

Normative Construction of Notarial Supervision over the Obligation to Actually Perform Notarial Office

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Abstract

The obligation of a notary to actually perform his or her office, as stipulated in Article 7 paragraph (1) letter a of the Indonesian Notary Office Law, constitutes a legal norm with significant implications for legal certainty and public protection. However, the provision does not provide clear, measurable, and operational indicators regarding the meaning of “actually performing the office.” This article aims to analyze the normative weaknesses of the existing regulation and to formulate an ideal supervisory model for notaries who do not actually perform their official duties. This study employs normative legal research using statutory, conceptual, and case approaches. The findings indicate that the absence of objective indicators, the lack of a specific examination mechanism, and the unavailability of routine monitoring systems have rendered notarial supervision ineffective and overly dependent on public complaints. This situation creates legal uncertainty and weakens legal protection for members of the public who require notarial services. This article argues that the phrase “actually performing the office” should at least include the existence of an active office, the physical presence of the notary, the real exercise of notarial authority, the readiness of administrative records and notarial protocols, and the openness of services to the public. Furthermore, an operational, structured, and objectively measurable supervisory mechanism is required to strengthen the effectiveness of supervision and to ensure legal certainty and public protection.

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INTRODUCTION

A notary, in performing his or her official duties, must adhere strictly to the provisions of the Notary Office Law and the professional code of ethics. The existence of ethical rules is essential because, without professional ethics, legal professionalism and public trust may decline, thereby affecting the dignity of the notarial profession and other legal professions more broadly. High moral standards are indispensable for notaries because ethical norms function as instruments of self-control and as preventive mechanisms against the abuse of authority. In this regard, professional ethics plays an important role in maintaining the honor and dignity of notaries as public officials who provide legal services in accordance with applicable laws and regulations. The importance of legal enforcement against public officials who violate legal norms also reflects the broader need to maintain institutional credibility and public accountability (Prapanca, 2019, pp. 60–68).

The Notarial Code of Ethics is established by the Indonesian Notary Association as the sole legally recognized professional organization for notaries. This is consistent with Article 82 paragraph (1) of the Notary Office Law, which affirms that notaries are united under one professional organization. The relationship between notaries and their professional organization is regulated by the Notarial Code of Ethics, which contains provisions concerning obligations, prohibitions, exceptions, and sanctions for ethical violations. It also regulates the mechanism for enforcing ethical standards, including temporary suspension from membership in the Indonesian Notary

Association. In this context, violations of notarial obligations may produce legal consequences not only in administrative terms but also in relation to the professional integrity of the notary's office (Rifdi & Handoko, 2023, p. 13).

A notary takes an oath before the state to perform his or her official duties, including reading deeds before the parties, legalizing signatures, and exercising other statutory authorities without interference from the executive branch or other institutions. Such freedom reflects the neutral and independent character of the notarial office. As a public official, the oath taken by a notary is not intended to serve personal interests but rather to fulfill the legal needs of society. Therefore, the notarial office must be exercised independently and free from intervention, pressure, or improper influence from any party.

The independence of the notary may be understood through three principal dimensions: institutional independence, functional independence, and financial independence. Institutionally, the notary occupies an independent position that is separate from other state or private institutions. Functionally, the notary performs duties and authorities based on legal norms established by the state. Financially, the notary operates independently because the implementation of his or her office does not depend on the budget of other parties. To preserve this independence and professionalism, the law imposes an obligation on notaries to actually perform their office in a real and effective manner.

The legal issue arises from the phrase "actually performing the office" in Article 7 paragraph (1) letter a of the Notary Office Law. This phrase contains a juridical problem because it is abstract and is not accompanied by firm normative parameters. The article does not explain the criteria or objective indicators for determining whether a notary has actually performed his or her office. It remains unclear whether such obligation is fulfilled merely by opening an office, receiving clients, producing deeds, maintaining an active physical office, keeping regular working hours, or providing adequate facilities and infrastructure. Consequently, the provision creates interpretive space that may lead to legal uncertainty, for example in situations where a notary's office is closed to the public but internal administrative activities are still being carried out.

