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Study of Misapplication of the Law by the Notary Regional Supervisory Council in Imposing Sanctions on Notaries Who Make Deeds

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Abstract:

Purpose:
This study is a case study of a decision of the regional Supervisory Council of Notaries (MPWN), where MPWN imposed sanctions against notaries who violated UUJN Article 17 paragraph (1) letter a, namely running for office outside the territory of his position, not by the current legislation. MPWN sanctions verbal reprimand to the notary. As we know, in the UUJN changes, sanctions in the form of verbal reprimands are no longer applied.

Methodology:
This research is a descriptive analysis. Namely, the discussion is done by presenting and explaining data thoroughly, in detail and systematically. This type of research is normative legal research, a legal research method that examines library materials.

Findings:
The result is that the MPWN decision must be appealed to someone other than the Central Supervisory Board. Because there is a rule in Article 28 paragraph (2) of PERMENKUMHAM number 15 of 2020, namely MPW has the authority to reject objections to decisions on oral warning sanctions and written warnings, in this case, the oral warning sanctions and written warnings are final and cannot be appealed.

Implication:
However, with the law on judicial power and the law on administrative court, the party who objected can file a legal remedy in Administrative Justice. The MPWN decision can be subject to State Administration, and the proper application of the law is outlined in Article 17, paragraph (2) of the amendment law. As a supervisor, the MPWN must remain objective and thorough to prevent errors in the application of the law from recurring.

INTRODUCTION

The state mandates Notaries to carry out some of their duties and authorities to provide civil services to the community. The law and the community trust a Notary; therefore, a Notary must carry out the trust given to him by continually upholding the law, ethics, dignity and nobility of his position. If a Notary ignores this, it will be dangerous for those he serves.

Based on the provisions of Article 1 number 1 UUJN, a notary is a public official authorized to make authentic deeds and has other authorities as referred to in this Law or based on other laws. A public official is a translation of the term openbare amtbtenaren, which is regulated in Article 1 of the Notary Position Regulations and Article 1868 of the Civil Code. Based on the description above, it can be concluded that a notary is a public official authorized explicitly by law to make authentic evidence (Borman, 2019). The authority of a notary is known as notary authority. In contrast, in Dutch, it is known as de notaries authorities, namely the power given to a notary to make authentic deeds and other powers. Power is defined as the ability of a notary to carry out his/her position (Toruan, 2019). Authentic deeds made by a notary have powerful legal force, considering that authentic deeds are perfect evidence, so it is not uncommon for various laws and regulations to require certain legal acts to be made in authentic deeds.

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There are 2 (two) types of authentic deeds made by a notary: the Ambtelijk Act and the Partij Act. Ambtelijk Act is a "deed made by a notary" regarding all events or incidents witnessed in real terms by the notary himself, including the deed of minutes of the General Meeting of Shareholders (GMS) of a limited liability company and the deed of registration or inventory of inherited assets. At the same time, the Partiji Act or deed of the parties is a deed made according to the will or desire of the parties about legal acts carried out by the parties, made by and before a notary (Madyastuti, 2020).

Notaries who carry out their duties and positions for the benefit of the general public must be under the supervision of a neutral and independent institution. This institution is regulated in the provisions of Article 67 paragraph (1) of Law Number 2 of 2014, amending Law Number 30 of 2004 concerning the Position of Notary (UUJN-Amendment), that the Minister carries out the supervision of Notaries. In carrying out this supervision, the Minister forms a Supervisory Board (Article 67 paragraph (2) of the UUJN-Amendment). Article 67 paragraph (3) of the UUJN-Amendment stipulates that the Supervisory Board consists of 9 (nine) people, consisting of 3 (three) Government elements, 3 (three) Notary Organizations and 3 (three) Experts/academics (Adjie, 2017).

