

**LEGAL ACTION AGAINST OF NOTARY SUPERVISORY BOARD
DECISION**

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ABSTRACT

The Notary Supervisory Board has the authority to supervise the Notary Public and in order to carry out this authority the Notary Supervisory Board issues decisions related to violations committed by Notaries. The method used is secondary data sourced from primary, secondary and tertiary legal materials. The decision of the Notary Supervisory Board for the central level is final and binding. If then there are parties who are not satisfied with the decision of the Notary Supervisory Board, what legal remedies can be taken by the dissatisfied party. Based on the research conducted, the decision of the Notary Supervisory Board can be categorized as a state administration decision which is a competency of the Administrative Court to examine, hear, and decide upon it. Therefore, if there are parties who are dissatisfied with the decision of the Notary Supervisory Board, then they can submit legal remedies to the Administrative Court.

Keywords: *Decision, Notary Supervisory Board, Administrative Court*

INTRODUCTION

The background to the existence of notary is to assist the public in providing reliable information, with signatures and stamps that can provide strong guarantees and evidence, and moreover, which is independent or does not favor one of the parties in the deed. The notary is authorized by government and not a few legal actions must be carried out using the services of a notary to certify or be said with an authentic deed. Notary profession is one of the professions that demands a balance of the three forms of human intelligence (Intellectual, Emotional and Spiritual). A notary public as a provider of legal advice to the public may not be able to carry out their duties if they do not have strong legal knowledge (intellectual intelligence).¹

According to Habib Adjie, a Notary is a public officer that has the characteristics of being a profession, meaning that the notary profession law is a unification in the field of notary profession regulation, so that the only rule of law in the form of laws governing notary profession in Indonesia, so that all matters relating to notary in Indonesia must refer to notary law regulation. The notary profession is an institution created by the State. Placing a Notary Public as a position is a field of work or assignment that is intentionally made by the legal rules of particular needs and functions (certain authorities) and is of a continuous nature as a permanent work.²

¹ Adjie, H., *Sanksi Perdata dan Administratif Terhadap Notaris Sebagai Pejabat Publik*, (Bandung: PT. Refika Aditama, 2008), p. 32.

² *Ibid.*, p. 32-34.

Because of the severity of the task of the Notary, a supervisory mechanism and organs are required for the duties, functions and authority of the Notary as a state official. To supervise the Notary Public, a Notary Supervisory Council was established at the central and regional levels, starting from the Regional Supervisory Board, the Regional Supervisory Council and the Central Supervisory Council.

Notary supervisory council is a body that has the authority and obligation to carry out supervision and guidance of Notary. In accordance with the provisions of Article 67 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning notary profession states that supervision of notary is carried out by the Minister by forming a Supervisory Board consisting of the Regional Supervisory Council, Regional Supervisory Council, and the Assembly Central Superintendent.³

Supervision of a notary public is the function of fostering and supervising the implementation of the position and behavior of a notary public. The task is carried out by the notary supervisory board as an extension of the Indonesian Law and Human Rights Council which has the authority to supervise the notary public.⁴

One of the authorities and obligations of the Notary Supervisory Board both the Regional Supervisory

Council, Regional Supervisory Council, and the Central Supervisory Council is to receive and examine reports of alleged violations of the Notary's code of ethics or violations of the implementation of the Notary Public's Office. In carrying out these authorities and obligations, the Notary Supervisory Board issues a decision if the Notary as the reported party is proven to have violated the implementation of the notary profession.

Article 33 of the Minister of Law and Human Rights Regulation of the Republic of Indonesia Number M.02.PR.08.10 of 2004 concerning Procedures for Appointing Members, Dismissing Members, Organizational Structure, Working Procedures, and Procedures for the Inspection of the Notary Supervisory Board stated that "Reporting and / or Reported those who object to the verdict of the Regional Examining Panel have the right to file an appeal against the Central Supervisory Board". And the decision of the Central Audit Board is final and has permanent legal force, except the decision on the proposed sanction in the form of dismissal with respect to the Minister.

