

## The Implementation of Authority and Resolution Efforts Undertaken by the Ministry of Law and Human Rights (Kemenkumham) in Addressing the Case of Dualism within the Indonesian Notary Association (INI)

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**Abstract.** This study aims to examine the implementation of the authority of the Ministry of Law and Human Rights (Kemenkumham) in conducting supervision and oversight to resolve the issue of dualism within the Indonesian Notary Association (INI) and the resolution efforts that can be undertaken to address this dualism. The issues raised in this study are: first, whether the Ministry of Law and Human Rights (Kemenkumham) exercised its authority to supervise and oversee the resolution of dualism within the Indonesian Notary Association (INI). Second, what resolution efforts can be undertaken by the Ministry of Law and Human Rights (Kemenkumham) regarding the dualism in the Indonesian Notary Association (INI). The research method employed is normative juridical, using a statutory approach. Data collection was conducted through a literature study. The findings indicate that the Ministry of Law and Human Rights (Kemenkumham), assisted by the Supervisory Council, has the authority to supervise and oversee the sole organization of notaries, INI, as stipulated in Article 82 of the Law on Notary Positions (UUJN) and as provided in Article 67 paragraphs (1) and (2) of the UUJN and Article 2 of the Ministerial Regulation on Law and Human Rights (Permenkumham). However, Kemenkumham lacks clear and definitive measures for conducting oversight and supervision to resolve the dualism issue. This is due to the absence of explicit regulations addressing dualism, whether in the UUJN, Permenkumham, or other regulations. As a result, Kemenkumham cannot fully exercise its authority in supervising and overseeing the dualism issue within the Indonesian Notary Association (INI). To resolve this issue, regulatory reform is necessary to enhance Kemenkumham's authority in supervising and overseeing notary organizations, particularly in addressing the dualism within the Indonesian Notary Association (INI). The regulations requiring reform in this context include the UUJN and Permenkumham.

**Keywords:** Indonesian Notary Association (INI), Ministry of Law and Human Rights, Authority, Resolution

**Abstrak.** Penelitian ini bertujuan untuk membahas mengenai bagaimana pelaksanaan kewenangan Kementerian Hukum dan Hak Asasi Manusia (Kemenkumham) dalam melakukan pembinaan dan pengawasan untuk menyelesaikan masalah dualisme Organisasi Ikatan Notaris Indonesia (INI) dan upaya penyelesaian yang dapat dilakukan untuk menangani permasalahan dualisme Organisasi Ikatan Notaris Indonesia (INI). Permasalahan yang diangkat dalam penelitian ini yaitu, Pertama, apakah dalam kasus dualisme Ikatan Notaris Indonesia (INI) Kementerian Hukum dan Hak Asasi Manusia (Kemenkumham) telah melaksanakan kewenangannya untuk melakukan pembinaan dan pengawasan dalam menyelesaikan kasus dualisme Ikatan Notaris Indonesia (INI). Kedua, bagaimana upaya penyelesaian yang dapat dilakukan oleh Kementerian Hukum dan Hak Asasi Manusia (Kemenkumham) terkait adanya dualisme dalam Ikatan Notaris Indonesia (INI). Metode penelitian yang digunakan ialah yuridis normatif dengan pendekatan perundang-undangan. Pengumpulan data melalui studi kepustakaan. Hasil kajian menunjukkan Kementerian Hukum dan HAM (Kemenkumham) yang dibantu Majelis Pengawas memiliki kewenangan untuk melakukan pengawasan dan pembinaan terhadap satu-satunya wadah tunggal Organisasi Notaris yaitu INI (Pasal 82 UUJN) sebagaimana telah tercantum dalam Pasal 67 ayat (1) dan ayat (2) UUJN dan Pasal 2 Permenkumham, akan tetapi Kemenkumham tidak memiliki langkah yang jelas dan pasti terkait bagaimana upaya pembinaan dan pengawasan yang harus dilakukan untuk dapat menyelesaikan dualisme tersebut. Hal ini disebabkan tidak adanya peraturan yang mengatur secara eksplisit untuk menyelesaikan permasalahan dualisme baik dalam UUJN, Permenkumham, maupun peraturan lainnya, sehingga Kemenkumham tidak dapat melaksanakan kewenangannya dalam melakukan pembinaan dan pengawasan terhadap kasus dualisme dalam Ikatan Notaris Indonesia (INI). Untuk dapat menyelesaikan tersebut maka upaya penyelesaian yang diperlukan ialah dengan melakukan pembaharuan terhadap regulasi yang berkaitan dengan kewenangan Kemenkumham terhadap pembinaan dan pengawasan organisasi Notaris terutama dalam melakukan pembinaan dan pengawasan terhadap penyelesaian kasus dualisme Organisasi Ikatan Notaris Indonesia (INI), regulasi sebagaimana yang dimaksud dalam hal ini ialah UUJN dan Permenkumham.