Based on Article 1 number 6 of the Notary Supervisory Board in conjunction with Article 1 number 2 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 15 of 2020 concerning Procedures for Examination of the Notary Supervisory Board (from now on in this article referred to as PERMENKUMHAM Number 15 of 2020) in conjunction with Article 1 number 1 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 16 of 2021 concerning Organizational Structure and Procedures for Appointment and Dismissal, as well as the Budget of the Notary Supervisory Board, (from now on in this article referred to as PERMENKUMHAM Number 16 of 2021), The Notary Supervisory Board, henceforth known as the Supervisory Board, is a body responsible for guiding and supervising Notaries.

According to Article 168 of the Notary Supervisory Board, the Notary Supervisory Board consists of the Regional Supervisory Board, the Regional Supervisory Board and the Central Supervisory Board (Adjie, 2017). Supervision and examination of Notaries are carried out by the Supervisory Board, which includes Notary elements; thus, at least Notaries are supervised and examined by members of the Supervisory Board who understand the world of Notaries. The existence of members of the Supervisory Board from Notaries is internal supervision, meaning it is carried out by fellow Notaries who understand the world of Notaries inside and out. At the same time, the other elements are external elements that represent the academic world, government and society. With the combination of the members of the Supervisory Board, it is hoped that it can provide an objective synergy of supervision and examination so that each supervision is carried out based on applicable legal regulations, and Notaries, in carrying out their duties, do not deviate from the UUJN because they are supervised internally and externally (Adjie, 2017).

According to Article 1, Number 6 of PERMENKUMHAM, Number 16 of 2021, supervision means preventive and curative activities, including coaching activities carried out by the Supervisory Board for Notaries. Thus, there are 3 (three) types of tasks carried out by the Supervisory Board, namely (Adjie, 2017)

1. Preventive Supervision.
2. Curative Supervision.
3. Coaching

According to Ten Berge, law enforcement instruments include supervision and enforcement of sanctions. Supervision is a preventive measure to enforce compliance. In the world of notaries to enforce sanctions against notaries, the instrument of law enforcement is the Supervisory Board, which will take preventive measures to enforce compliance, apply repressive sanctions, and enforce that these sanctions can be appropriately implemented (Darus, 2017). Law enforcement is closely related to the effectiveness of the law itself. For the law to be effective, objective law enforcers must enforce the sanctions. A sanction can be actualized to the community through compliance, with these conditions indicating that the law is effective (Darus, 2017).

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However, in practice, some implementations of law enforcement still need to follow applicable law. In this case, the error in the application of the law carried out by the Notary Supervisory Board of the Special Capital Region of Jakarta (from now on referred to in this article as the DKI Jakarta MPWN) in its decision Number 2/PTS/MJ.PWN.Prov.DKIJakarta/II/2023 occurred due to negligence or negligence where the DKI Jakarta MPWN has violated general/public legal principles. The general/public legal principles are legal principles that relate to all areas of law. The general legal principle related to this analysis is the Lex Posterior Derogat Legi Priori principle.

Simply put, this principle means that if there is a new regulation, the old regulation will be set aside. This principle aims to prevent legal uncertainty when two regulations are equal based on hierarchy. Then the theory used in this study is the Theory of Legal Effectiveness. According to Soerjono Soekanto, the theory of legal effectiveness is that practical is the extent to which a group can achieve its goals. A law is effective if it has a positive legal impact, where the law achieves its goal of directing or changing human behavior so that it becomes legal behavior (Huda et al., 2022).

According to Soerjono Soekanto in theory, namely, the Theory of Legal Effectiveness, whether a law is effective or not is determined by 5 (five) factors (Huda et al., 2022)

1. Legal factors themselves,
2. Law enforcement factors, namely the parties that form or implement the law,
3. Factors of facilities or facilities that support law enforcement,
4. Community factors, namely the environment in which the law applies or is implemented,
5. Cultural factors, namely as a result of work, creation, and feeling, are based on human will in social interaction.