In the laws and regulations related to Notary Public there are no provisions that govern the settlement mechanism if a Notary is not satisfied with the decision issued by the Notary Supervisory Board. Therefore it becomes interesting then to discuss the form of legal remedies against the decision of the Notary Supervisory Board related to judicial competence.

³ Majelis Pengawas Notaris, *Pedoman Majelis Pengawas Notaris*, (Jakarta: Direktorat Jenderal Administrasi Hukum Umum Kementerian Hukum dan HAM RI, 2018), p. 1.

⁴ *Ibid.*

METHOD

Legal research is a process to find the rule of law, legal principles, and legal doctrines to address the legal issues.⁵

DISCUSSION

The existence and authority of the Notary Supervisory Board

Supervision of Notaries is developing due to changes in laws and regulations related to Notaries. Before the entry into force of Law Number 30 of 2004 concerning the Position of Notary, supervision, inspection and imposition of sanctions against the Notary were carried out by the judicial body at that time, as stipulated in article 140 *Reglement op de Rechtelijke Organisatie en Het Der Justitie* (Stbl. 1847 No. 23), Pasal 96 *Reglement Buitengewester*, article 3 *Ordonantie Buitengerechtelijke Verrichtingen* – State Gazette 1946 Number 135. Then Supervision of the Notary Public General Court and the Supreme Court as referred to in Articles 32 and 54 of Law Number 13 of 1965 concerning Courts in the General Courts and the Supreme Court. Then also circulated the Supreme Court of the Republic of Indonesia Number 2 of 1984 concerning "Notary Supervision Procedures, Joint Decree of the Chief Justice of the Supreme Court and Minister of Justice Number KMA / 006 / SKB / VII / 1987 concerning Procedures for Notary Supervision, Enforcement and Self Defense, and finally in Article 54 of Law Number 8 of 2004 concerning Amendments to Law Number 2 of 1986 concerning General Courts.⁶

⁵ Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana Prenada Media Group, 2005), p. 35.

After the enactment of Law Number 30 Year 2004 concerning the Notary Profession, the judiciary no longer carries out oversight, inspection, imposition of Notary sanctions, the task is carried out by the Minister of Law and Human Rights by forming a Notary Supervisory Board. The purpose of supervision is so that the Notaries when carrying out their duties as a Notary, for the sake of securing the interests of the community, because the Notary is appointed by the government, not for the benefit of the Notary himself but for the benefit of the people he serves. Another goal of supervising a Notary is that the Notary is presented to serve the interests of the public who require evidence in the form of an authentic deed according to the request to the Notary. So that without a community who needs a Notary, the Notary is useless. Even so, it does not mean that by changing the agency that supervises the Notary will not occur violations committed by the Notary, because however strict the supervision by the Notary Supervisory Board is, it is not easy to carry out such supervision. This is up to the Notary himself with awareness and full responsibility in the duties of his office following or based on applicable legal rules. No less important is the role of the community to supervise and always report the actions of a Notary who does not

⁶ Kurnianingsih, S., "Comparative Study of Notary Oversight according to the Notary Position Law Number 30 of 2004 and the Decree of the Results of the Congress of the Indonesian Notary Association Code of Conduct (Analysis of Cases of Violation of the Notary Code of Ethics in Surabaya)", Thesis, Depok: Magister Notary of the Faculty of Law University of Indonesia, (2010), p. 41.

comply with the applicable legal rules to the local Notary Supervisory Board. With a report like this one can eliminate the actions of a Notary that is not in accordance with the legal rules for carrying out the duties of a Notary Public.⁷

Notary Supervisory Board as regulated in Article 68 of Law Number 30 Year 2004 concerning Notary Profession stated that "Supervisory Council consists of: Regional Supervisory Council, Regional Supervisory Council, and Central Supervisory Council". This distribution is related to the position of the Notary Supervisory Board. Regional Supervisory Councils are formed and domiciled in the capital of regencies / cities, Regional Supervisory Councils are formed and domiciled in provincial capitals, while Central Supervisory Councils are formed in the national capital.