**Kata Kunci:** Ikatan Notaris Indonesia (INI), Kementerian Hukum dan Hak Asasi Manusia, Kewenangan, Penyelesaian

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## INTRODUCTION

The notary profession is a position of trust that must align with those who perform notarial duties as highly trusted individuals. As a position that prioritizes trust, it becomes meaningless if those holding the position of notary fail to earn that trust in executing their responsibilities. Article 1 point (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 on the Position of Notary (hereinafter referred to as UUJN) defines a notary as a public official authorized to draft deeds and other powers as prescribed by law.<sup>1</sup> Hence, the position of a notary and the official holding the notary office must align, like two sides of a coin that cannot be separated.<sup>2</sup> Furthermore, Article 15 paragraph (1) of the UUJN states that a notary has the authority to draft authentic deeds regarding all acts, agreements, and stipulations required by legislation and/or requested by interested parties to be formalized in authentic deeds, guarantee the certainty of the date of drafting, store the deeds, and provide Grosse, copies, and excerpts of deeds, as long as the drafting of such deeds is not assigned or excluded to other officials or individuals as stipulated by law.<sup>3</sup> In addition to fulfilling the duties prescribed by law, notaries also engage in broader activities that extend beyond those explicitly outlined in the UUJN. Notaries carry out a significant social function, encompassing areas wider than the responsibilities officially entrusted to their role.

The notary profession in Indonesia is united under a single organization known as the Indonesian Notary Association, often abbreviated as INI. Established on July 1, 1908, INI is a professional organization for notaries in Indonesia, officially recognized as a legal entity (*rechtspersoon*) through a *Gouvernement Besluit* (Government Decree) dated September 5, 1908, Number 9. It serves as the sole unifying entity for all individuals holding and executing the duties of a public official in Indonesia. This recognition and approval were further solidified by the government under the Association's Articles

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<sup>1</sup> Hartanti Silihandari dan Nisya Rifiani, *Prinsip-prinsip Dasar Profesi Notaris*, Dunia Cerdas, Yogyakarta, 2013, page. 2-3.

<sup>2</sup> Habib Adjie, *Sanksi Perdata dan Administratif Terhadap Notaris Sebagai Pejabat Publik*, Reflika Aditama, Bandung, 2009, page. 83.

<sup>3</sup> Article 15 section (1) Law Number 30 Of 2004 on Notary Position.

of Association, which received ratification from the Minister of Justice on December 4, 1958, through Decree Number J.A.5/117/6, and published in the State Gazette of the Republic of Indonesia on March 6, 1959, Number 19, Supplement to the State Gazette Number 6. The most recent amendment to the Articles of Association received approval from the Minister of Law and Human Rights of the Republic of Indonesia through Decree Number AHU 03.AH.01.07.2009, dated January 12, 2009. Therefore, INI functions as the official notary organization as referred to in Law Number 30 of 2004 on the Position of Notary, which was promulgated in the State Gazette of the Republic of Indonesia of 2004 Number 117, Supplement to the State Gazette Number 4432, and came into force on October 6, 2004. This law was later amended by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 on the Position of Notary, promulgated in the State Gazette of 2014 Number 3, Supplement to the State Gazette Number 5491 (hereinafter referred to as the Law on the Position of Notary or UUJN).<sup>4</sup> The UUJN serves as the guideline and legal foundation for regulating notarial institutions, including government bodies and other relevant institutions, particularly for all notaries in carrying out their duties within society. This aligns with Mochtar Kusumaatmadja's perspective, which defines law as "a set of rules and principles governing human life in society, including institutions and processes necessary to actualize the law in reality."<sup>5</sup> The UUJN was also established to minimize conflicts of interest among related parties by integrating, limiting, and protecting their respective interests.<sup>6</sup>

Based on the provisions of Article 1 paragraph (5) of the Law on the Position of Notary (UUJN), it is stated that a Notary Organization is a professional organization for notaries that is required to have a charter, bylaws, a code of ethics for the profession, a membership registry, and copies of these documents must be submitted to the Minister and the Supervisory Council.<sup>7</sup> Regulations regarding the Notary

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<sup>4</sup> Herlina Ernawati Napitupulu, "Peranan Ikatan Notaris Indonesia dalam Pembinaan Notaris dan Pengawasan Kode Etik Notaris di Wilayah Sumatera Utara", *Premise Law Jurnal*, Vol.2 No. 9, 2017, Fakultas Hukum, Universitas Sumatera Utara, page. 1-2.

