

## THE ROLE OF THE NOTARY SUPERVISORY COUNCIL IN ADDRESSING CIVIL LAW VIOLATIONS COMMITTED BY NOTARIES

Hans Lukita<sup>1\*)</sup>, Ariawan Gunadi<sup>2</sup>

<sup>1,2</sup>Faculty of Law, Tarumanagara University, Jakarta, Indonesia  
hans.217232012@stu.untar.ac.id<sup>1\*)</sup>, ariawang@fh.untar.ac.id<sup>2</sup>

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### Abstract

The notary profession holds a strategic position in Indonesia's civil law system due to its authority to produce authentic deeds with full evidentiary value. However, in practice, there are several cases in which notaries have been reported for alleged civil law violations, including drafting deeds that harm certain parties. This situation highlights the need for proportional legal protection and supervision of notaries as public officials. This study aims to analyze the supervisory mechanisms and the preventive role of the Notary Supervisory Council over notaries reported for civil law violations. This research uses a normative juridical method through literature review and case-based analysis. The findings show that notaries can still be held legally accountable if they are negligent or violate procedures in preparing deeds. In some instances, notarial deeds may be downgraded to private deeds or annulled by law. The Notary Supervisory Council plays a role in administering guidance and tiered supervision, including issuing administrative sanctions such as warnings or dismissals. Additionally, the Council serves as legal support to prevent criminalization of notaries who perform their duties professionally. In conclusion, notary supervision must be carried out fairly and proportionally while upholding the integrity of the profession; it is recommended that the Council's preventive role be strengthened, particularly through legal assistance in civil cases.

**Keywords:** Notary, Supervisory Council, Civil Law Violation, Authentic Deed, Professional Oversight

## INTRODUCTION

Law Number 40 of 2007 concerning Limited Liability Companies (“Company Law”) explicitly stipulates in Article 1 paragraph (1) that a limited liability company is a legal entity established based on a capital alliance, founded through an agreement, and conducts business activities with an authorized capital divided into shares (S. F. D. N. Sari, 2018). Within this legal framework, the existence of a limited liability company does not merely depend on the fulfillment of formal elements as a legal entity, but also requires compliance with the normative provisions set forth in statutory regulations and their implementing rules (Abbas et al., 2019). The phrase “based on an agreement” in the aforementioned article emphasizes that the establishment of a company must be grounded in the mutual consent of the parties, formally embodied in the deed of establishment, which is generally prepared in the form of an authentic deed by a notary. This is in accordance with the mandate of Article 7 of the Limited Liability Company Law, which requires the company to be established by at least two founders and formalized through a notarial deed executed in the Indonesian language as the official language of the state (Apriana & Hafidz, 2017).

However, in practice, the role of a notary in the process of company establishment and legal entity authorization is not immune from potential legal issues, particularly in cases where negligence or procedural violations occur in the drafting of the authentic deed. Such negligence may give rise to legal disputes that escalate into civil litigation, thereby highlighting the urgency of the existence of the Notary Supervisory Council as an institution tasked with overseeing the notarial profession, enforcing ethical standards, and providing legal protection—both repressively and preventively. Accordingly, a thorough examination of the supervisory mechanisms and the legal implications of notarial actions becomes essential, considering the strategic role of notaries in ensuring legal certainty and protection in every formal legal engagement (Lahay et al., 2020).

In exercising its functions as a legal entity, a limited liability company operates with structural support from three primary organs: the Board of Directors, the Board of Commissioners, and the General Meeting of Shareholders (Al-Murtadho, 2023). Although each of these organs holds distinct roles and responsibilities, hierarchically, the General Meeting of Shareholders occupies the highest position within the corporate structure. This is due to the exclusive authorities vested in the General Meeting of Shareholders, which cannot be delegated to other corporate organs. The General Meeting of Shareholders is categorized into two types: the Annual the General Meeting of Shareholders and the Extraordinary General Meeting of Shareholders. The distinction between the two lies in the timing of their convening as well as the urgency and nature of the agenda items discussed (PT Bank CIMB Niaga Tbk, 2024).