From the perspective of legal certainty, legal norms should be formulated clearly and should not create multiple interpretations. Sudikno Mertokusumo emphasizes that legal rules must be sufficiently clear so that they can be applied consistently and fairly; unclear norms may generate uncertainty in legal practice (Mertokusumo, 2010, p. 121). The absence of an operational explanation of the phrase "actually performing the office" therefore indicates that the Notary Office Law has not provided a detailed normative standard for the practical application of this obligation.

As a result, the implementation of the obligation to actually perform notarial office depends heavily on the subjective interpretation of each Supervisory Council. This opens the possibility of inconsistency in supervisory practice, especially because there is currently no specific examination mechanism designed to assess whether a notary has genuinely performed his or her office. Without a special procedure, supervision over this issue remains dependent on general supervisory mechanisms, even though the nature of the violation has distinctive characteristics. In practice, this situation creates difficulties for the Regional Supervisory Council in proving whether a notary has actually performed the office, because there are no definite normative standards or special examination instruments that can be used as a basis for assessment.

The evidentiary difficulty becomes more serious when the issue is not a visible administrative violation but rather a factual condition concerning the notary's presence, office activity, continuity of service, and accessibility to the public. A relevant example can be found in the report concerning the coordination between the Bali Regional Office of the Ministry of Law and Human Rights and the Denpasar Regional Notary Supervisory Council. The report noted a case in which a notary could not be located, could not be contacted, and the notary's office was closed, thereby obstructing the process of taking over the notarial protocol (Kementerian Hukum dan Hak Asasi Manusia Kantor Wilayah Bali, 2024). This situation illustrates that the absence of a notary in a real and accessible manner may obstruct public access to notarial documents and legal services.

In such circumstances, different views may arise as to whether the notary can still be regarded as actually performing his or her office or whether the notary has neglected a fundamental obligation as a public official who must provide open and accessible legal services. This difference in assessment reflects the weakness of objective standards in notarial supervision. It also reveals an incomplete normative framework in regulating the actual presence of notaries in the performance of their office. Based on this problem, this article examines the legal certainty of the phrase "actually performing the office" and formulates a normative construction of notarial supervision over the obligation to perform the office in a real and effective manner.

RESEARCH METHOD

This study is a normative legal research that focuses on the analysis of legal norms governing the obligation of notaries to actually perform their office. The research applies statutory, conceptual, and case approaches. The statutory approach is used to examine the provisions of the Notary Office Law and its implementing regulations concerning notarial obligations, supervision, and sanctions. The conceptual approach is used to analyze the concepts of legal certainty, authority, and legal protection as theoretical foundations for discussing the problem. Meanwhile, the case approach is used to examine factual phenomena involving notaries who do not actually perform their office.

The legal materials used in this research consist of primary, secondary, and tertiary legal materials. Primary legal materials include statutory regulations related to the notarial office. Secondary legal materials consist of books, journal articles, and scholarly writings on notarial law, legal certainty, authority, sanctions, and legal protection. Tertiary legal materials are used to support the analysis. The legal materials are collected through library research and analyzed qualitatively using descriptive-analytical and prescriptive methods. The descriptive-analytical method is used to explain the normative weaknesses of the existing regulation, while the prescriptive method is used to formulate an ideal supervisory mechanism.

RESULT AND DISCUSSION

1. The Meaning of the Phrase "Actually Performing the Office" in Article 7 Paragraph (1) Letter a of the Notary Office Law

Grammatically, the phrase "actually performing the office" consists of elements of action, object of authority, and the manner of implementation. The word "performing" indicates an active and continuous activity in carrying out a duty, rather than merely holding a formal status. The term "office" refers to a legal position attached to authority, responsibility, and statutory obligations. Meanwhile, the word "actually" indicates that

the performance of the office must be factual, concrete, and verifiable in practice, not merely administrative or formal. Thus, normatively, the phrase implies that a public official, in this case a notary, is not only required to possess legal status but must also actively, continuously, and measurably exercise the authority and responsibilities attached to the office.