<sup>5</sup> Mochtar Kusumatmadja, *Konsep-konsep Hukum dalam Pembangunan*, Alumni, Bandung, 2006, page. 91.

<sup>6</sup> Sajipto Raharjo, *Ilmu Hukum*, PT. Citra Aditya Bakti, Bandung, 2000, page. 53.

<sup>7</sup> Article 1 section (5) Law Number 30 Of 2004 on Notary Position.

Organization are also found in Article 1 point 13 of the Decree of the Minister of Justice and Human Rights No. M.10.HT.03.01 of 2003 on Notarial Matters, which states:<sup>8</sup>

*“A Notary Organization is the Indonesian Notary Association, the sole professional organization of public officials that has been legally recognized as a legal entity.”*

This is because the Indonesian Notary Association is a professional organization registered with the Ministry of Law and Human Rights as a legal entity following the relevant provisions. Articles 82 paragraphs (1) to (5) of the Law on the Position of Notary (UUJN) also stipulate that notary are united under a single organization, namely the Indonesian Notary Association (INI), which serves as the sole, independent, and autonomous professional organization for notaries. The provisions regarding the objectives, duties, authorities, working procedures, and organizational structure are determined in the Articles of Association and Bylaws of the Notary Organization, while provisions on the establishment, supervision, and oversight of the Notary Organization are regulated by a Ministerial Regulation. These mandatory regulations require all notaries to be part of a single notarial organization.

Guidance and supervision must indeed be carried out within the Notary Organization (INI), as stipulated in Article 82 paragraph (5) of the Law on the Position of Notary (UUJN). Guidance is conducted to maintain the professionalism of notaries in executing their duties and in their behavior. Meanwhile, supervision is a process of establishing performance benchmarks and taking actions to support the achievement of expected results as determined. Based on the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 16 of 2021 on the Organizational Structure, Working Procedures, Appointment and Dismissal Procedures, and Budget of the Notary Supervisory Council, Article 1 paragraph (1) states: “The Notary Supervisory Council, hereinafter referred to as the Supervisory Council is a body authorized and obligated to carry out guidance and supervision of notaries.” The Supervisory Council itself acts as a delegation of authority from the Ministry of Law and Human Rights (Kemenkumham) to the Supervisory Council. This delegation is

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<sup>8</sup> Article 1 point 13 Decree of the Minister of Justice and Human Rights No. M.10.HT.03.01 Of 2003 on Notary

further clarified in Article 1 paragraph (7), which states: “The Minister is the Minister responsible for governance in the field of Law and Human Rights.”

Despite the implementation of guidance and supervision over the Indonesian Notary Association (INI), irregularities persist, as exemplified by an incident in 2023. Within the INI organization, a conflict arose regarding the management of its Central Executive Board (Pengurus Pusat, PP). The organization has split into two factions: one led by Tri Firdaus Akbarsyah, resulting from the XXIV INI Congress held in Banten Province, and the other led by Irfan Ardiansyah, emerging from the 2023 Extraordinary Congress in Bandung City. This conflict originated during the congress, where some INI members felt their participation was not facilitated, despite the prior introduction of an e-voting system for electing the chairman. Essentially, the dispute stems from both parties' desire to become the general chairman to contribute positively to the advancement of the notarial profession. It was not driven by the misuse of the organization as a vehicle for other objectives. Nevertheless, this has resulted in dual leadership within the INI organization. Additionally, complaints have emerged from prospective notaries intending to participate in the Notary Code of Ethics Exam (UKEN) and the Joint Internship Program (MABER), which are planned to be organized separately by the conflicting leadership factions. As a result, the Directorate General of General Legal Administration (Ditjen AHU) of the Ministry of Law and Human Rights (Kemenkumham) has opted not to recognize the UKEN administered by either faction. This illustrates the consequences of dualism within the INI organization. However, Kemenkumham, as the supervisory and regulatory authority over INI, has yet to respond or take a firm stance on this matter. As the organization responsible for overseeing the Indonesian Notary Association, Kemenkumham should act decisively to address this issue. Based on the background outlined above, the research formulates the following problems: *First*, Has the Ministry of Law and Human Rights (Kemenkumham) exercised its authority to provide guidance and supervision in resolving the dualism within the Indonesian Notary Association (INI)? *Second*, what measures can the Ministry of Law and Human