Through the General Meeting of Shareholders mechanism, shareholders collectively exercise their rights to determine the strategic direction of the company. This forum serves as the ultimate decision-making body, reflecting the principle of corporate democracy, wherein the voices of shareholders exert a direct influence on the governance of the company. Although the implementation of the General Meeting of Shareholders resolutions may be delegated to the Board of Directors or, in certain circumstances, to the Board of Commissioners, the primary authority and ultimate legal power remain with the the General Meeting of Shareholders. Thus, the General Meeting of Shareholders not only functions as the embodiment of the collective will of the capital owners, but also serves as a legal instrument that ensures checks and balances within the corporate governance system of a limited liability company (Kurniawan, 2014).

An extraordinary general meeting of shareholders is held to discuss strategic and extraordinary matters, such as amendments to the Articles of Association, mergers, demergers, consolidations of the company, appointment or replacement of curators, postponement of debt payment obligations, bankruptcy petitions, and the cessation of business activities. The Articles of Association itself is an integral part of the deed of establishment of a limited liability company, containing the company’s internal regulations, including the rights and obligations between the Company, the Board of Directors, and the Board of Commissioners. Article 15 of the Company Law stipulates that the Articles of Association must include provisions regarding authorized capital, issued and paid-up capital, the number of shares, as well as the identities and composition of the members of the Board of Directors and the Board of Commissioners. Therefore, the creation and amendment of the Articles of Association always follow strict legal procedures, and in practice, the amendment process is documented in a notarial deed to ensure the validity and legal force of the decisions made at the general meeting of shareholders.

A notarial deed used in the context of the general meeting of shareholders can take the form of a deed *relaas*, which is a deed made based on the minutes of the meeting and then becomes an authentic deed (Munthe & Rouli, 2022). Without a valid notarial deed, the decisions of the general

meeting of shareholders have no legal force and cannot be implemented. In the case of amendments to the Articles of Association or other significant changes, the presence of at least two-thirds of the total shares with voting rights at the general meeting of shareholders is an absolute requirement, and decisions must be approved by two-thirds of the votes cast (Azizah, 2016), unless otherwise stipulated in the Articles of Association regarding quorum and decision-making mechanisms. If the quorum is not met, the general meeting of shareholders may be repeated up to three times with permission from the local district court (Widjaja, 2008). As regulated in Article 88 of the Company Law, once the decision of the general meeting of shareholders is determined and documented in a notarial deed, the decision acquires binding and legal force.

The role of a notary in the creation and legalization of authentic deeds is very important, not only as a public official who is responsible (Afifah, 2017), but also as a party who masters the correct legal techniques and language in accordance with the provisions of Articles 1867-1870 of the Indonesian Civil Code. With an authentic deed made by a notary, the evidence regarding the content of the deed becomes perfect and holds the highest evidentiary power in court. As a public official regulated by the Notary Position Law, a notary has special authority in making authentic deeds as well as the obligation to securely store those documents (Kurnia, 2022). The special expertise inherent in the notary position is not merely a professional characteristic but a requirement obtained through specialized education and training, including notary education, training from the Indonesian Notary Association, and strict supervision from various authorized institutions.

As a public official holding a special legal position (Adjie, 2020), a notary is obligated to perform his duties and responsibilities with utmost diligence and professionalism. This is crucial to prevent any harm or loss to the parties involved as well as to himself. Nevertheless, in practice, inadvertent negligence or carelessness occasionally occurs. Should such negligence result in damages, the notary may be held liable under civil law. Within the internal relations of a company—whether between corporate organs, employees, or external parties such as suppliers and consumers—the environment is not always harmonious or free from disputes. Conflicts arising in these relationships may have wide-ranging implications, including the potential involvement of the notary if he fails to carry out his duties in accordance with the provisions of the Notary Position Law. Therefore, the role of a notary extends beyond merely recording or authenticating documents; it also includes ensuring that all legal and administrative processes are conducted in compliance with applicable legal norms to protect the interests of all parties fairly and proportionately.

