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### The Position of the Sued Decision of the Notary Regional Supervisory Council by the State Administrative Court

<sup>1</sup> Indrayati Febisyah Ananda, <sup>2</sup> Iman Jauhari, <sup>3</sup> Siti Rahmah

<sup>1</sup> Student, Faculty of Law, Universitas Syiah Kuala, Banda Aceh, Indonesia

<sup>2,3</sup> Lecturers, Faculty of Law, Universitas Syiah Kuala, Banda Aceh, Indonesia

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Corresponding Author: **Indrayati Febisyah Ananda**

#### Abstract

The Regulation of the Minister of Law and Human Rights Number 15 of 2020 regarding the Procedures for the Examination of the Supervisory Council Against Notaries, in Article 28 paragraph (1), stipulates that the Reporter and/or the Reported Party who contests the decision of the Regional Supervisory Council is entitled to appeal to the Central Supervisory Council, submitted through the secretariat of the Regional Supervisory Council. Nevertheless, discrepancies are frequently observed in practice. An illustrative instance is the State Administrative Court Decision No. 190/G/2020/PTUN.JKT, wherein a Notary contested the Regional Supervisory Council of Notaries for the DKI Jakarta Province Decision No. 05/PTS/Mj.PWN.Prov.DKI Jakarta/IX/2020, dated September 14, 2020, concerning the issuance of a Written Warning Sanction to the Respondent. This study utilises the normative juridical technique, employing both the statutory

and conceptual methods. This research utilises secondary data and primary data, supplemented by interviews with subject matter experts. Data is examined descriptively and qualitatively through legal interpretation. This research aims to elucidate the legal status of the Regional Supervisory Council's decisions within the framework of the State Administrative Court Law and Minister of Law and Human Rights Regulation Number 15 of 2020. The research findings indicate that the decision of the Notary Regional Supervisory Council satisfies the criteria outlined in Article 1, number 9 of the Administrative Court Law, as it encompasses the elements of being concrete, individual, and final. The panel of judges determined that the judgement of the Regional Supervisory Council of Notaries, which is the subject of the dispute, complies with all components of administrative law as per the proposal of the Regional Supervisory Council of Notaries.

**Keywords:** The Position of the Notary Supervisory Council's Decision, Administrative Court

#### Introduction

Law Number 2 of 2014 concerning the Notary Office (UUJN) regulates the supervision mechanism for Notaries in carrying out their duties and authorities, which is conducted by the Notary Supervisory Council. In order to ensure the quality of the notary office, the Notary Office Law also regulates a supervision system thru the Notary Supervisory Council (MPN), both at the regional level called the Regional Supervisory Council (MPD), the Regional Supervisory Council (MPW), and at the central level called the Central Supervisory Council (MPP). The purpose of supervision is to provide guidance and direction to Notaries in carrying out their profession<sup>[1]</sup>. The authority regarding the Regional Supervisory Council (MPD) is stated in Article 70 and its obligations are stated in Article 71 of the Notary Position Act (UUJN). The authority of the Regional Supervisory Council (MPW) is stated in Article 73 and its obligations are stated in Article 75 of the Notary Position Act (UUJN). The authority of the Central Supervisory Council (MPP) is stated in Article 77 and its obligations are stated in Article 79 of the Notary Position Act (UUJN).

Regulation of the Minister of Law and Human Rights Number 15 of 2020 on the Procedure for the Supervisory Council's Examination of Notaries in Article 28 paragraph (1) states that the Reporter and/or the Reported who object to the decision of the Regional Supervisory Council have the right to appeal to the Central Supervisory Council, submitted thru the secretariat of the Regional Supervisory Council. This is further emphasized in Article 31, paragraph (1), letter a: "The Central Examination Council examines and decides on the appeal against the objection to the decision of the Regional Supervisory Council." However, in practice, deviations are often found. In the Jakarta Administrative Court Decision Number

190/G/2020/PTUN.JKT, a notary, sued the Decision of the Notary Supervisory Council of the DKI Jakarta Province to the Administrative Court over the issuance of Decision Number 05/PTS/Mj.PWN.Prov.DKIJAKARTA/IX/2020 dated September 14, 2020, which imposed a written reprimand on him. Thru its ruling, the panel of judges annulled the Decision of the Notary Supervisory Council of the DKI Jakarta Province Number 05/PTS/Mj.PWN.Prov.DKIJAKARTA/IX/2020 regarding the imposition of a written reprimand on the notary and ordered the defendant to revoke the decision. Based on the above description, it is important to research the Position of the Decision of the Regional Supervisory Council of Notaries being challenged in the Administrative Court.

