



Characteristics of the Authority of the Honorary Council of Notaries

Hatta Isnaini Wahyu Utomo

Faculty of Law, Yos Soedarso University, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v12i2.6620>

Abstract

The Minister formed the Notary Honorary Council to supervise the implementation of the Notary's office. The Notary Honorary Council institution is expected to maintain the confidentiality of the deeds made by the parties, mainly when a dispute occurs, so that no party is harmed due to the disclosure of the confidentiality of the deeds that the parties have made. This study discusses the characteristics of the Notary Honorary Council institution. This study uses a statute approach and a conceptual approach. The results of the study indicate that the Notary Honorary Council is a State Administrative Body because it obtains delegation of authority from the Minister of Law and Human Rights. The Notary Honorary Council is present to provide legal protection to Notaries when Notaries carry out their obligations to maintain the confidentiality of their position.

Keywords: *Notary Honorary Council; Legal Protection; Characteristics*

1. Introduction

The enactment of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN-P) gave birth to a new institution in terms of guidance for Notaries, namely the formation of the Notary Honorary Council. The birth of the Notary Honorary Council institution is based on the fact that Notaries, as public officials who carry out their profession in providing legal services to the community, need protection and guarantees to achieve legal certainty. In this case, the legal protection provided to Notaries is not solely for the needs of Notaries but rather more in the form of providing legal protection to the parties for the confidentiality of their deeds before a Notary. The Notary Honorary Council institution is expected to maintain the confidentiality of the deeds made by the parties, mainly when a dispute occurs, so that no party is harmed due to the disclosure of the confidentiality of the deeds made by the parties.

To implement the provisions of Article 66A Paragraph (3) of the UUJN UUJN-P above, the Regulation of the Minister of Law and Human Rights Number 17 of 2021 concerning the Duties and Functions, Requirements and Procedures for Appointment and Dismissal, Organizational Structure, Work Procedures, and Budget of the Notary Honorary Council (hereinafter referred to as Permenkumham No. 17 of 2021). In Permenkumham No. 17 of 2021, the definition of the Notary Honorary Council is emphasized, which was not previously described in the UUJN-P. The definition of the Notary Honorary Council is noted in Article 1 number 1 of Permenkumham No. 17 of 2021, 2021, which states that the

Notary Honorary Council is a body that has the authority to carry out the development of Notaries and the obligation to provide approval or rejection for investigations and judicial processes regarding the taking of photocopies of minutes of deeds and summoning Notaries to attend examinations related to deeds or Notarial Protocols that are in the Notary's custody.

The Notary Honorary Council formed by the Minister to supervise the implementation of the Notary's office consists of the Regional Notary Honorary Council (MKNW), which is formed and domiciled in the Provincial Capital and the Central Notary Honorary Council (MKNP), which is formed and domiciled in the National Capital. Regarding the division of duties and authorities of each level of the Notary Honorary Council, it is determined that the MKNP has the task of carrying out guidance for the MKNW related to its duties by supervising the MKNW. In contrast, the MKNW has the task of examining applications submitted by investigators, public prosecutors, and judges and providing approval or rejection of requests for authorization to summon Notaries to attend investigations, prosecutions, and judicial processes.

The position of the Minister as an executive (government) who exercises government power in the qualification as a State Administrative Agency or Office delegates the authority to guide Notaries to an agency called the Notary Honorary Council. Thus, the Minister as a delegate and the Notary Honorary Council are delegates. The Notary Honorary Council, as a delegate, has the authority to thoroughly guide Notaries without returning its jurisdiction to the delegans.¹ The position of the Minister as a State Administrative Agency or Office that carries out government affairs based on applicable laws and regulations has consequences for the Notary Honorary Council, namely that the Notary Honorary Council also has the position of a State Administrative Agency or Office because it receives delegations from the State Administrative Agency or Office.