Rights (Kemenkumham) take to address the dualism within the Indonesian Notary Association (INI)?

## METHODOLOGY

The type of research employed is normative juridical research using a conceptual approach, a case approach, and a statutory approach relevant to the issues under discussion. The types of data used in this research are primary and secondary data. Primary data are derived from the 1945 Constitution of the Republic of Indonesia, Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 on the Position of Notary, the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 16 of 2021 on the Organizational Structure, Working Procedures, Appointment and Dismissal Procedures, and Budget of the Notary Supervisory Council, and other related regulations. Secondary data are sourced from books, literature, journals, articles, papers, and other internet media references or news. The data collection method involves library research, which includes examining and tracing various statutory regulations or other relevant rules, journals, and articles related to the research conducted.

## DISCUSSION

### **Implementation of the Authority of the Ministry of Law and Human Rights (Kemenkumham) in Providing Guidance and Supervision to Resolve the Dualism within the Indonesian Notary Association (INI)**

Notaries in Indonesia are united under a single professional organization known as the Indonesian Notary Association (INI). This is also explained in Article 82 of the Law on the Position of Notary (UUJN), which states:

- (1) *Notaries are united in a single Notary Organization.*
- (2) *The Notary Organization referred to in paragraph (1) is the Indonesian Notary Association (INI).*

- (3) *The Notary Organization referred to in paragraph (1) is the sole professional body for Notaries, independent and autonomous, established to enhance the quality of the Notary profession.*
- (4) *Provisions regarding the objectives, duties, authorities, work procedures, and organizational structure are determined in the Articles of Association and Bylaws of the Notary Organization.*
- (5) *Provisions concerning the establishment, guidance, and supervision of the Notary Organization are regulated through Ministerial Regulations.*

These provisions are mandatory, requiring all Notaries in Indonesia to join a single Notary Organization, namely INI. The existence of the Notary Organization is essential for ensuring public order and safeguarding individual rights to recognition, legal certainty, and equal treatment under the law. This necessity arises because Notaries are public officials entrusted by the state with specific tasks and authorities to serve the legal needs of society.<sup>9</sup>

In practice, supervision and guidance are indispensable. These are regulated under Article 67 of the UUJN, which stipulates:<sup>10</sup>

- (1) *Supervision over Notaries is conducted by the Minister.*
- (2) *In carrying out the supervision referred to in paragraph (1), the Minister establishes a Supervisory Council.*

Paragraph (1) explains that supervision is carried out by the Minister with relevant authority. Article 1, number (14) of the UUJN defines the Minister as the one responsible for notarial matters. This aligns with Article 2 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 16 of 2021, which addresses the organizational structure and work procedures, as well as the appointment and dismissal processes and budgets of the Notary Supervisory Council. Furthermore, Article 1, number (7) defines the Minister as the one responsible for governmental affairs in law and human rights. Thus, it can be concluded that supervision and guidance are conducted by the Supervisory Council (*Majelis Pengawas Notaris*, or MPN), as a delegation of authority from the Ministry of Law and Human Rights (Kemenkumham). Article 5 of the UUJN further explains that the supervision

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<sup>9</sup> Rizki Anlapater dan Dani Kurniawansyah, "Implementasi Penyatuan Organisasi dalam Profesi Notaris", *Jurnal Pendidikan Tambusai*, Vol.6 No. 2, 2022, page. 3.