### Research Method

Which makes norms and rules the main basis, focusing on what is written in laws, court decisions, agreements, and doctrines to regulate human behavior appropriately. The research approach used in this study is the statutory approach and the conceptual approach [2]. The legal data sources used in this research are secondary data and primary data. Secondary data consists of primary, secondary, and tertiary legal materials obtained thru literature review. Primary data refers to field data obtained thru interviews with informants. Data analysis in this study uses descriptive and prescriptive analysis methods.

### Results and Discussions

Related to the increasing demand for notary services, notaries as public servants have the duty to serve the community in civil matters, particularly in the creation of authentic deeds. As referred to in Article 1868 of the Civil Code, in conjunction with Article 1, paragraph 7 of Law Number 30 of 2004, in conjunction with Law Number 2 of 2014 concerning the Notary Position. In Article 1868 of the Civil Code, it is stated that "An Authentic Deed is a deed in the form determined by law, made by or in the presence of authorized public officials at the place where the deed is made." Meanwhile, in Article 1, paragraph 7 of the Notary Law, it is stated that "a notarial deed is an authentic deed made by or in the presence of a Notary according to the form and procedure stipulated in this law."

In carrying out the authority and duties entrusted to them, Notaries are subject to the Notary Profession Act (later called the UUJN), and Notaries operate under the auspices of the Minister of Law and Human Rights as regulated in Article 67 paragraph (1) of the UUJN, which states that supervision over Notaries is conducted by the Minister. Thus, it can be concluded that the authority inherent in the notary's position is attributional because it is derived from statutory regulations. In the context of carrying out the supervisory function, the Minister establishes the Notary Supervisory Council as an institution tasked with overseeing the performance of the Notary's duties, both in terms of performance and compliance with the code of ethics. Supervision of Notaries aims to assess, know, and declare that the performance and actions carried out by Notaries must comply with the applicable ethics and legal regulations [3]. The Notary Supervisory Council is an institution that has the authority to conduct supervision, inspection, and impose sanctions on Notaries. This authority is exclusive, as only the Notary Supervisory Council is authorized to perform the functions of supervision, inspection, and imposing sanctions

for violations committed by Notaries [4]. The sanctions imposed by the Notary Supervisory Council are classified as administrative sanctions.

The position of the Minister as a State Administrative Body or Officer executing governmental functions based on statutory regulations has legal implications for the Supervisory Council. In this case, the Supervisory Council is also positioned as a State Administrative Body or Officer, as it derives its authority thru delegation from an official who holds the status of a State Administrative Body or Officer [5]. Therefore, the Supervisory Council has the authority to establish and issue Decrees or decisions related to the results of supervision, inspection, or the imposition of sanctions on the Notary in question [6]. Therefore, the Supervisory Council has the authority to establish and issue Decrees or regulations related to the results of supervision, inspection, or the imposition of sanctions against the Notary in question.

The notary supervisory council, in its capacity as an administrative body or official, has the authority to issue decisions or decrees related to the results of supervision, inspection, or imposition of sanctions directed at notaries under its jurisdiction. The absolute authority of the State Administrative Court is to examine, adjudicate, and resolve disputes in the field of state administration [7]. This is explicitly regulated in Article 47 of Law Number 5 of 1986 concerning the Administrative Court, which states that the Administrative Court has the competence to resolve administrative disputes. Furthermore, based on the provisions of Article 1 number 4 of Law Number 5 of 1986 in conjunction with Article 1 number 10 of Law Number 51 of 2009, Administrative Disputes are defined as disputes arising in the realm of administrative law between individuals or civil law entities and administrative bodies or officials, both at the central and regional levels, which arise as a result of the issuance of an Administrative Decision, including employment disputes based on the applicable statutory regulations.