The position of the Notary Honorary Council as an Administrative Agency/Official has not been stated explicitly either in the UUJN, UUJN-P or in Permenkumham No. 17 Th. 2021 gave rise to a vague norm, because to formulate the position of the Notary Honorary Council as an Administrative Body/Official at this time only relies on doctrine. Due to these conditions, legal certainty and legal protection are far from being achieved, especially to align the duties and authorities of the Notary Honorary Council as stated in the UUJN with the guidelines for implementing governance regulated in the UUAP. In addition, references that examine in detail the position and characteristics of the Notary Honorary Council are still very minimal so that in this case it opens up space to interpret it freely. The above has an impact on the implementation of the duties and authorities of the Notary Honorary Council. With the lack of guidelines for the implementation of the duties and authorities of the Notary Honorary Council, the position of the Notary as an object of guidance from the Notary Honorary Council is vulnerable to being harmed, especially due to legal defects in the decisions issued by the Notary Honorary Council regarding the taking of minutes of deeds and summoning Notaries.

The position of the Notary Honorary Council as an Administrative Agency/Official has not been stated explicitly either in the UUJN, UUJN-P or in Permenkumham No. 17 Th. 2021 gave rise to a vague norm because formulating the position of the Notary Honorary Council as an Administrative Body/Official at this time relies only on doctrine. Due to these conditions, legal certainty and protection are far from being achieved, primarily to align the duties and authorities of the Notary Honorary Council as stated in the UUJN with the guidelines for implementing governance regulated in the UUAP. In addition, references that examine the position and characteristics of the Notary Honorary Council are minimal, so in this case, it opens up space to interpret it freely. The above impacts the implementation of the duties and authorities of the Notary Honorary Council. With the lack of guidelines for the implementation of the responsibilities and authorities of the Notary Honorary Council, the position of the Notary as an object of guidance from the Notary Honorary Council is vulnerable to being harmed, mainly due to legal defects in the decisions issued by the Notary Honorary Council regarding the taking of minutes of deeds and summoning Notaries.

¹ Habib Adjie, *Sanksi Perdata Dan Administratif Terhadap Notaris Sebagai Pejabat Publik* (Bandung: Refika Aditama, 2008).

2. Method

In this research, a normative juridical research type is used, meaning that this research is based on a literature review of a set of existing norms, especially Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries. This research uses an approach through statutory regulations (Statute Approach) and a research approach through concepts, principles, doctrine and opinions of scholars (Conceptual Approach).

3. Discussion

Discussion on the philosophy of the existence of the Notary Honorary Council cannot be separated from the understanding of the word "assembly". Etymologically, the word "assembly" comes from Arabic, namely "al-majlis", which means a place to sit and welcome guests.² In terminology, the word "assembly" is interpreted as: 1) a council that carries out specific tasks regarding the state, etc., in a limited manner; 2) a meeting (gathering) of many people; meeting; density; session; 3) a building where meetings are held.

The word "assembly" in Arabic is identical to the word "Majelis Ta'lim", which means a place to teach or study Islamic teachings.³ In general, the Majelis Ta'lim is a pure non-governmental institution. It is established, managed, maintained, developed, and supported by its members. Therefore, the Majelis Ta'lim is a forum for the community to meet their own needs. So, it can be said that the Majelis Ta'lim is a Muslim community that specifically organizes education and teaching about Islam, which aims to provide guidance, direction, and instruction on Islam to the congregation.⁴

In Indonesia, in addition to the Majelis Ta'lim, several institutions use the word "majlis", including:

1. Majelis Permusyawaratan Rakyat (MPR)

The MPR is a bicameral legislative institution and one of the state institutions in the Indonesian state system. It consists of members of the People's Representative Council (DPR) and members of the Regional Representative Council (DPD) who are elected through general elections. A Presidential Decree inaugurates MPR membership.

2. Majelis Ulama Indonesia (MUI)

MUI is an independent institution that accommodates Islamic scholars, Zuma, and intellectuals to guide, foster, and protect Muslims in Indonesia. The MUI is tasked with assisting the government in carrying out matters concerning the welfare of Muslims, such as issuing fatwas on the halalness of food, determining the truth of a sect in the Islamic religion, and issues relating to the relationship between a Muslim and his environment.

3. Majelis Luhur Kepercayaan Terhadap Tuhan Yang Maha Esa Indonesia (MLKI)

MLKI is a single forum for believers in the Almighty God and the traditional belief community in Indonesia.⁵

Based on the institutions that use the word "council", one core similarity can be seen, namely a forum or group that aims for the welfare of the people, especially those within its scope.