Disputes arising within a company may lead to resolution in the District Court, and if necessary, proceed to the appellate level at the High Court, where the roles of judges and law enforcement officials are crucial (Nadapdap, 2024). Notaries involved will be under strict supervision to minimize potential losses that may arise from the performance of their duties. The professional organization of notaries, particularly the Indonesian Notary Association, serves as the sole platform providing training, guidance, and oversight for its members. This guidance is also regulated through the Notary Supervisory Council, which consists of the Regional Supervisory Council, the Provincial Supervisory Council, and the Central Supervisory Council (Purwaningsih et al., 2023). This council is tasked with overseeing the practice of the profession, providing guidance, and imposing administrative sanctions in the event of violations of the code of ethics and legal provisions.

The process of imposing sanctions on notaries who commit violations is regulated in a tiered manner, starting from the Regional Supervisory Council, the Provincial Supervisory Council, to the Central Supervisory Council, with the highest authority to propose dishonorable dismissal to the Minister of Law and Human Rights (Haris, 2023). Such dismissal can only be carried out after a comprehensive examination process and is not done arbitrarily. Additionally, in the context of criminal law enforcement, notaries under investigation must obtain approval from the Notary Supervisory Council in accordance with the provisions of Ministerial Regulation No. 7 of 2016, ensuring that not just any party can summon or examine a notary without proper procedures. With strict oversight mechanisms and clear regulations, it is expected that the notary profession can be carried out with high integrity, protecting the interests of parties involved in limited liability companies and the wider community. The existence of this supervisory institution also upholds the dignity of the profession and fosters public trust in notaries as public officials with significant authority in civil and corporate law. Based on the above, authors aim to examine the following issues: 1) How is the normative regulation regarding the mechanism for imposing sanctions on Notaries who commit violations of civil law?; 2) What is the role of the Notary Supervisory Council in protectively safeguarding Notaries?

## RESEARCH METHOD

In preparing this research, authors employ a normative juridical approach, which focuses on the analysis of written legal norms as stipulated in legislation, court decisions, and relevant legal literature (Marzuki, 2019). This study is based on library research encompassing legal books, scholarly journals, as well as digital sources such as official websites and articles accessible online through internet search engines (Matheus & Gunadi, 2024). The digital search is aimed at uncovering the latest developments on legal issues currently attracting public attention, thereby providing a factual context to the subject under study. To enhance understanding and sharpen the analysis, authors also conducted limited interviews with a resource person who serves as a Supervisory Officer in the relevant institution, to obtain practical and empirical perspectives on the application of the legal norms examined. The secondary legal materials used include legal literacy documents, academic references, and educational experiences that have served as the author's foundation for understanding the national legal system. Through a combination of normative and case approaches, authors strive to connect positive legal principles with concrete facts from relevant legal events, so that the analysis in this scholarly work is not only theoretical but also practical. This approach is expected to provide a meaningful scientific contribution, both in the development of legal discourse and in promoting the more effective protection of the legal rights of society.

## RESULTS AND DISCUSSION

### The Notary Profession is Considered a Noble Profession (*Officium Nobile*)

According to the legal perspective expressed by Tan Thong Kie, a notary is essentially a professional figure whose existence is relied upon in legal transactions due to their high authority and integrity (Kie, 2007). A notary is trusted as a party capable of providing assurance of the formal truth of an event or legal act through the deed they create. The signature and seal affixed by the notary on the authentic deed are not merely symbolic but reflect a legal guarantee that the contents of the document have been prepared in accordance with lawful procedures and represent the will of the parties involved (Sihombing, 2020). In performing their duties, a notary is required to remain neutral and impartial, as well as uphold confidentiality and unimpeachable moral integrity, a characteristic known in legal terms as *onbreekbaar* or unimpeachable.