<sup>10</sup> Article 67 Law Number 30 Of 2004 on Notary Position.

referred to in Article 1 includes oversight of Notary conduct and professional duties. The Regulation of the Minister of Law and Human Rights Number 16 of 2021 further clarifies in Article 1, number (1) that the Notary Supervisory Council is a body tasked with providing guidance and supervision over Notaries.<sup>11</sup> Guidance is described as an effort, action, and activity carried out effectively and efficiently to achieve better outcomes. Meanwhile, supervision, as defined in Article 1, number (6) of the same regulation, includes preventive and corrective activities, as well as guidance conducted by the Supervisory Council towards Notaries. Supervision entails assessing performance against set standards and taking actions to support the achievement of the expected outcomes.<sup>12</sup> In conclusion, the purpose of guidance and supervision over Notaries is to maintain their professionalism in performing their duties and responsibilities. These measures aim to protect the legal standing of Notaries and ensure that they always act per applicable laws and regulations, as well as the ethical standards of the notarial profession.

Despite being regulated in such a manner regarding guidance and supervision in the UUJN and Permenkumham, dualism in leadership still occurs within the INI Organization. In this issue, INI is divided into two factions, namely the Tri Firdaus Akbarsyah faction from the results of the XXIV INI Congress in Banten Province, while the other faction is led by Irfan Ardiansyah from the results of the Extraordinary INI Congress 2023 in Bandung City. This division certainly also affects the prospective notaries who will take the Notary Code of Ethics Exam (UKEN) and Joint Internship (MABER) which will be organized by each conflicting INI organizational management, so that the Ministry of Law and Human Rights, Directorate General of AHU, does not recognize the UKEN. The emergence of this issue has not prompted the Ministry of Law and Human Rights, as the authority responsible for guidance and supervision of notaries, to take firm action. So far, the Ministry of Law and Human Rights can only suggest and strive to resolve the internal affairs (both central and

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<sup>11</sup> Article 1 number (1) Minister of Law and Human Rights of the Republic of Indonesia Regulation No 16 Of 2021 on Organizational Structure and Work Procedures, Procedures for Appointment and Dismissal, and Budget of the Notary Supervisory Board.

<sup>12</sup> Harahap Sofyan Safari, *Sistem Pengawasan Manajemen*, Quantum, Jakarta, 2001, page. 10.



regional management) through mediation between the conflicting parties in the hope of resolving the issue, thus maintaining the integrity of INI as a single entity. The government also strives to the best of its ability to facilitate and assist in resolving the matter. Statements issued by the Ministry of Law and Human Rights (in this case, the Directorate General of AHU) can only maintain a neutral and impartial stance. This is followed up through an announcement, as follows:<sup>13</sup>

1. *The Heads of Regional Offices of the Ministry of Law and Human Rights throughout Indonesia are advised not to attend activities or engage in cooperation with the Indonesian Notary Association Organization, whether through the management elected based on the XXIV INI Congress on August 30-31, 2023, or based on the Extraordinary Congress of the Indonesian Notary Association (KLB INI) on October 29-30, 2023, until the internal issues of the Indonesian Notary Association Organization are resolved.*
2. *In response to complaints from the public, particularly prospective notaries who will participate in the Notary Code of Ethics Exam (UKEN) and Joint Internship (MABER) organized by the conflicting management of the Indonesian Notary Association, the Government, specifically the Ministry of Law and Human Rights, through the Directorate General of General Legal Administration, has adopted a stance of not recognizing the Notary Code of Ethics Exam (UKEN) and Joint Internship (MABER) conducted by the conflicting management. This is to avoid legal issues and material and immaterial losses for the prospective notaries.*
3. *For notaries who wish to apply for an extension of their term from 65 to 67 years, if they encounter difficulties in obtaining recommendations from the Regional, Provincial, and Central Management, the Ministry of Law and Human Rights takes the position that it does not nullify the notary's right to apply for a term extension and only requires recommendations from the Regional Supervisory Council (MPD), Provincial Supervisory Council (MPW), and National Supervisory Council (MPPN).*

The Ministry of Law and Human Rights also expressed another opinion that, although the UUJN stipulates that the Notary Organization is singular, it does not mean it is completely singular. This is because revisions to the law can be made, allowing the Notary Organization to no longer be singular and potentially split into two or several factions. This opinion was put forward as a response if no path to peace is found from the various solutions offered by the Ministry of Law and Human Rights. However,

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<sup>13</sup> Marliawan Yusuf, *Sikap Kemenkumham Terkait Dualisme Ikatan Notaris Indonesia* <https://www.rri.co.id/daerah/610463/sikap-kemenkumham-terkait-dualisme-ikatan-notaris-indonesia>, accessed on 20 July 2024, 13.00 WIB.