² Puslitbang Kehidupan Keagamaan, *Peningkatan Peran Serta Masyarakat Dalam Pendalaman Ajaran Agama Melalui Majelis Taklim* (Jakarta: Puslitbang Kehidupan Keagamaan, 2007).

³ Hasbullah, *Kapita Selektta Pendidikan Islam Di Indonesia* (Jakarta: Raja Grafindo Persada, 1996).

⁴ Tuti Alawiyah, *Strategi Dakwah Di Lingkungan Majelis Ta'lim* (Bandung: Mizan Pustaka, 1997).

⁵ Hatta Isnaini Wahyu Utomo, "The Position of Honorary Council of Notary in Coaching Indonesian Notaries," *Journal of Law, Policy and Globalization* 92 (2019), <https://doi.org/10.7176/jlpg/92-12>.

The characteristics of the "council" are generally also found in the Notary Honorary Council institution. The Notary Honorary Council is an institution consisting of 3 (three) Notary elements, 2 (two) government people and 2 (two) academics. So, there is a forum or group within the Notary Honorary Council.

The Notary Honorary Council is an institution that functions to guide Notaries. Etymologically, guidance comes from the word "guidance". Guidance is a process, creation, method of guidance, renewal, effort and action or activity carried out effectively and efficiently. Guidance is development or renewal. In guidance activities, there are development activities (development) and improvements, as well as the discovery of new things. In other words, guidance activities are always dynamic, progressive and even innovative.

Guidance is assistance from a person or group of people aimed at another person or group through guidance materials to develop abilities to achieve what is expected.⁶ Guidance contains elements of objectives, materials, processes, methods, renewal, and guidance actions. In addition, planning, organizing, and controlling are required to carry out guidance activities. In its implementation, the concept of guidance should be based on things that are effective and pragmatic in the sense that it can provide the best possible solution to the problems faced and practical in the sense of basing existing facts on reality so that it is helpful because it can be applied in practice. So this is from Coaching is an effort made by a person or group of people to others to change bad habits into good ones.

In carrying out their duties, notaries are required to keep confidential the deeds and information obtained in the process of making the deed, unless otherwise ordered by Law that Notaries are not required to keep confidential and are required to provide the necessary information relating to the deed. Thus, it is clear that the limitation of the Notary's obligation to keep the deed confidential is only the order of the Legislation. The Notary's obligation to keep confidential the contents of the deed and all information obtained in making the deed by the Notary's oath of office is called the Obligation of Denial (*Verschoningsplicht*). This obligation is not for the benefit of the Notary himself but for the benefit of the parties who have celebrated the Notary.⁷

The obligation to keep the contents of the deed confidential is part of the secret of the position that must be maintained by the Notary by the oath or promise made by the Notary before carrying out his office, before the Minister or appointed Official. The oath or oath taken by a Notary to maintain the confidentiality of the contents of the deed is a manifestation of the Principle of Trust, which is a guideline for Notaries in carrying out their duties. The oath or promise must be understood, namely that the public believes that the Notary can keep all information or statements given before the Notary. On this basis, the position of a Notary is a position of trust. One form that positions a Notary in a position of trust is the obligation to keep everything regarding his deed confidential and all information obtained to make the deed by the oath/promise of office. Exceptions to this obligation are only limited if the Law determines otherwise.

The existence of the Notary Honorary Council institution regulated in Article 66A of the UUJN-P is to replace the role of the Regional Supervisory Council in fostering Notaries, mainly to provide approval or reject the summons of Notaries and the taking of photocopies of Notary protocols by investigators, public prosecutors and judges which have been declared invalid by the Constitutional Court Decision Number 49/PUU-X/2012.⁸ The Notary Honorary Council is an independent body making

⁶ Ahmad Tanzeh, *Pengantar Metode Penelitian* (Yogyakarta: Teras, 2009).

⁷ Hatta Isnaini Wahyu Utomo, "Hakikat Lembaga Majelis Kehormatan Notaris Dalam Pembinaan Notaris Sebagai Pejabat Umum" (Universitas 17 Agustus 1945 Surabaya, 2020).