The DKI Jakarta MPWN, when imposing sanctions, still follows the old notary law, Law Number 30 of 2004, regarding the Notary Position. In the decision, the reported party has violated the UUJN-Amendment Article 17 paragraph (1) letter a. (carrying out a position outside his/her area of office) and a verbal warning sanction was imposed on the reported party. As in Article 17 paragraph (2) of the UUJN-Amendment, it is expressly regulated regarding the form of sanction that will be imposed on a Notary who has violated Article 17 paragraph (1) letter a, namely that they can be subject to sanctions in the form of a written warning, temporary dismissal, honorable dismissal or dishonorable dismissal. In the UUJN Amendment, the provision of sanctions in the form of verbal warnings is no longer applicable. All articles regulating sanctions for notary violations that are applied are at least written warning sanctions. Based on the description above that has been outlined, the formulation of the problem in this study is: What are the legal remedies for the consequences of the misapplication of the law by the Notary Regional Supervisory Board against notaries who do deeds outside their area of office in decision number: 2/pts/MJ.pwn.prov.dkijakarta/II/2023? In line with the formulation of the problem that has been conveyed above, this study aims to Analyze and examine the legal remedies for the consequences of the misapplication of the law by the Notary Regional Supervisory Board against notaries who do deeds outside their area of office in decision number: 2/pts/MJ.pwn.prov. di Jakarta/II/2023.

METHODS

This research is a descriptive analysis. Namely, the discussion is carried out by presenting and explaining data thoroughly, in detail and systematically. This type of research is normative legal research, a legal research method that examines library materials. Normative research refers to legal norms contained in laws, court decisions, and legal norms that exist in society (Ali, 2014).

The researcher used the Statute Approach and the Case Approach in this study. The statutory approaches used are Law Number 30 of 2004 concerning the Position of Notary, Law Number 2 of 2014 Amendment to Law Number 30 of 2004 concerning the Position of Notary, PERMENKUMHAM Number 15 of 2020 concerning Procedures for Examination of the Supervisory Board of Notaries, PERMENKUMHAM Number 16 of 2021

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concerning Organizational Structure and Work Procedures, Procedures for Appointment and Dismissal, and Budget of the Notary Supervisory Board, Civil Code, Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power and Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts. The case approach uses a judge's decision with permanent legal force as a source of legal material (Markuat, 2022).

The data collection method is carried out by Library Research, namely by using written sources in the form of laws and regulations, literature books and written works from legal experts related to the problems discussed. This research will obtain secondary data from legal materials, including primary, secondary, and tertiary legal materials. The data presentation technique is a narrative or text in sentences to describe, explain, elaborate and illustrate data. The data in question is a literature review of laws and regulations related to this research.

The data collected through the research method above, in the form of court decisions of the regional supervisory board of notaries, were analyzed qualitatively by interpreting the logical, rational and systematic relationships between the data and the theories used in this study. Then, conclusions were made that were useful for answering the formulation of the problem in this study.

RESULTS AND DISCUSSION

According to the Big Indonesian Dictionary (KBBI), applying law is the act of implementing. Meanwhile, some experts argue that application is practicing a theory, method, and other things to achieve specific goals and for the interests desired by a group or group that has been planned and arranged in advance (Trisno, 2017). Talking about the application of the law means talking about the law's implementation, where the law was created to be implemented. The law cannot be called a law if it has never been implemented. The implementation of the law always involves humans and their behavior. In its implementation, sometimes it needs to be following applicable provisions. This can also be called the wrong or inappropriate application of the law.

As explained in the previous discussion, the party issuing the decision Number: 2/Pts/M.J.Pwn.Prov.Dkijakarta/II/2023 is an independent institution and an agency that has the authority and obligation to carry out guidance and supervision of Notaries in the region (Provincial Level), which has been determined based on the Decree of the Director General of General Legal Administration, Ministry of Law and Human Rights of the Republic of Indonesia, namely the Notary Regional Supervisory Council of the Special Capital Region of Jakarta Province.

According to Article 1 paragraph (1) of PERMENKUMHAM Number 16 of 2021, the Notary Supervisory Board, from now on referred to as the Supervisory Board, is a body that has the authority and obligation to carry out guidance and supervision of Notaries (Bangkara et al., 2023). The Notary Supervisory Board is required to exercise its authority as well as possible. Imposing sanctions or penalties on Notaries who violate their position by considering the matters submitted by the reporting party and the reported party.