In addition to their position, the difference in the division of the Notary Supervisory Board is related to their respective authorities and obligations. The Regional Supervisory Council based on the provisions of Article 70 of Law Number 30 Year 2004 concerning the Notary Profession has the following authority:

- a. convening hearings to examine suspected violations of the Notary Code of Ethics or violations in the performance of the notary profession
- b. to examine the Notary Protocol periodically 1 (one) time in 1 (one) year or at any time deemed necessary
- c. give leave permission for a period of up to 6 (six) months

- d. stipulate the Substitute Notary by taking into account the proposal of the concerned Notary
- e. determine the place of deposit of the Notary Protocol at the time the handover of the Notary Protocol is 25 (twenty-five) years of age or more
- f. appointing a Notary who will act as a provisional holder of the Notary Protocol appointed as a state official as referred to in Article 11 paragraph (4)
- g. receive reports from the public regarding alleged violations of the Notary Ethics Code or violations of the provisions in this Law; and
- h. make and submit reports as referred to in letter a, letter b, letter c, letter d,
- i. letter e, letter f, and letter g to the Regional Supervisory Board

In addition to authority, the Regional Supervisory Council also has obligations as regulated in Article 71 of Law Number 30 Year 2004 concerning the Position of Notary as follows:

- a. record the list of books included in the Notary Protocol stating the date of the examination, the number of deeds as well as the number of undisclosed documents that were made since the date of the last inspection;
- b. make minutes of the inspection and submit it to the local Regional Supervisory Council, with a copy to the Notary concerned, Notary Organization, and the Central Supervisory Council;
- c. keep the contents of the deed and the examination results confidential;
- d. receive a certified copy of the list of deeds and other lists from the Notary and keep it a secret;
- e. examine the public report on the Notary Public and submit the results of the inspection to the Regional Supervisory

⁷ *Ibid.*, p. 44-45.

Council within 30 (thirty) days, with a copy to the reporting party, the Notary concerned, the Central Supervisory Council, and the Notary Organization.

f. submit an appeal against the decision to reject leave

The authority of the Regional Supervisory Council as regulated in Act Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Profession is as follows::

- a. Convening hearings to examine and make decisions on public reports that can be submitted through the Regional Supervisory Council;
- b. Call the reported Notary Public to be inspected of the report as referred to in letter a;
- c. Give leave permission for more than 6 (six) months to 1 (one) year;
- d. Examine and decide upon the decision of the Regional Supervisory Council that rejects the leave proposed by the reporting Notary Public;
- e. Sanction both verbal warning and written warning;
- f. Propose a notary sanction to the Central Supervisory Board in the form of:
 - 1) temporary termination of 3 (three) months up to 6 (six) months; or
 - 2) dishonorable discharge.

While the obligations of the Regional Supervisory Board are:

- a. submit the decision referred to in Article 73 paragraph (1) letter a, letter c, letter d, letter e, and letter f to the Notary concerned with a copy to the Central Supervisory Board, and Notary Organization; and
- b. submit an appeal from the Notary to the Central
- c.

Supervisory Board against the imposition of sanctions and the rejection of leave.

The Central Board of Trustees as the supreme supervisor also has the following authority and obligations:

1. The authority of the Central Board of Trustees is as follows:
 - a. convening hearings to examine and make decisions on appeal against sanctions and the rejection of leave;
 - b. call the reported Notary Public to be inspected as referred to in letter a;
 - c. impose sanctions on termination; and
 - d. proposing sanctions in the form of dismissal with no respect to the Minister.
2. The obligation of the Central Supervisory Board is to submit the decision as referred to in Article 77 letter a to the Minister and Notary concerned with a copy to the Regional Supervisory Council and the Regional Supervisory Council concerned and the Notary Organization.