⁸ Luthfan Hadi Darus, *Hukum Notariat Dan Tanggung Jawab Notaris* (Yogyakarta: UII Press, 2017).

decisions that have the task and obligation to provide guidance or coaching to strengthen the Notary institution in enforcing the UUJN for everyone who holds the position of Notary.⁹

The amendment that Article 66 of the Amendment UUJN re-accommodates the principle of protection for the position of Notary. This article becomes a protective suit for Notaries, where previously, the substance of the article regulated in Article 66 UUJN had been revoked by the Constitutional Court through the Constitutional Court Decision Number 49/PUU-X/2013. The existence of this Notary Honorary Council is a form of legal protection that can be given to Notaries. Notary in providing services for making deeds and other tasks assigned to Notary, which are attached to the predicate as a public official within the scope of the duties and authority of Notary. Public interest services are the essence of government duties based on providing and guaranteeing legal certainty for citizens. This task is given and entrusted to a Notary by Law in specific fields. UUJN has placed a Notary as a public official who carries out the legal profession. Therefore, the Notary needs legal protection as a position, not as a Notary personally.¹⁰

Philosophically, the purpose of the Notary Honorary Council is to protect the Notary from untrue or arbitrary summons from law enforcement officers. Sociologically, the Notary Honorary Council exists in the Legislation because law enforcement officers summon many Notaries without going through legal procedures. So, the Notary cannot carry out their authority properly because, at any time, they will be summoned by law enforcement officers.¹¹

This Notary Honorary Council institution is formed by the Minister, who has the authority to guide Notaries, and further implementation will be regulated through ministerial regulations. Among other things, the government's task is to determine whether or not a Notary can be brought to the investigation level due to the work (deed) results and behaviour in carrying out his/her position.¹² The purpose of the Notary Honorary Council is to ensure that a Notary can maintain the confidentiality of the deed and his/her obligation to deny carrying out his/her position. Notaries must keep confidential the contents of the deed and information obtained in carrying out their duties because the Notary has taken an oath before carrying out his/her position.¹³ Notaries must also keep confidential various initial discussions in preparation for making the deed, even though not all of what was discussed was included. A Notary who cannot keep secrets will lose public trust and no longer be considered trusted. On that basis, the obligation to keep the deed confidential was born, and there is a specific mechanism for parties who want a deed to be opened in court. A mechanism like this is needed so that Notaries can freely carry out their positions because of legal protection.¹⁴

In the process of discussing the Draft Amendment to the Notary Law, both the DPR and the President put forward several reasons for the formation of the Notary Honorary Council which can be summarized as follows:¹⁵

1. The creation of the Amendment to the Notary Law does not hinder the investigation process, this can be seen from the construction of the wording of Article 66 paragraph (1) of the Amendment to the Notary Law which states that "For the interests of the judicial process, investigators, public prosecutors, or judges with the approval of the Notary Honorary Council are authorized to take

⁹ Habib Adjie, *Hukum Notaris Indonesia Tafsir Tematik Terhadap UU No.30 Tahun 2004 Tentang Jabatan Notaris*, (Bandung: Refika Aditama, 2008).

¹⁰ Ferdiansyah Putra and Ghansham Anand, "Perlindungan Hukum Terhadap Para Pihak Yang Dirugikan Atas Penyuluhan Hukum Oleh Notaris," *Jurnal Komunikasi Hukum (JKH)* 4, no. 2 (August 10, 2018): 26, <https://doi.org/10.23887/jkh.v4i2.15460>.

¹¹ HS Salim, *Peraturan Jabatan Notaris* (Jakarta: Sinar Grafika, 2018).

¹² A.A. Andi Prajitno, *Pengetahuan Praktis Tentang Apa Dan Siapa PPAT* (Malang: Selaras, 2013).

¹³ Hatta Isnaini Wahyu Utomo, "Legal Position of the Surrogate as a Substitute For a Signature In a Notarial Deed," *Jurnal Hukum Dan Kenotariatan* 8, no. 2 (August 12, 2024): 94–104, <https://doi.org/10.33474/hukeno.v8i2.22378>.

¹⁴ Freddy Harris & Leny Helena, *Notaris Indonesia* (Jakarta: Lintas Cetak Djaja, 2017).