the author disagrees with this, because: *First*, it violates the initial provisions as stipulated in the UUJN and the Decree of the Minister of Justice and Human Rights No. M.10.HT.03.01 of 2003 concerning Notary Affairs, which states that the Notary Organization is entirely unified under a single entity, namely the Indonesian Notary Association (INI), and the INI Organization is the sole entity for notary organizations in Indonesia. Even if there are several organizations outside of INI and compared to INI, the one that meets the criteria as a Notary Organization based on Article 82 of the UUJN is INI because only INI is legally incorporated and does not recognize other Notary Organizations outside of INI. This is as stated in Article 1 point (4) of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 16 of 2021 concerning the Structure of Organization and Work Procedures, Procedures for Appointment and Dismissal, and the Budget of the Notary Supervisory Council, which reads:

*"The Notary Organization is a professional organization of the Notary position in the form of a legal entity association."*

Furthermore, as we know, almost all notaries in Indonesia are united in a single entity, namely the INI Organization. INI is the only Notary Organization recognized by the Government. This provision is also contained in Article 1 point 13 of the Decree of the Minister of Justice and Human Rights No. M.10.HT.03.01 of 2003 concerning Notary Affairs, which states that the Notary Organization is the Indonesian Notary Association as the sole professional public officer organization that has been established as a legal entity. This is further reinforced by the judicial review conducted by the Constitutional Court. The decision of the Constitutional Court regarding Decision Number: 009-014/PUU-III/2005 on judicial review of Article 1 paragraph (5) and Article 82 paragraph (1) of the UUJN emphasizes the issue of a single entity for the Notary Organization, as previously explained. *Second*, it impacts the code of ethics commonly used by notaries (Notary Code of Ethics), which has so far recognized only one, namely the one issued by the INI Organization. *Third*, having a single Notary Organization will facilitate the government in conducting supervision and guidance for notaries in Indonesia.

From the background of the issues presented, it can be concluded that both the Supervisory Council and the Ministry of Law and Human Rights do not have a definitive and clear approach regarding the resolution of the dualism problem, despite having the authority to supervise and guide the INI Organization. The actions that the Ministry of Law and Human Rights can take are merely efforts to mediate between the two parties; however, there has been no reaction from either side, as the Ministry has not taken any firm and clear actions. Article 67 paragraph (5) of the UUJN states that the supervision referred to in Article 67 paragraph (1) of the UUJN only covers the behavior of notaries and the execution of notarial duties. The behavior of notaries and the execution of notarial duties are closely related to the notary code of ethics. The functions of the Notary Code of Ethics are:<sup>14</sup>

1. To control the behavior of members of the profession to prevent the misuse of knowledge or advantages possessed by the profession in question.
2. The code of ethics is to uphold the dignity of the profession.

Therefore, it can be concluded that since the provisions regarding guidance and supervision do not specify how the Ministry of Law and Human Rights or the Supervisory Council should carry out their guidance and supervision efforts, and there are also no regulations in other laws that explicitly govern the actions or steps that the Ministry of Law and Human Rights or the Supervisory Council must take to resolve the dualism issues within the management of the INI Organization, both the Ministry of Law and Human Rights and the Supervisory Council can be said to be failing to exercise their authority in providing guidance and supervision over the Indonesian Notary Association (INI). In reality, this Notary Organization is also part of the responsibility of the Ministry of Law and Human Rights and the Supervisory Council to ensure proper guidance and supervision.

### **Efforts to Resolve Guidance and Supervision of the Notary Organization Amidst Dualism in the Indonesian Notary Association (INI)**

The existence of dualism within the Indonesian Notary Association can lead to several disadvantages for various parties. The losses experienced include delays in the

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<sup>14</sup> Yovita A. Mangesti dan Bernard L., *Moralitas Hukum*, Genta Publishing, Yogyakarta, 2014, page. 104.

implementation of organizational activities and other losses as previously mentioned. Additionally, this situation can also impact the public, as the Ministry of Law and Human Rights does not recognize the two factions that have emerged. All activities conducted by both factions are deemed invalid, and the organizers are urged to cease the Notary Code of Ethics Exam (UKEN) and Joint Internship (MABER) activities conducted in the name of the INI organization, with the hope that the issues within the INI organization can be resolved. To address and resolve the dualism issues within the INI Organization, decisive resolution efforts are required. The guidance and supervision of the Notary Organization, as regulated in the UUJN and the Ministerial Regulation, do not explicitly outline the steps that should be taken to resolve this issue. This is because there are no provisions within the guidance and supervision regulations that specify the steps to be taken in the event of deviations within the INI Organization, even though this should be an area of concern for effective guidance and supervision. Such measures aim to prevent future issues, such as the dualism case within the INI Organization. Furthermore, the Ministerial Regulation, as explained in Article 82 paragraph 5 of the UUJN, also lacks provisions that accommodate the resolution of cases that may arise within notary organizations, such as the dualism within the INI Organization. Therefore, issues related to dualism or other similar problems, if they do occur, can be considered violations of the law or relevant regulations.