Regarding the position of the decision letter or decree of the notary supervisory council, it can be the subject of a lawsuit by the notary to the State Administrative Court (later called as the PTUN) as an administrative dispute if the notary concerned feels that the decision issued by the notary supervisory council is inaccurate or burdensome to the notary concerned or if there is a lack of transparency or balance in the examination process. The opportunity to file a lawsuit with the PTUN remains open after administrative efforts have been exhausted. The submission of administrative efforts in state administrative disputes essentially stems from the dissatisfaction of the aggrieved party toward the actions of the state administration.

The provision of Article 48 paragraph (1) of Law Number 5 of 1986 states that if a State Administrative Body or Officer is authorized by or based on statutory regulations to resolve certain State Administrative disputes administratively, it shall be null and void, with or without accompanying claims for damages and available administrative remedies. Looking at the provisions of Law Number 5 of 1986 and the second amendment of Law Number 51 of 2009 concerning the Administrative Court, it can be seen whether the decision issued by the Notary Supervisory Council is categorized as an Administrative Court decision as regulated in the Administrative Court Law.

The position of the minister as an administrative body or TUN official who carries out government affairs based on applicable legislation has consequences for the Notary Supervisory Council, which also serves as an administrative body or TUN official, because it receives delegation from an administrative body or TUN official. Article 67 paragraphs (1) and (2) of the UUJN fall within the meaning of Article 1 of Law Number 51 of 2009, the second amendment to Law Number 5 of 1986 on Administrative Court Jurisdiction, that the minister as an administrative body or TUN official who carries out government affairs based on legislation has delegated its authority to the Supervisory Council, which therefore functionally and in its existence acts as an administrative body. Not all decisions from the TUN Body are considered TUN decisions. It can be said that to obtain government authority, it can be done thru three ways, namely, Attribution, Delegation, and Mandate. Attribution is the granting of new government authority by a regulation (legislative legal product) to carry out governance<sup>[8]</sup>.

The position of the minister as an executive (government) who exercises governmental power in the qualification as a Body or State Administrative Officer. Based on Article 67 paragraph (2) of the UUJN, the minister delegates the supervisory authority to an institution called the notary supervisory council. The definition of the Notary Supervisory Council is mentioned in Article 1, paragraph 2 of the Regulation of the Minister of Human Rights of the Republic of Indonesia Number 15 of 2020, which is an institution that has the authority and obligation to supervise and guide notaries. Thus, the minister as the delegans and the Notary Supervisory Council act as the delegataris. The Notary Supervisory Council, as the delegataris, has the authority to fully supervise notaries without needing to return its authority to the delegans.

In conducting oversight, examination, and imposition of sanctions, the Supervisory Council must base its authority on the provisions set forth by the UUJN as a reference for decision-making. This needs to be understood because not all members of the Notary Supervisory Council come from a Notary background, so the actions or decisions of the Notary Supervisory Council must reflect the actions of an institution, not the actions of individual members of the Notary Supervisory Council. Article 67 paragraph (3) of the UUJN stipulates that the Notary Supervisory Council consists of 9 (nine) members, which includes several elements: 3 (three) members from the government, 3 (three) members from the Notary Organization, and 3 (three) members from experts/academics.

According to the elements of the Notary Supervisory Council, it can be concluded that the supervision and examination of notaries conducted by the MPWN are at least overseen and inspected by members who understand the world of notaries. Darmawan, as a source from the academic community, explained that the presence of members of the Notary Supervisory Council constitutes internal supervision, meaning it is conducted by fellow notaries who understand the world of notaries inside and out, while the other elements are external representatives from the academic world, government, and society<sup>[9]</sup>. Thus, the combination of the membership of the Notary Supervisory Council is expected to provide a synergy of objective supervision and inspection, in which every supervision is carried out based on the applicable regulations, and the notaries in performing their duties do

not deviate from the UUJN because they are supervised both internally and externally. The Notary Supervisory Council not only conducts supervision and inspections of notaries but also has the authority to impose sanctions on notaries who have been proven to violate their duties.