The profession of a notary is inherently regarded as a noble office (*officium nobile*), as its existence serves not only as a public service but also as a pillar for the enforcement of justice within society (Ridodi, 2017). Documents prepared by a notary are not merely evidence recognized by law, but they also possess the power to establish the legal status of an object, regulate civil relationships, and determine the rights and obligations of legal subjects (Marbun, 2015). Thus, the role of a notary is not solely administrative but carries significant legal consequences. Consequently, negligence or lack of due care in the performance of their duties may result not only in material losses in the civil sphere but may also give rise to criminal liability if there is an element of intent or gross negligence in the execution of their duties. This underscores the immense responsibility borne by a notary in carrying out their functions, requiring a high degree of professionalism and caution to maintain public trust and uphold legal certainty.

Although in their role as the drafter of deeds, a notary is essentially not a party directly involved in the substance of the agreement made, but only records and formulates the will of the parties in the form of an authentic deed in accordance with the applicable legal provisions, legal practice in the field shows quite a complex dynamic (Purwaningsih et al., 2023). In several civil and even criminal cases, there is a tendency for notaries to be dragged in as defendants or co-defendants, even though normatively their responsibility is limited only to the formal aspects of the deed. This indicates that although the notary profession is safeguarded by strict legal regulations, it is still not immune to potential legal risks arising from social dynamics or misuse by certain parties. Therefore, notaries are required not only to be technically proficient in drafting deeds but also to exercise caution and moral integrity in maintaining professionalism to realize legal certainty, justice, and benefit.

### Notary Commits Legal Violation, Reported, and Taken to Court

In notarial practice, legal issues often arise that not only involve the parties using notarial services but also place the notary themselves in a legally vulnerable position. It is not uncommon for a notary, who is supposed to act as a neutral and professional party, to become involved in the investigation and prosecution of criminal cases involving their clients, even up to the stage of court trials. In more complex cases, the notary is not only called as a witness or client companion but is also reported as a party held responsible or even named as a defendant in a legal case. This phenomenon raises fundamental

questions about the limits of a notary's responsibilities, especially when there is a deviation from the provisions of the Indonesian Civil Code or other relevant legislation.

Authors in this context seeks to examine more deeply the legal consequences that may be imposed on a notary if they are proven to have committed an unlawful act (*onrechtmatige daad*). The discussion is also directed towards the forms of sanctions, both civil and administrative, including their impact on the validity of the deeds made by the notary. These sanctions are not limited to civil compensation but may also include reprimands, temporary suspension, or revocation of the notary's position imposed by the Notary Supervisory Council in accordance with the supervisory mechanisms regulated by the Notary Position Law.

Within this framework, it is important to understand that the professional responsibility of a notary cannot be taken lightly. A notary is required to undergo a long and structured educational and training process, starting from obtaining a Bachelor of Law degree, then continuing to a Master's degree in Notarial Studies, completing a two-year internship at a registered notary office, and participating in various trainings, seminars, and competency tests such as the selection exam for Extraordinary Members and the Code of Ethics exam conducted by the Ministry of Law and Human Rights. Even after being declared graduated and receiving an Appointment Decree from the Minister of Law and Human Rights, a prospective notary is still required to take an oath of office at the Regional Office of the Ministry as an ethical pledge to perform duties honestly and responsibly.

However, the reality on the ground shows that violations of professional ethics and laws still occur. In fact, under the principle of legality, all layers of society, including public officials such as notaries, are bound by the generally applicable legal norms. Violations committed by notaries in practice, especially in the creation of authentic deeds, can cause real harm to the interested parties. For example, in cases where the name of a shareholder is omitted from the articles of association of a company, it can result in material losses as referred to in Article 1365 of the Indonesian Civil Code, which states that any unlawful act causing harm to another obliges the perpetrator to provide compensation (I. Sari, 2020).

However, the provision does not yet provide clear parameters on how to assess or measure the extent of the losses suffered. The absence of clear benchmarks often leads to legal uncertainty and disputes between parties, ultimately resulting in litigation. In such situations, many notaries end up being dragged into lawsuits due to their role in the establishment of legal entities or in the drafting of deeds related to changes in the General Meeting of Shareholders. Therefore, discussions concerning the legal liability of notaries, the sanctions that can be imposed, and the legal consequences of the deeds they create are important aspects in maintaining the integrity and accountability of the notary profession amid evolving legal dynamics and increasingly complex public demands.