As an effort to resolve the dualism within the INI Organization, it is essential to first revise the relevant regulations. The revision of these regulations is necessary because, as previously outlined, there are currently no rules that explicitly govern or accommodate how the Ministry of Law and Human Rights can address this issue. While guidance and supervision by the Ministry of Law and Human Rights have been conducted for notaries as regulated in the existing UUJN and Ministerial Regulations, there have not yet been definitive steps for guidance and supervision regarding this dualism case. The Ministry of Law and Human Rights has only requested that the internal parties resolve the issue through mediation facilitated by the government and has taken the stance of not recognizing the activities conducted by both factions.

Therefore, in the author's view, this cannot be considered a definitive step or effort to resolve the dualism within the Notary Organization, as the problem continues to persist to this day.

The author believes that we can revise the UUJN or the Ministerial Regulation and/or both. This is because the UUJN and the Ministerial Regulation regulate the Notary Organization and how guidance and supervision should be conducted. However, the author suggests that it would be better and more effective to revise both regulations. The author proposes this considering several reasons, namely: *First*, this revision should be made to the UUJN. Revising the law has the benefit of improving, updating, or adjusting existing regulations to be more relevant to current conditions and needs, particularly regarding the dualism issues within the INI Organization. The Ministry of Law and Human Rights has stated that if a peaceful resolution between the two parties is not found, the INI Organization may be split into two factions. This is because the regulation in the UUJN regarding the INI Organization as the sole organization for notaries is not absolute, as revisions can still be made to the UUJN. However, the author believes that the revision should not focus on the regulation governing that aspect. Instead, the revision should be directed at the articles related to the authority of the Ministry of Law and Human Rights in providing guidance and supervision over notary organizations, especially concerning how to resolve the dualism issues within the INI Organization. As explained, this is because there are no significant regulations in the UUJN regarding the provisions or resolution efforts that govern what to do in the event of dualism within the Notary Organization in Indonesia, which is the sole legal entity of the Notary Organization. This revision is not only due to urgent needs but also in compliance with legal principles, namely adhering to the principles of justice, legal certainty, and utility. According to the author, the revision could be carried out by adding articles in Chapter X regarding the Notary Organization that would regulate how to resolve issues in the event of deviations or violations within the notary organization. This step, in the author's view, is much more effective compared to the suggestion made by the Ministry of Law and Human Rights to split the INI Organization into two parts. Splitting the INI

Organization into two parts would certainly have significant implications and demonstrate inconsistency with the statement that the INI Organization is the sole legal entity for notaries and also the only notary organization supervised by the government, which would inevitably change the provisions regarding the notary code of ethics. As previously explained and as we know, the applicable notary code of ethics in Indonesia is only that issued by the INI Organization. *Second*, a revision should be made to the Ministerial Regulation, particularly the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 16 of 2021 concerning the Organization and Work Procedures, Procedures for Appointment and Dismissal, and the Budget of the Notary Supervisory Council. The revision of the Ministerial Regulation is also necessary because Ministerial Regulations play a significant role in the effectiveness of government administration; not all matters that are substantively regulated in higher legal provisions are implementable for the administration of government.<sup>15</sup> The Ministerial Regulation itself has the following functions: to organize general regulations in the context of exercising government power in its field (based on Article 17 paragraph (1) of the 1945 Constitution and existing practices); to implement further regulations from Presidential Regulations; to implement further regulations from laws that explicitly mention it; and to implement further regulations from Government Regulations that explicitly mention it.<sup>16</sup> The establishment of Ministerial Regulations is also motivated by government policies that need to be articulated in the form of regulations that serve as implementation of higher-ranking regulations. Therefore, the Minister or officials at the ministerial level can be granted the authority to create regulations that are of an implementation nature. Based on this, the presence of Ministerial Regulations is still necessary, especially to regulate the implementation of specific government affairs and their applicability (*geldigheid*) to specific government matters according to the respective

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<sup>15</sup> Nimatul Huda, "Kedudukan dan Materi Muatan Peraturan Menteri Dalam Perspektif Sistem Presidensial", *Jurnal Hukum IUS QUILA IUSTUM*, Vol.28 No. 3, September 2021, page. 562.