¹⁵ Rahmida Erliyani and Ahmad Ratomi, *Eksistensi Notaris Dalam Dinamika Hukum Dan Kebijakan* (Yogyakarta: Genta Publishing, 2018).

photocopies of the Minutes of the Deed and/or letters attached to the Minutes of the Deed or Notary Protocol in the Notary's custody; and to summon the Notary to attend the examination related to the Deed or Notary in the Notary's custody". The construction of the wording of this article opens up vast opportunities for investigators to obtain evidence to clarify the investigation process, and it is only right that the Notary Honorary Council provide the evidence in question for the investigation. That then a unique case emerged where the Notary Honorary Council did not give permission is another thing that cannot be a reason to blame the editorial provisions in Article 66 paragraph (1) of the Amendment UUJN as contradicting the 1945 Constitution of the Republic of Indonesia.

2. If the Notary Honorary Council does not permit the Investigator to take a photocopy of the minutes of the deed and/or letters attached to the Notary's Request for Deed or notary protocol in the Notary's storage, then the Police as investigators and law enforcers should make other efforts to obtain the evidence, for example by applying to the District Court to issue a determination to take a photocopy of the request for the deed/letters attached to the Notary's minutes or protocol for the sake of advancing the investigation process. So, this is not a normative problem but rather an enrichment of law enforcers' methods to collect evidence.
3. The ratio legis is an effort to enforce the obligation to deny or the Notary's right to refuse (the obligation to keep the contents of the deed confidential). Thus, the approval of the Notary's Honorary Council is the "key" to unlocking the Notary's obligation to deny when facing the complexity of the legal process (investigation, inquiry, prosecution, and court hearing). The final examination result is the approval or rejection of the request of the Investigator, public prosecutor and judge regarding the contents of the deed, photocopy of the minutes or other letters. The complexity of the tasks, obligations, and guarantees of using the Notary's right to deny in carrying out his duties requires standard protection standards by forming the Notary's Honorary Council. Therefore, Article 66 paragraph (1) of the Amendment to the UUJN provides protection and equality before the law to Notaries in providing information in the legal process.

As a logical consequence of the Notary's responsibility to the public, continuous supervision and guidance must be guaranteed so that the Notary always complies with the legal principles underlying his/her authority and can avoid abuse of authority or trust given.¹⁶ Supervision is necessary for the ethical and legal values the Notary should uphold to run by existing laws. The purpose of Notary supervision is to fulfil the requirements and carry out his/her duties by the provisions of applicable laws to safeguard the interests of the general public, while the main task of Notary supervision is so that all rights, authorities and obligations given to the Notary in carrying out his/her duties as provided by the relevant basic regulations, are always carried out on the path that has been determined, not only the legal path but also based on morals and professional ethics to ensure protection and legal certainty for the public.¹⁷ As a public official who also carries out part of his/her duties and authority in making authentic deeds, which are also state documents, it is only right that the Notary obtains special legal protection related to his/her duties and obligations. The need for legal protection for Notaries in carrying out their duties is accommodated in the Amendment to the UUJN. This can be seen in consideration of Letter C of the Amendment to the UUJN, which states: "Notaries as public officials who carry out their profession in providing legal services to the public, need to receive protection and guarantees to achieve legal certainty."¹⁸

¹⁶ Hatta Isnaini and Wahyu Utomo, "The Existence of the Notary and Notarial Deeds within Private Procedural Law in the Industrial Revolution Era 4.0," *International Journal of Innovation, Creativity and Change* 10, no. 3 (2019): 128–39.

¹⁷ Hatta Isnaini and Hendry Dwicahyo Wanda, "PRINSIP KEHATI-HATIAN PEJABAT PEMBUAT AKTA TANAH DALAM PERALIHAN TANAH YANG BELUM BERSERTIFIKAT," *Jurnal Hukum IUS QUIA IUSTUM* 24, no. 3 (July 2017): 467–87, <https://doi.org/10.20885/iustum.vol24.iss3.art7>.