The increasing public demand for legal services, especially in the field of notarial practice, places the notary in a strategic position as a public official authorized to make authentic deeds that provide legal certainty, order, and protection. Such authority constitutes a delegation from the state and must be exercised not only formally but also actually in the provision of legal services to the public. The Notary Office Law regulates notarial obligations from the taking of the oath of office, the performance of duties within a certain period, and the fulfillment of administrative and substantive duties in the implementation of the office. In the framework of legal certainty, authority, and legal protection, notarial duties must be performed clearly, measurably, and based on legal norms to guarantee protection for society (Hadjon, 1987, p. 2).

As a legal norm, Article 7 of the Notary Office Law must be understood within the broader principles of the rule of law, particularly the principles of certainty, order, and protection. The ratio legis of the provision is to ensure that a notary appointed by the state immediately exercises his or her public authority in a real and effective manner. In the Indonesian notarial system, the legitimacy of the notarial office originates from the state through the authority of appointment and dismissal by the Minister. Therefore, the notarial office is regarded as an *officium nobile*, requiring high moral integrity and professional responsibility (Roby et al., 2026, p. 36).

The appointment of a notary is not merely an administrative act. It is a legal act that gives rise to public authority. Therefore, the appointment must be followed by the actual fulfillment of academic, administrative, and practical obligations. The requirement to begin performing the office within a certain period aims to ensure the operational readiness of the notary, prevent the absence of notarial services, and guarantee public access to notarial legal services. From the perspective of legal certainty, this obligation reflects the state's effort to provide clarity concerning the implementation of notarial authority and to ensure that the public function of the notarial office is effectively carried out.

However, the phrase "actually performing the office" gives rise to a juridical problem because it is not supported by clear objective indicators. The Notary Office Law does not provide further explanation regarding the criteria that can be used to determine whether a notary has fulfilled this obligation. The ambiguity raises questions as to whether the phrase refers to the physical presence of the notary in the office, the active and regular operation of the office, the availability of facilities and infrastructure, the frequency of deed-making, or the openness of services to the public. The absence of such indicators causes Article 7 paragraph (1) letter a to become abstract and open to various interpretations.

In practice, this ambiguity may lead to different interpretations among supervisory authorities and members of the public. One view may consider the obligation fulfilled when the notary has opened an office and begun notarial administration. Another view may argue that regular physical presence in the office and public accessibility are also essential elements of actual performance. These differences demonstrate that a norm that is not clearly formulated may produce diverse interpretations and complicate its application in practice. Mertokusumo explains that

legal certainty requires legal norms to be clear, firm, and capable of consistent application (Mertokusumo, 2009, pp. 160–161). Therefore, the absence of clear indicators in Article 7 paragraph (1) letter a weakens the certainty of the norm.

The ambiguity also affects the supervisory function of the Notary Supervisory Council, particularly the Regional Supervisory Council, which directly supervises the implementation of the notarial office at the local level. In the absence of objective indicators, the Regional Supervisory Council may encounter difficulties in assessing whether a notary has actually performed the office. This condition may result in inconsistent supervisory practices because each Regional Supervisory Council may use different standards or considerations. Consequently, a condition considered a violation in one region may not necessarily be considered a violation in another. This shows that normative ambiguity not only creates interpretive problems but also directly affects the effectiveness of supervision.

The problem also relates to the theory of legal authority. The authority of a notary is public in nature because it derives from statutory law. Therefore, the performance of notarial authority must be accountable and must correspond to the legal mandate granted by the state. Authority cannot be understood merely as a formal competence; it must also be exercised in a manner consistent with the purpose for which it was granted. Salim HS argues that legal theory must examine not only the existence of norms but also their function in ensuring order and justice in society (Salim HS, 2012, pp. 112–114). Accordingly, the actual performance of notarial office must be understood as a functional requirement to ensure that the authority delegated by the state is genuinely exercised for the benefit of society.