The Notary Supervisory Council, in its capacity as an Administrative Court Body or Officer, has the authority to issue or release Decrees or Decisions related to the results of supervision, inspection, or imposition of sanctions directed at the notary concerned. By fulfilling the provisions of Article 1, number 3 of Law Number 5 of 1986, and the second amendment of Law Number 51 of 2009 concerning the Administrative Court.

With that legal standing, the Decree or Decision of the Notary Supervisory Council can, in principle, be made the object of a lawsuit in the Administrative Court (PTUN) because it falls within the category of Administrative Disputes. This is in line with the provisions of Article 1 number 10 of Law Number 51 of 2009, the second amendment to Law Number 5 of 1986 concerning Administrative Court, which defines Administrative Disputes as disputes arising in the realm of government administration between individuals or legal entities with state administrative officials, both at the central and regional levels, as a result of the issuance of an Administrative Decision, including disputes related to personnel based on applicable laws and regulations.

If a Notary believes that the decision issued by the Supervisory Council contains errors, is disproportionately burdensome, or is produced thru a non-transparent examination process that does not uphold the principle of balance, the right to file a lawsuit with the Administrative Court remains open. The submission of the lawsuit can be carried out after all administrative effort mechanisms have been exhausted, whether in the form of objections or administrative appeals, even tho the provisions of the legislation state that the decision is final or no other legal remedies are available. This is because, in essence, the use of administrative efforts in State Administrative disputes stems from dissatisfaction with the actions or decisions of state administrative officials.

The main advantage of pursuing this legal path is that the assessment of State Administrative actions is not solely limited to the aspect of legality, but also includes policy considerations (doelmatigheid). In addition, the judicial process also opens up the possibility of new decisions that can replace previous State Administrative decisions deemed detrimental. The Notary Supervisory Council is an institution with the authority to provide guidance and supervision to Notaries, both in relation to their conduct and the performance of their duties. In exercising its authority, the Notary Supervisory Council has the scope of duties to conduct hearings on alleged violations of the Notary Code of Ethics or deviations in the performance of Notary duties as regulated by legislation.

The criteria and standards for an Agency or Official to be referred to as a State Administrative Agency or official, according to legislation, have the authority to carry out government affairs. According to the explanation of Article 1, point 7 of the Law Number 51 of 2009, the second amendment to Law Number 5 of 1986 concerning the Administrative Court, what is meant by governance is Executive affairs.

The actions taken by the Notary Supervisory Council are an administrative legal act, as the issuance of decisions by that body has direct legal consequences for the notary in question. However, not every decision made by the Notary Supervisory Council can immediately become the subject of a lawsuit in the Administrative Court (PTUN). According to the author's view, decisions that still require ratification or approval from a higher-ranking official do not meet the criteria as objects of administrative disputes. Conversely, decisions that are definitive and final, and that have direct legal consequences, can be contested in the Administrative Court, as can be observed from the provisions of Article 48 of Law Number 51 of 2009, the second amendment to Law Number 5 of 1986 concerning Administrative Courts.

Based on the description, it can be concluded that the Notary Supervisory Council is positioned as a State Administrative Body or Officer, as it exercises governmental authority delegated by the Minister, either through delegation or attribution mechanisms, sourced from the Notary Office Law. Therefore, decisions issued by the Notary Supervisory Council meet the criteria as State Administrative Decisions, and can legally be subject to dispute in the State Administrative Court.

### Conclusion

In conclusion, the judgement of the Regional Supervisory Council of Notaries satisfies the criteria outlined in Article 1, number 9 of the UUPTUN, as it encompasses the concrete, individual, and final elements. The panel of judges determines that the judgment of the Regional Supervisory Council of Notaries, founded on the suggestion of the same council, which is the subject of the dispute, satisfies the criteria of KTUN. In the context of the MPW decision imposing a written reprimand on the notary, the element of finality is deemed satisfied as the sanction has been executed, resulting in tangible legal repercussions for the Plaintiff, especially regarding the integrity and public confidence in the notary profession.

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