¹⁸ Hatta Isnaini Wahyu Utomo, "LEGAL COUNSELING BY A NOTARY AS A MEANS TO PRODUCE A BALANCED AGREEMENT," *NOTARIAL Jurnal Kenotariatan* 7, no. 1 (June 3, 2022): 1–8, <https://doi.org/10.22225/jn.7.1.2022.1-8>.

The guarantee of legal protection for the implementation of Notary duties has previously been regulated in the UUJN, but what is regulated in the UUJN is no longer in accordance with legal developments and the needs of the community, so changes need to be made. These changes are also intended to further emphasize and strengthen the duties, functions, and authorities of Notaries as officials who carry out public services. This is the background to the establishment of the Notary Honorary Council.

Legal protection for Notaries is legal protection for Notaries as public officials who carry out their duties and obligations in carrying out the authority of the government to store State documents in the form of authentic deeds. This legal protection is not given to Notaries as individuals but is more emphasized to protect their position. The Notary Honorary Council plays a role in protecting the Notary's position, not in preserving the Notary personally so that if a Notary commits or is suspected of committing a crime that is unrelated to the duties of the Notary's position, investigators do not need to ask for permission from the Notary Honorary Council to investigate it.

The Notary Honorary Council aims to protect notaries as public officials from arbitrary actions by law enforcement in examining criminal cases related to the notary's making of authentic deeds. Law enforcers such as the Police, Public Prosecutors, and Judges are not permitted to arbitrarily take photocopies of notarial deed minutes because they are confidential state documents.

The authority to guide Notaries is the authority of the Minister of Law and Human Rights, as stated in Article 66, paragraph (1) of the Amendment to the UUJN. In carrying out this guidance, the Minister of Law and Human Rights forms the Notary Honorary Council. The Minister of Law and Human Rights has the task of assisting the President in carrying out part of government affairs in the field of Law and human rights so that the authority to guide Notaries lies with the Government. Therefore, it closely relates to how the Government obtains authority to guide notaries.

There are 2 (two) main ways to obtain government authority, namely Attribution and Delegation. Mandates are also placed as a separate way to get authority. Still, when associated with a lawsuit to the State Administrative Court, the mandate is not placed separately because the recipient cannot be a defendant in the State Administrative Court. Attribution is the formation of certain authority and its granting to certain organs, or it is also formulated in the attribution of the granting of new government authority by a provision in the Legislation.

Attribution of the formation or granting of Government authority is based on legal rules that can be distinguished from their origin, namely those originating from the Government at the central level originating from the People's Consultative Assembly (MPR), the Constitution (UUD) or Laws, and those originating from the regional Government originating from the Regional People's Representative Council (DPRD) or Regional Regulations (Perda). Attribution of authority is formed or created by the relevant legal rules, or attribution is determined by the legal rules that mention it.¹⁹

Delegation is the Delegation of an existing authority by a State Administrative Agency or Office (TUN) that has obtained Government authority attributively to another State Administrative Agency or Office. In another formulation, Delegation is the transfer of authority by a Government Official (TUN Official) to another party, and the authority becomes the other party's responsibility. The first opinion is that the Delegation must be from a TUN Agency or position to another TUN Agency or Position, meaning that both the delegator and delegee must be from the same TUN Agency or Position. The second opinion is that Delegation can occur from a TUN Agency or Official to another party that is not necessarily a TUN Agency or Position, with the possibility that a TUN Agency or Position can delegate its authority (delegans) to an Agency or Position that is not a TUN (delegated). An attribution of authority always precedes a delegation.

¹⁹ SF Marbun, *Peradilan Administrasi Negara Dan Upaya Administratif Di Indonesia* (Yogyakarta: Liberty, 1997).

A State Administration Agency or Office that does not have an attribution of authority cannot delegate its authority to another party. Delegation must meet the following requirements:

- a. Delegation must be definitive, meaning that the delegate can no longer use the authority that has been delegated;
- b. Delegation must be based on the provisions of the Laws and Regulations, meaning that Delegation is only possible if there are provisions for it in the Laws and Regulations;
- c. Delegation is not to subordinates, meaning that in the relationship of the employee hierarchy, Delegation is not permitted;
- d. Obligation to provide information (explanation), meaning that the delegate has the authority to ask for an explanation regarding the implementation of the authority;
- e. Policy regulations (beleidsregel), meaning that the delegan provides instructions (guidelines) regarding the use of the authority.