### **The Preventive Role of the Notary Supervisory Council Regarding Public Reports on Notarial Deeds Allegedly Causing Harm**

In the practice of notarial duties in Indonesia, the notary position is fundamentally subject to certain limitations that are expressly regulated under Article 15 of the Notary Position Law (Tuwaidan, 2018). This provision serves as the principal normative foundation in determining the scope of authority and responsibilities that may be exercised by a notary, and it also forms the legal basis for assessing the extent of legal accountability attached to the office. Within the framework of supervision, the law emphasizes that oversight of notaries is principally confined to matters involving criminal cases, as evidenced by the authority granted to investigators and public prosecutors in handling cases that contain elements of criminal offenses (Adjie, 2015). This interpretation aligns with the legal reasoning set forth in the North Jakarta District Court Decision Number 214/Pdt.G/2021/PN.Jkt.Utr, in which the panel of judges affirmed that in civil cases, the examination of a notary does not require prior approval from the Notary Supervisory Council or any other supervisory authority.

Nevertheless, in the author's view, such a legal approach contains a fundamental weakness with regard to the legal protection afforded to the notarial profession. In practice, civil cases that initially fall strictly within the domain of private law may develop into criminal proceedings, depending on the factual dynamics that emerge during the course of investigation or inquiry. Therefore, it is of paramount importance to establish a preventive legal assistance mechanism for notaries summoned by law enforcement authorities—whether as witnesses, expert witnesses, or even as parties suspected of involvement in a case. Ideally, such legal assistance should be provided from the earliest stage, even prior to any formal examination, to ensure that all acts of summons and investigation remain within the bounds of legality and uphold the principles of prudence and protection of the dignity of the notarial office. In this context, the existence of the Notary Supervisory Council should not merely be regarded as an internal oversight organ, but also as an institution capable of providing institutional advocacy and

conferring legitimacy upon legal processes involving notaries. In other words, the presence of this Council carries a strategic role in preventing procedural deviations that may undermine or impair the independence and integrity of the notarial profession, particularly in its function as a public official entrusted with the performance of legal services on behalf of the state (Lahay et al., 2020).

### **The Role of the Notary Supervisory Council in Imposing Sanctions on Notaries Proven to Have Committed Civil Law Violations**

The authority to supervise notaries is explicitly regulated under the Notary Position Law, particularly in Article 66. This provision mandates the Regional Supervisory Council to exercise supervisory functions over the performance of duties and responsibilities of notaries (Husain et al., 2022). Such authority includes the right of the Regional Supervisory Council to request copies or duplicates of the minutes of deeds, as well as other supporting documents directly related to the minutes or the notarial protocol. All such documents are under the possession and responsibility of the respective notary as a public official. Furthermore, the Regional Supervisory Council is also authorized to summon and request clarification from a notary suspected of violating either the code of professional ethics or the applicable laws and regulations (Paikah, 2023).

This clarification and examination process is not final; rather, it is part of a hierarchical mechanism, as the outcome must be forwarded to the Regional Supervisory Council at the provincial level for further review. In accordance with Article 73(1) of the same Law, the Regional Supervisory Council has the authority to evaluate the findings from the district level and subsequently provide recommendations to the Central Supervisory Council regarding the appropriate sanctions to be imposed on notaries found to have committed violations (Putra et al., 2024). Such recommendations and evaluations are not merely administrative in nature, but possess legal evidentiary value and may be used in judicial proceedings before the District Court or the High Court, thereby reflecting a clear correlation between the professional supervisory system and the national legal enforcement system.

Ideally, if there is an allegation that a notary has committed an unlawful act, the proper procedure to be followed is the internal supervisory mechanism as outlined in the Law. This mechanism begins with the filing of a report or complaint to the Regional Supervisory Council, which holds the authority to conduct a preliminary clarification (Armaini et al., 2023). If indications of a more serious violation are found, the matter will then be escalated to the provincial and potentially to the central level. Only after all these stages have been objectively and professionally carried out can a sanction be imposed in accordance with the degree of wrongdoing committed (Iriantoro & Shafira, 2025).