Judicial Competence in Indonesia

In the opinion of Bernard Arief Sidharta, the State of Indonesia which was fought to be realized was the Pancasila state with the following characteristics:⁸

- a) First of all, the Pancasila state is a state of law in which the use of its power must always have a legal basis and

⁸ Syaputra, M.Y.A., (2017), "Kajian Hukum Pemberlakuan Perda Kota Medan Nomor 6 Tahun 2003 Perspektif Utilities Theory", *Mercatoria*, Vol. 10 (2), Desember 2017, p. 203- 204.

within the framework of the limits established by law, a fortiori for the use of public power. So, the desired government is a government based on, with and by law (rule by law and rule of law);

- b) Pancasila state is a democratic country which in all its tower activities is always open to the participation of all people, which in the exercise of authority and use of public power must be accountable to the people and must always be open to rational assessment by all parties within the framework of the applicable values and legal order
- c) Pancasila state is an organization of all people who organize themselves nationally for togetherness in the sense, within the framework and through the order of applicable legal rules, to realize inner and outer well-being for all people by always referring to the values of human dignity and Godhead. In this conception of the Pancasila State, the state and the government are more coordinating various rational decision-making centers with the principle of rationality-efficiency, principle of rationality-reasonableness, principle of principle-rationality and principle of value-rationality, rather than mere organization of power. Thus, it can be said that the aspired Pancasila state is a rule of law state based on popular principles aimed at realizing welfare (social justice) for all Indonesian people and world peace.

To realize an equitable Pancasila state, a process of resolution of every problem in society is needed, so that the principle of justice can be carried out well through judicial authority. Article 24 of the

1945 Constitution of the Republic of Indonesia states that:

- 1) Judicial power is an independent power to administer justice in order to uphold law and justice.
- 2) Judicial power shall be exercised by a Supreme Court and the judiciary below it in the general court, religious court environment, military court environment, state administrative court environment and by a Constitutional Court.

Based on these provisions, each judicial body has their respective competencies, namely:

1. The General Court has the authority to examine, hear, and decide on criminal and civil cases in accordance with statutory provisions;
2. Religious Courts have the authority to examine, hear, decide, and settle cases between people who are Muslims in accordance with the provisions of the legislation;
3. Military Courts are authorized to examine, hear, and decide cases of military criminal offenses in accordance with statutory provisions;
4. State Administrative Court has the authority to examine, hear, decide, and settle state administrative disputes in accordance with statutory provisions.

If we then look at the competency of the existing judiciary, to examine, hear, and resolve disputes related to the Decision of the Notary Supervisory Council, then it is closer to being the competency of the State Administrative Court.

The Nature Of State Administration Decision

To see whether the decision of the Notary Supervisory Board is a state administration decision or not, it is necessary to look at the nature of the state administration decision based on the State Administrative Court Law. Based on the provisions of Article 1 number 9, it is stated that a state administration decision is a written stipulation issued by a state administration agency or official based on applicable laws, which is concrete, individual, and final, which results in legal consequences for a person or civil legal entity.

From these provisions, elements of the state administrative decisions can be found as follows:⁹

a. Writing determination

According to Article 1 number 3 of Law Number 5 of 1986 concerning State Administrative Court it is stated that "the written stipulation is formulated as a state administration decision issued by a state administration agency or official. The meaning of the term "written determination" refers to the content and not to the form issued by the state administration agency or official. The decision was indeed required to be written, but not the formal form, like the decree, and so on.

A letter can be said to meet written requirements and is a decision of a state administration agency or official according to the law if: 1) which state administration agency or authority issues it; 2) The purpose and rights of what the contents of the writing are; and 3) To

whom the writing was intended and what was stipulated therein.

b. Issued by a national body or agency

State administrative bodies or officials are agencies or officials at the central and regional levels that carry out executive activities. Contains legal actions on state administration based on statutory Regulations.

Legal actions for state administration are legal actions of state administrative bodies or officials that originate from a state administrative law provision that can give rise to rights and obligations to others. What is meant by legislation is all generally binding regulations issued by the House of Representatives with the government, both at the central and regional levels and all decisions of state administrative bodies or officials.

c. concrete, individual, and final

It is concrete, meaning that the object decided in the state administration decision is not abstract, but it is tangible, certain, and can be determined. Individualized means that state administrative decisions are not intended for the public, but certain both the address and the intended destination, while being final means that it is definitive and therefore has legal consequences.

d. Causing legal consequences for a person or private legal entity.