The imposition of sanctions carried out by the Notary Regional Supervisory Board is still guided by the old regulations, namely Law Number 30 of 2014 concerning the Position of Notary, Article 85 Chapter IX Provisions on Sanctions states that Violations of the provisions as referred to in Article 17, may be subject to sanctions in the form of verbal warnings, written warnings, temporary dismissal, honorable dismissal or dishonorable dismissal. The provisions regarding the imposition of sanctions in Law Number 2 of 2014, amending Law Number 30 of 2004 concerning the Position of Notary, Article 17 paragraph (2), no longer include verbal warnings.

The Notary Regional Supervisory Board has the right to impose sanctions on notaries who have violated the code of ethics and UUJN. The Notary Regional Supervisory Board must be objective in imposing sanctions on "naughty" notaries. The aim is to have a deterrent effect so that it can be a lesson for the notary and other notaries. However, in decision Number: 2/Pts/M.J.Pwn.Prov.Dkijakarta/II/2023, the Notary Regional Supervisory Board did not act objectively in imposing sanctions on the Reported Party.

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The Notary Regional Supervisory Board has the right to impose sanctions on notaries who have violated the code of ethics and UUJN. The Notary Regional Supervisory Board must be objective in imposing sanctions on "naughty" notaries. The aim is to have a deterrent effect so that it can be a lesson for the notary and other notaries. However, in decision Number: 2/Pts/M.J.Pwn.Prov.Dkijakarta/II/2023, the Notary Regional Supervisory Board did not act objectively in imposing sanctions on the Reported Party.

1. The legal system must contain regulations, meaning that it must not contain merely ad hoc decisions.
2. The regulations must be announced.
3. The regulations must not be retroactive.
4. The regulations are formulated in understandable terms.
5. The system must not contain regulations that contradict each other.
6. The regulations must not contain demands that exceed what can be done.
7. The regulations must be kept the same.
8. There must be a match between the regulations enacted and daily implementation.

This analysis is closely related to the theory of legal effectiveness. As explained in the introduction, according to Soerjono Soekanto, the theory of legal effectiveness is that effectiveness is the extent to which a group can achieve its goals (Oktaviari et al., 2023). A law is effective if it has a positive legal impact, where the law achieves its goal of directing or changing human behavior so that it becomes legal behavior. The effectiveness of law enforcement is closely related to the effectiveness of the law. In order for the law to be effective, there needs to be law enforcement to enforce the sanctions. A sanction can be actualized to the community in the form of compliance, with this condition indicating an indicator that the law is effective. When we want to know a law's effectiveness, we first must measure the extent to which the legal regulations are obeyed or not obeyed. Factors that greatly influence the effectiveness of a law are the professionalism and optimization of the implementation of the role, authority and function of law enforcers, both in explaining the tasks assigned to them and in enforcing the regulations. So, in this case, the Supervisory Board, which has a role as part of law enforcement, must carry out its duties and authorities properly. Due to the misapplication of the law in imposing the sanctions and the inappropriate imposition of sanctions by referring to legal considerations or legal facts stated in decision number 2/pts/m.j.pwn.prov.dkijakarta/II/2023 will result in legal uncertainty and will not deter the Reported Party (Sambo et al., 2024).

From the discussion described above, the Decision of the Notary Supervisory Board number: 2/pts/m.j.pwn.prov. di Jakarta/II/2023, studied in this research, can be canceled. Canceling this Council's Decision is, of course, with legal remedies. Legal remedies are a way to prevent and correct errors in a decision. Not all decisions issued by the Supervisory Board follow applicable regulations. This can happen because of human resource factors, namely an error made by the Notary Supervisory Board in imposing sanctions on Notaries. As in the decision issued by the DKI Jakarta Notary Regional Supervisory Board, namely Decision Number: 2/Pts/M.J.Pwn.Prov.Dkijakarta/II/2023.