The phrase “actually performing the office” should therefore be constructed systematically by linking Article 7 of the Notary Office Law as a general norm with Article 16 of the same law, which provides more concrete forms of notarial obligations. In this context, “actually” should not be interpreted merely as administrative fulfillment. It must be understood as the active, factual, and continuous performance of the notarial office. This includes the preparation of deed minutes, the reading of deeds before the parties, the presence of the notary in legal processes, and the proper management of notarial protocols. Habib Adjie emphasizes that notaries, as public officials, bear administrative and civil responsibilities when they fail to perform their duties in accordance with legal norms (Adjie, 2008, p. 67).

The presence of an active and accessible office is also an important indicator because it is directly related to the obligation to provide services to the public. Administrative aspects, such as the management of protocols, repertory records, and periodic reporting, demonstrate accountability in the performance of the notarial office. Habib Adjie also explains that the notarial office in Indonesia is inseparable from the obligation to maintain legal certainty through the proper exercise of statutory authority (Adjie, 2011, p. 78). Therefore, the phrase “actually performing the office” should be operationalized through objective parameters, including the existence of an operational office, the physical presence of the notary, the real exercise of authority, the readiness of administrative records and protocols, and the openness of public services.

Through such a construction, the phrase will no longer remain abstract and susceptible to multiple interpretations. Instead, it will become a norm that can be assessed concretely in practice. This construction is necessary to support uniform supervision, legal certainty, and legal protection for society.

2. The Ideal Regulation of the Supervisory Mechanism for Notaries Who Do Not Actually Perform Their Office

In the performance of the notarial office, a notary is only permitted to open an office and conduct official duties in the regency or municipality designated as his or her place of office. Nevertheless, the notary's authority to make authentic deeds extends throughout the province in which he or she is appointed. As a public official providing legal services, a notary is required to remain within the territorial area of office so that notarial services can be performed optimally and continuously.

Article 17 paragraph (1) letter b of the Notary Office Law prohibits a notary from leaving the territorial area of office for more than seven consecutive working days without a valid reason. This prohibition aims to ensure the availability of notarial services for the public. It implies that when a notary cannot perform the office due to leave, illness, or temporary impediment, the notary must follow the legal procedures provided in the Notary Office Law. These procedures include applying for leave, appointing a substitute notary, and transferring the notarial protocol in accordance with applicable mechanisms. Such procedures are intended to maintain the continuity of legal services and to guarantee legal certainty and protection for the public.

In practice, however, there are still conditions in which notaries leave their territorial area of office without valid reasons and without fulfilling the required administrative obligations. The failure to apply for leave, appoint a substitute notary, or transfer the notarial protocol may cause harm to members of the public who require notarial services. This condition reflects a gap between the legal norms and their implementation. It may also disrupt public access to legal services. Mariel and Wulandari note that supervision over notaries who leave their territorial area or fail to perform their office remains a significant issue in notarial practice, especially because the supervisory framework does not always provide clear operational standards (Mariel & Wulandari, 2025, pp. 4–5).

The current supervisory system is not sufficiently supported by routine and periodic monitoring mechanisms. Supervision of notaries is generally incidental and has not been implemented systematically to ensure the continuous performance of the office. As a result, the absence or inactivity of a notary may not be detected at an early stage and may only become known after problems arise in society. Moreover, there is no specific procedure that explicitly regulates the handling of notaries who are inactive or who do not actually perform their office. Existing provisions in the Notary Office Law focus mainly on general prohibitions and sanctions, without technical mechanisms governing examination stages, evidentiary standards, and procedures for handling factual absence.

This regulatory incompleteness causes the handling of inactive notaries to be inconsistent and dependent on the discretion of each Supervisory Council. Supervision that relies heavily on public complaints is reactive rather than preventive. Members of the public often submit complaints only after experiencing losses or obstacles in obtaining notarial services. Larasati observes that the dynamics of the notarial supervisory system in Indonesia show the need for more structured and effective mechanisms to ensure that supervision is not merely formal but also functional (Larasati, 2023, p. 38).

The ideal regulation of the obligation of notaries to actually perform their office should contain at least three main components. First, it should establish objective parameters of notarial presence. These parameters should include minimum office hours, periodic reporting obligations, an attendance registration system, and an

obligation to update the office address and operational status. The purpose of these parameters is to make the phrase “actually performing the office” measurable and verifiable.