However, in the specific case that is the subject of the author's study, a deviation was identified that is legally and ethically indefensible. In that case, the law enforcement authorities—specifically the police—summoned the notary directly without first submitting a formal request to the Regional Supervisory Council, as required by law. This action constitutes a procedural deviation from the legal framework established under the national legal system. Moreover, it may also be classified as a violation of the principle of legality and the principles of due process of law, which must be upheld in every legal proceeding against public officials. A notary, as a public official entrusted by the state with the legal service function to the public, should not be subjected to arbitrary examination without adherence to lawful procedure. Legal protection of a notary's position under the prevailing laws is in fact part of the broader effort to preserve the integrity of the legal institution itself (Afifah, 2017).

On the other hand, in the realm of civil law, the Notary Position Law also provides serious legal consequences for deeds drawn up by notaries found to have committed violations. This is explicitly stipulated in Article 84, which grants judges the authority to impose two types of civil sanctions on legally defective notarial deeds (Panjaitan & Simamora, 2025). First, the authentic deed may lose its evidentiary strength and be treated merely as a private deed. Second, in more severe cases, the deed may be declared null and void by operation of law (Indarwati, 2023). Therefore, if a deed made by a notary is proven not to comply with the formal or material requirements stipulated in the prevailing laws and regulations, the deed shall no longer have legal force and must be treated as if it never existed (Amalia & Soroinda, 2024).

In the context of the case studied by the author, there is a strong legal conviction that the deed in question contains substantial formal defects, both in terms of its procedural drafting and in the supervisory authority that should have overseen the process. Accordingly, such deed should be deemed invalid and devoid of legal force, as it contravenes the principle of legality and the doctrine of legal certainty, both of which serve as fundamental pillars of the national legal system, particularly in relation to the evidentiary value of notarial deeds.

## CONCLUSION

In conclusion, although the notary profession holds significant authority within Indonesia's civil law system, it is not immune to the risk of civil disputes that may arise from negligence or procedural errors. In this regard, the Notary Supervisory Council—particularly at the regional level—plays a strategic role not only in imposing administrative sanctions but also in providing early legal assistance to notaries undergoing legal proceedings. Therefore, strengthening the supervisory mechanisms and ensuring more effective coordination between law enforcement authorities and the Supervisory Council is essential to ensure that legal proceedings involving notaries are conducted in accordance with the principles of due process and professional protection. By reinforcing the supervisory function, public trust in notarial deeds can be preserved, and legal certainty as well as justice in civil cases can be better upheld.

The Notary Supervisory Council, particularly the Regional Supervisory Council, holds a vital role in maintaining the integrity of the notarial profession through both preventive and repressive supervisory functions. Preventive supervision is implemented through guidance, directions, and legal assistance for notaries involved in legal proceedings—whether civil or criminal. Such assistance is crucial, since even though a case may originate as a civil dispute, if elements of legal violations are found during the process, it may lead to criminal prosecution of the notary concerned. In many cases, authentic deeds executed by notaries risk being declared null and void by the court if proven to have caused harm to certain parties, which may diminish public trust and tarnish the dignity of the notarial office.

Therefore, the Regional Supervisory Council must broaden the scope of its preventive role, not only in terms of administrative guidance but also by providing legal support to notaries facing civil lawsuits. The objective is not to justify any unlawful conduct, but rather to ensure that notaries receive proportional legal protection while performing their official duties. Additionally, law enforcement officers must be equipped with adequate understanding of the Notary Office Law and the role of the Supervisory Council, so that the summoning or examination of a notary is conducted not arbitrarily but in accordance with lawful procedures that respect the notary's status as a public official. Hence, the guidance and supervision by the Regional Supervisory Council is aimed not only at ensuring notaries' compliance with prevailing laws and regulations, but also at safeguarding the dignity and honor of the notarial profession. On the other hand, notaries are expected to uphold professional ethics at all times and to exercise not only trust in their appearers but also prudence, integrity, and legal accountability in every deed they execute.

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