The error in applying the law committed by the Notary Regional Supervisory Board in decision Number: 2/Pts/M.J.Pwn.Prov.In imposing sanctions on the Reported Party, Dkijakarta/II/2023, the Board still refers to the old UUJN, Law Number 30 of 2004, concerning Notary Positions. The Reported Party was charged with violating Article 17 paragraph (1), namely carrying out a position outside his/her office area. In the amended UUJN, the provisions for sanctions for Notaries who violate Article 17 paragraph (1) are regulated in the following article, namely Article 17 paragraph (2), where the minimum sanction that can be imposed is a written warning. However, the Reported Party was given a verbal warning sanction in the decision. Therefore, there was an error in applying the law committed by the Notary Regional Supervisory Board. The Notary Regional Supervisory Board is a regional-level institution with the authority to supervise and guide Notaries in their positions.

The rules regarding legal remedies that can be taken regarding the decision of the Regional Supervisory Board are regulated in PERMENKUMHAM Number 15 of 2020, Article 28, which states that the Reporter and

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Reported Party who objects to the decision of the Regional Supervisory Board has the right to file an appeal to the Central Supervisory Board which is submitted through the Regional Supervisory Board secretariat. However, the Regional Supervisory Board has the right to reject objections to decisions of verbal warnings or written warnings because Article 26 paragraph (2) states that the sanctions, as referred to in paragraph (1) letter i, in this case, verbal warnings or written warnings are final and cannot be appealed. So, the decision of the Regional Supervisory Board cannot be appealed to the Central Supervisory Board.

Likewise, in Article 73 paragraph (1) letter e UUJN, the Regional Supervisory Council is given the authority to impose sanctions on Notaries who commit violations in the form of verbal warnings or written warnings. Then, paragraph (2) states that the Decision of the Regional Supervisory Council, as referred to in paragraph 1 letter e, is final. This means that if a party objects to the decision of the Regional Supervisory Council, an appeal cannot be made to the Central Supervisory Council. The Central Supervisory Council does not have the authority if the decision in the Regional Supervisory Council is final. This means that no more legal efforts can be taken to improve the decision of the Regional Supervisory Council.

However, in the Republic of Indonesia Law Number 48 of 2009 concerning Judicial Power, judicial power, according to the 1945 Constitution of the Republic of Indonesia, is an independent power exercised by a Supreme Court and judicial bodies under it in the general court environment, religious court environment, military court environment, state administrative court environment, and by a Constitutional Court, to organize trials to uphold law and justice. So that other legal efforts can be made related to the decision of the Notary Supervisory Board, namely, the party that feels aggrieved can file an appeal at the State Administrative Court. This is because the Notary Supervisory Board is a government institution with a position as a State Administrative Agency or position (TUN), and the Minister delegates as an Agency or Position with a position as a TUN Agency or Position. This institution is also included in the State Administrative position because its duties are of a state administrative nature that carries out functions to organize government affairs both at the center and in the regions. The Notary Supervisory Board is also called a State Administrative Body or Official because it carries out government affairs based on applicable laws and regulations.

Therefore, the Notary Supervisory Board of DKI Jakarta Province is:

1. State Administrative Officer (TUN);
2. Can carry out government affairs;
3. Can supervise Notaries following the UUJN based on applicable laws and regulations.

Therefore, parties who feel objections can file a report to the State Administrative Court. The decision of the Notary Regional Supervisory Board can be the object of the State Administrative Court. The existence of errors in applying the law by the Notary Supervisory Board is included in the State Administrative dispute. State Administrative Disputes are disputes arising in state administration between individuals or civil legal entities with state administrative bodies or officials, both at the center and in the regions, including personnel disputes based on applicable laws and regulations. According to Article 1, Number 12 of the PTUN Law, the defendant is a state administrative body or official who issues a decision based on the authority he has, or that is delegated to him. An individual or civil legal entity sues him.

The DKI Jakarta Provincial Supervisory Board, in its position as the only institution authorized to carry out supervision, has the authority to make or issue a Decree from the results that have been carried out in the supervision process, examination or to impose sanctions on notaries who are proven to have violated or deviated from the notary's job regulations, by looking at the provisions of Article 1 number 9 of the PTUN Law which regulates that decisions issued by authorized agencies or State Administrative officials in the form of written determinations containing State Administrative legal acts based on applicable laws and regulations, which are concrete, individual and final, which can give rise to legal consequences for a person or by a civil legal entity.