Second, the regulation should establish preventive supervisory mechanisms. These mechanisms may include annual monitoring by the Regional Supervisory Council, periodic inspections, and physical verification of the notary’s office. Preventive supervision is necessary to detect potential non-performance before it causes harm to the public. It also shifts the supervisory paradigm from a complaint-based model to a proactive model.

Third, the regulation should provide repressive supervisory mechanisms. These mechanisms should include administrative warnings, special examinations, tiered sanction recommendations, and further recommendations for normative reform. Repressive supervision is required when a notary is proven to have failed to actually perform the office. However, such supervision must be carried out through clear procedures and evidentiary standards to avoid arbitrary assessment.

The regulation concerning the obligation of notaries to actually perform their office in Article 7 paragraph (1) letter a of Law Number 2 of 2014 remains declaratory and lacks sufficient operational force. The norm contains an obligation but does not provide measurable indicators, systematic supervisory mechanisms, or clear enforcement procedures. Consequently, the provision tends to function as a symbolic norm whose application depends heavily on the subjective interpretation of supervisory authorities.

From the perspective of Gustav Radbruch’s theory, law must fulfill three fundamental values: certainty, justice, and utility. The unclear meaning of “actually performing the office” shows that legal certainty has not been fully achieved because there is no objective standard to assess the conduct of notaries. Therefore, the formulation of an ideal supervisory model is an urgent necessity to fill the normative gap.

The ideal model of supervision should be designed comprehensively based on five principal characteristics. It must be objective, measurable, transparent, nationally uniform, and administratively integrated. Objectivity means that supervision must be based on clear indicators rather than subjective impressions. Measurability means that the indicators must be capable of factual verification. Transparency means that notaries and members of the public must understand the standards used in supervision. National uniformity means that all Regional Supervisory Councils should apply the same standards. Administrative integration means that supervisory data should be connected to the administrative system of the Ministry of Law and Human Rights.

In normative terms, the ideal regulation may be achieved through several legal reforms. First, Article 7 of the Notary Office Law should be revised by adding an official explanation of the phrase “actually performing the office.” Second, implementing regulations under the Ministry of Law and Human Rights should provide detailed parameters and technical procedures for supervision. Third, a standard operating procedure should be established for supervising notarial presence and office activity. These reforms are necessary to ensure that the obligation is not merely formal but can be enforced effectively.

CONCLUSION

Based on the analysis above, two conclusions can be drawn. First, the regulation concerning the obligation of notaries to “actually perform their office” as stipulated in Article 7 paragraph (1) letter a of the Notary Office Law still contains normative weaknesses because it is not accompanied by clear and measurable indicators. This ambiguity creates multiple interpretations in practice, particularly regarding the meaning of notarial presence, physical existence in the office, and the real exercise of notarial authority. The absence of objective parameters also results in inconsistency in supervision by the Regional Supervisory Council. This condition is worsened by the absence of a special examination mechanism for notaries who do not actually perform their office and by the lack of routine and preventive monitoring systems. As a result, supervision tends to be reactive and dependent on public complaints. This shows that the existing regulation has not fully satisfied the principles of legal certainty, clarity of formulation, and enforceability, and has not provided optimal legal protection for users of notarial services.

Second, the ideal formulation of a supervisory mechanism for notaries who do not actually perform their office must be comprehensive, operational, and based on objective parameters. The phrase “actually performing the office” should be normatively understood as including several essential elements: the existence of an active and accessible office, the physical presence of the notary in performing duties, the real exercise of notarial authority, the readiness of administrative records and notarial protocols, and the openness of services to the public. In addition, a structured supervisory mechanism is needed, including periodic monitoring, special examination procedures, evidentiary standards, and clear stages of sanction imposition. The ideal supervisory model should also be transparent, measurable, nationally uniform, and integrated with the administrative system of the Ministry of Law and Human Rights. Through such regulation, notarial supervision can be strengthened, legal certainty can be guaranteed, and public legal protection can be optimized.

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