Causing legal consequences means legal actions that are realized in making state administrative decisions by state administrative bodies or officials may cause rights or obligations to a person or civil legal entity.

It can be concluded, that the elements of state administrative decisions include in principle:

⁹ Abdullah, A., *Teori & Praktik Hukum Acara Peradilan Tata Usaha Negara Pasca Amandemen*, (Jakarta: Kencana, 2017), p. 34- 36

- a. In terms of the makers, issued by state administrative bodies or officials in the context of carrying out executive activities;
- b. In terms of the material form, it contains the legal actions of state administration, namely the legal actions of the state administration which carry
- c. out functions to carry out government affairs both at the central and regional levels;
- d. In terms of its nature, concrete, individual, and final;
- e. In terms of consequences, it has legal consequences for a person or a legal entity

Notary Supervisor Assembly As A State Administration

To see whether the Notary Supervisory Board is a state administration body or official and the decision issued is a state administration decision, 4 (four) elements of the state administration decision can be used as a basis.

When viewed in terms of its maker, the Notary Supervisory Board is a state administrative body or official. Because based on the elements that can be categorized as state administration officials are agencies or officials who carry out government or executive affairs. If you look back at the provisions of Law Number 30 Year 2004 concerning the Position of Notary, it will be found that the Notary Supervisory Council is an extension of the Minister of Law and Human Rights of the Republic of Indonesia in the context of carrying out supervision and guidance of Notaries who are the authority of the Minister of Law and Human Rights of the Republic of Indonesia. Thus, the Notary Supervisory

Board is included in the executive or executive affairs of the government.

In terms of the second element, that the decision of the Notary Supervisory Board in giving the decision of a Notary Public violates the Notary Office regulations is a state administrative law action because it is carried out to carry out the function of carrying out government affairs in the field of notary development and supervision. Of the third element, it is concrete, individual, and final. This element can also be clearly fulfilled, because the nature of the decision of the Notary Supervisory Board is also concrete and individual because it is addressed to the Notary as reported and is final because the decision of the Notary Supervisory Board does not require approval from other institutions.

The decision of the Notary Supervisory Board of course also fulfills the fourth element, which has legal consequences for the Notary. If a Notary is decided to be dismissed temporarily by the Notary Supervisory Board, of course it will cause legal consequences, namely the Notary is obliged not to open an office and carry out the functions of the Notary for a specified period.

CONCLUSION

Based on the discussion above, it can be concluded that the decision of the Notary Supervisory Council is a decision on state administration. Because it fulfills all the elements of a decision including state administrative decisions both in terms of the maker, material aspects, nature, and legal consequences. Therefore, if there is any dissatisfaction with the decision issued by the Notary Supervisory Board, the legal remedies that can be carried out are by

submitting an application to the State Administrative Court so that it is resolved by the State Administrative Court Judicial Procedure Law.

REFERENCES

- Abdullah, A., *Theory & Practice of Post-Amendment State Administrative Court Judiciary* (Jakarta: Kencana, 2017).
- Adjie, H., *Civil and Administrative Sanctions Against a Notary Public Officer*, (Bandung: PT. Refika Aditama, 2008).
- Kurniingsih, S., "Comparative Study of Notary Oversight according to the Notary Position Law Number 30 of 2004 and the Decree of the Results of the Congress of the Indonesian Notary Association Code of Conduct (Analysis of Cases of Violation of the Notary Code of Ethics in Surabaya)", Thesis, Depok: Magister Notary of the Faculty of Law University of Indonesia, (2010).
- Notary Supervisory Board, (2016), *Guidelines for Notary Supervisory Board*, Jakarta: Directorate General of General Law Administration Ministry of Law and Human Rights Republic of Indonesia.
- Syaputra, M.Y.A., "Legal Study of Enactment of Medan City Regulation Number 6 Year 2003 Perspective of Utilities Theory", *Mercatoria*, Vol. 10 (2), December 2017: 197 - 215, (2017).