<sup>16</sup> Maria Farida Indrati Soeprapto, *Ilmu Perundang-Undangan: Jenis, Fungsi, dan Materi Muatan*, Kanisius, Yogyakarta, 2007, page. 225-227.

ministry's field.<sup>17</sup> In this case, the issuance of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 16 of 2021 concerning the Organization and Work Procedures, Procedures for Appointment and Dismissal, and the Budget of the Notary Supervisory Council has a position as a form of further regulation or as an implementation of the UUJN that is more specific, as mentioned in Article 81. This Ministerial Regulation was created by the Ministry of Law and Human Rights as the Minister has the authority to conduct Examination, Guidance, and Supervision of Notaries. This Ministerial Regulation regulates the Organization and Work Procedures, Procedures for Appointment and Dismissal, and the Budget of the Notary Supervisory Council, including further regulations regarding the supervision of notaries as stated in Chapter II, Article 2 paragraphs (1) and (2). This Ministerial Regulation was issued to serve as an implementation of the existing UUJN. However, in reality, its content does not regulate how guidance, supervision, or resolution should be conducted in the event of disputes or issues arising within the Notary Organization. Based on this description, the author believes that the Ministerial Regulation needs to be revised by adding articles that regulate how resolution efforts or steps should be taken by the Minister of Law and Human Rights when problems occur within the Notary Organization (INI). Thus, the Ministry of Law and Human Rights, with the assistance of the Supervisory Council as the party conducting examination, guidance, and supervision of Notaries, can determine efforts and take definitive steps regarding how to resolve the dualism issues within the Notary Organization.

## CONCLUSION

Based on the explanation above, it can be concluded that the Ministry of Law and Human Rights (Kemenkumham), with the assistance of the Supervisory Council, indeed has the authority to conduct supervision and guidance over notaries in Indonesia as the sole legal entity of the Notary Organization, namely INI (based on

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<sup>17</sup> Ridwan, "Eksistensi dan Urgensi Peraturan Menteri dalam Penyelenggaraan Pemerintahan Sistem Presidensial", *Jurnal Konstitusi*, Vol.18, No. 4, Desember 2021, page. 837.

Article 82 of the UUJN), as also stated in Article 67 paragraphs (1) and (2) of the UUJN and Article 2 of the Ministerial Regulation. However, in resolving the dualism case within INI, Kemenkumham does not have clear and definitive steps in conducting supervision and guidance to address this matter. Therefore, due to the absence of regulations that explicitly govern the actions or steps that Kemenkumham must take in providing guidance and supervision to resolve the dualism issues within the management of the INI Organization, it can be concluded that Kemenkumham is not exercising its authority in providing guidance and supervision over the Indonesian Notary Association (INI), particularly regarding the dualism issues among notaries.

The efforts that can be made to resolve the dualism within the INI Organization, according to the author, are certainly through the revision of the UUJN and the Ministerial Regulation first. The revision of these two regulations is based on several reasons: *First*, the revision of the UUJN aims to serve as a guideline for regulating the resolution of dualism cases. This revision can be carried out by adding articles in Chapter X regarding the Notary Organization that would regulate how to resolve issues in the event of deviations or violations within the Notary Organization. *Second*, a revision should be made to the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 16 of 2021 concerning the Organization and Work Procedures, Procedures for Appointment and Dismissal, and the Budget of the Notary Supervisory Council. The revision of the Ministerial Regulation is necessary because it serves as a more specific implementation of the UUJN, as mentioned in Article 81 and Article 82 paragraph (5) of the UUJN. This revision should include adding articles that regulate how to implement resolution efforts that must be taken when problems arise within the Notary Organization (INI). Thus, the Ministry of Law and Human Rights, with the assistance of the Supervisory Council as the party conducting examination, guidance, and supervision of Notaries, can determine its stance and take definitive steps regarding how to resolve the dualism issues within the Notary Organization.



## CONFLICT OF INTEREST

There is no conflict of interest in the publication of this article.

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