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In its position, the DKI Jakarta Provincial Supervisory Board, in its decision stipulated in the form of a letter, can be used as an object of lawsuit by the reporting party to the State Administrative Court (PTUN) as a State Administrative dispute. In Article 1 number 10 of the PTUN Law, the definition of a State Administrative Dispute is determined, namely: "A State Administrative Dispute is a dispute arising in the field of State Administration between individuals or civil legal entities or State Administrative Officials, both at the center and in the regions, as a result of the issuance of a State Administrative Decision, including personnel disputes based on applicable laws and regulations."

This is in line with Article 10, paragraph (1) of the Judicial Power Law, which states that the court is prohibited from refusing to examine, try and decide on a case submitted because the law does not exist or is unclear but is obliged to examine and try it in conjunction with Article 25 paragraph (5), namely that the State Administrative Court as referred to in paragraph (1) has the authority to examine, try, decide and resolve State Administrative Disputes following the provisions of statutory regulations.

Suppose the Reporter feels that a decision made by the DKI Jakarta Provincial Supervisory Board needs to be more transparent and balanced. The decision is inappropriate and does not provide a deterrent effect to the Notary concerned, so it is very detrimental to the Reporter. In that case, the Reporter can submit a submission to the PTUN. The submission will be open after efforts to fulfill administrative efforts, both administrative objections and administrative appeals have been taken, even though the relevant legal regulations have determined that the decision made by the TUN agency or Office is final or cannot be pursued with various other legal efforts because basically, the use of administrative efforts in State Administrative disputes is based on an attitude of dissatisfaction with the actions or decisions made by the State Administrative.

This follows procedural law as regulated in Article 53 paragraph (1) of Law Number 5 of 1986, which stipulates that a person or civil legal entity whose interests are harmed by a State Administrative decision may file a written lawsuit with the State Administrative Court. The basis for the lawsuit is further regulated in Article 53 paragraph (2), which has been discussed previously.

In implementing the examination and the imposition of sanctions, the Supervisory Board of the DKI Jakarta Province must be based on the authority determined by the UUJN as a reference or guideline in making decisions. This needs to be considered and understood because the members of the Supervisory Board of the DKI Jakarta Province are not all Notaries, so actions in the form of decisions made by the Supervisory Board of the DKI Jakarta Province must reflect the actions of a Notary Supervisory Board as a legal entity, not just as the actions of one or 2 (two) members.

Therefore, following the legal teachings and thus also as stipulated in Article 53 paragraph (2) of the PTUN Law, it is the basis for a person or civil legal entity to sue and at the same time request a judicial review by a court judge against the decision of the DKI Jakarta Provincial Supervisory Board as a State Administrative Decision (KTUN). This article can also be a basis for a court decision stating that the decision is invalid or the cancellation of the State Administrative Decision. However, as with other courts, in state administrative courts, the reports of the parties can be granted or not granted; all results follow the judge's considerations.

CONCLUSION

Article 28 of PERMENKUMHAM Number 15 of 2020 has been regulated regarding legal efforts that can be taken if the reporting party or reported party objects to the decision of the Regional Supervisory Board; they have the right to file an appeal to the Central Supervisory Board, which is submitted through the Regional Supervisory Board secretariat. However, in Article 26 paragraph (2) of PERMENKUMHAM Number 15 of 2020, in conjunction with Article 73 paragraph (1) letter e and paragraph (2) UUJN, the MPW has the right to reject objections to decisions of verbal warnings or written warnings because verbal warnings or written warnings are final and cannot be appealed. So, no more legal efforts can be made to improve the decision of the Regional

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Supervisory Board. However, with judicial power and PTUN laws, parties who object can file a lawsuit in TUN court. As discussed, the Notary Supervisory Board is a TUN official who can be a defendant in the TUN court, and the decision of the Notary Supervisory Board can be an object of state administration.

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