Based on the Algemene Bepalingen van Administratief Recht, regarding delegation it is stated, "... *Te verstaan de overdracht van die bevoegdheid door het bestuursorgaan waaraan deze is gegeven, aan een ander orgaan, dat de overgedragen bevoegdheid als eigen bevoegdheid zal uitoefenen*" (... means the delegation of authority by government organs that have been given authority, to organs others, who will carry out the authority that has been delegated as their own authority). Meanwhile, in Algemene Wet Bestuursrecht delegation is defined as, "*Het overdragen door een bestuursorgaan van zijn bevoegdheid tot het nemen van besluiten aan een ander die deze onder eigen verantwoordelijkheid uitoefent*". (Delegation of authority by other organs to be responded to with full consideration). In relation to the transfer of authority through this delegation, the person granting the authority has been released from legal responsibility or from third parties, if in the use of the authority it causes losses to other parties.²⁰

Based on the understanding above, the authority to guide Notaries attributively lies with the Minister himself, which is made, created, and ordered in the Law as stated in Article 66A paragraph (1) of the Amendment to the UUJN. The position of the Minister is as an executive (Government) who exercises the power of the Government by qualification as a TUN Agency or Position. Based on Article 66A paragraph (1) of the Amendment to the UUJN, the Minister delegates the authority to guide to an agency called the Notary Honorary Council so that the Minister has been released from legal responsibility for everything that occurs due to the use of authority carried out by the Notary Honorary Council.

The position of the Minister as a State Administrative Agency or Office that carries out Government affairs based on applicable Laws and Regulations has consequences for the Notary Honorary Council, namely the Notary Honorary Council also has a position as a State Administrative Agency or Office because it receives delegations from agencies or Offices that have positions as State Administrative Agencies or Offices. Thus, collegially, the Notary Honorary Council has:

- a. State Administrative Agency or Official;
- b. Carrying out Government affairs;
- c. Based on applicable Laws and Regulations, namely guiding Notaries by the UUJN and the Amendment to the UUJN.

Article 1 number Law Number 5 of 1986 concerning the State Administrative Court (hereinafter referred to as the PTUN Law) states that the State Administrative Agency or Official is an Agency or Official that carries out government affairs based on applicable laws and regulations. Thus, the Minister, as the State Administration Agency or Position that carries out Government affairs based on the Laws and Regulations, has delegated his authority to the Notary Honorary Council, which functionally exists as a State Administrative Agency.

²⁰ Adjie, *Sanksi Perdata Dan Administratif Terhadap Notaris Sebagai Pejabat Publik*.

The Notary Honorary Council, according to Article 1 number 1 of Permenkumham No. 17 of 2021, is an agency that has the authority to carry out notary guidance and the obligation to provide approval or rejection for investigation and judicial process for taking photocopies of minutes of deeds and summoning notaries to attend examinations related to deeds or notary protocols that are in the Notary's storage. Thus, the Minister of Law and Human Rights acts as delegates and the Notary Honorary Council as delegates. The Notary Honorary Council, as delegate, has the authority to guide Notaries in full without returning its authority to the Minister. The establishment of the Notary Honorary Council is a mandate of the Amendment to the UUJN, which in the provisions expressly states that guidance to Notaries is the authority of the Minister of Law and Human Rights. In guiding Notaries, the Notary Honorary Council must be based on the authority determined by the UUJN and the Amendment to the UUJN as a reference for making decisions.

This needs to be understood because not all members of the Notary Honorary Council come from Notaries, so the actions or decisions of the Notary Honorary Council must reflect actions as a body, not those of members of the Notary Honorary Council, which are considered agency actions.

4. Conclusion

The Notary Honorary Council is an institution that has been delegated authority from the Minister of Law and Human Rights to provide legal protection to Notaries when Notaries carry out their obligations to maintain professional secrecy. The Delegation of authority from the Minister to the Notary Honorary Council places the Notary Honorary Council as a State Administrative Body. The professional secrecy held by a Notary is a professional secrecy that can only be opened if a law requires it to be opened. The legal protection given to notaries through the existence of the Notary Honorary Council institution is to protect the "position" and not to protect the Notary personally.

References

- A.A. Andi Prajitno. *Pengetahuan Praktis Tentang Apa Dan Siapa PPAT*. Malang: Selaras, 2013.
- Adjie, Habib. *Hukum Notaris Indonesia Tafsir Tematik Terhadap UU No.30 Tahun 2004 Tentang Jabatan Notaris*,. Bandung: Refika Aditama, 2008.
- . *Sanksi Perdata Dan Administratif Terhadap Notaris Sebagai Pejabat Publik*. Bandung: Refika Aditama, 2008.
- Alawiyah, Tuti. *Strategi Dakwah Di Lingkungan Majelis Ta'lim*. Bandung: Mizan Pustaka, 1997.
- Darus, Luthfan Hadi. *Hukum Notariat Dan Tanggung Jawab Notaris*. Yogyakarta: UII Press, 2017.
- Erliyani, Rahmida, and Ahmad Ratomi. *Eksistensi Notaris Dalam Dinamika Hukum Dan Kebijakan*. Yogyakarta: Genta Publishing, 2018.
- Freddy Harris & Leny Helena. *Notaris Indonesia*. Jakarta: Lintas Cetak Djaja, 2017.
- Hasbullah. *Kapita Selekta Pendidikan Islam Di Indonesia*. Jakarta: Raja Grafindo Persada, 1996.
- Hatta Isnaini Wahyu Utomo. "The Position of Honorary Council of Notary in Coaching Indonesian Notaries." *Journal of Law, Policy and Globalization* 92 (2019). <https://doi.org/10.7176/jlpg/92-12>.
- Isnaini, Hatta, and Wahyu Utomo. "The Existence of the Notary and Notarial Deeds within Private Procedural Law in the Industrial Revolution Era 4.0." *International Journal of Innovation, Creativity and Change* 10, no. 3 (2019): 128–39.
- Isnaini, Hatta, and Hendry Dwicahyo Wanda. "PRINSIP KEHATI-HATIAN PEJABAT PEMBUAT AKTA TANAH DALAM PERALIHAN TANAH YANG BELUM BERSERTIFIKAT." *Jurnal Hukum IUS QUIA IUSTUM* 24, no. 3 (July 2017): 467–87. <https://doi.org/10.20885/iustum.vol24.iss3.art7>.

- Marbun, SF. *Peradilan Administrasi Negara Dan Upaya Administratif Di Indonesia*. Yogyakarta: Liberty, 1997.
- Puslitbang Kehidupan Keagamaan. *Peningkatan Peran Serta Masyarakat Dalam Pendalaman Ajaran Agama Melalui Majelis Taklim*. Jakarta: Puslitbang Kehidupan Keagamaan, 2007.
- Putra, Ferdiansyah, and Ghansham Anand. "Perlindungan Hukum Terhadap Para Pihak Yang Dirugikan Atas Penyuluhan Hukum Oleh Notaris." *Jurnal Komunikasi Hukum (JKH)* 4, no. 2 (August 10, 2018): 26. <https://doi.org/10.23887/jkh.v4i2.15460>.
- Salim, HS. *Peraturan Jabatan Notaris*. Jakarta: Sinar Grafika, 2018.
- Tanzeh, Ahmad. *Pengantar Metode Penelitian*. Yogyakarta: Teras, 2009.
- Utomo, Hatta Isnaini Wahyu. "Hakikat Lembaga Majelis Kehormatan Notaris Dalam Pembinaan Notaris Sebagai Pejabat Umum." Universitas 17 Agustus 1945 Surabaya, 2020.
- . "Legal Counseling By A Notary As A Means To Produce A Balanced Agreement." *NOTARIAL Jurnal Kenotariatan* 7, no. 1 (June 3, 2022): 1–8. <https://doi.org/10.22225/jn.7.1.2022.1-8>.
- . "Legal Position of the Surrogate as a Substitute For a Signature In a Notarial Deed." *Jurnal Hukum Dan Kenotariatan* 8, no. 2 (August 12, 2024): 94–104. <https://doi.org/10.33474/hukeno.v8i2.22378>.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).