

The Form Of Incompetence Of The Notary Regional Supervisory Council In Imposing Written Reprimand Sanctions Against Notaries

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Abstract

Notary is a public official appointed by the state and given the authority to make an authentic deed with full legal force not only because it is required by legislation, but also because of the will of the parties. In carrying out their duties, notaries are required to comply with the provisions of the Notary Office Law (UUJN), and are subject to layered supervision from supervisory institutions consisting of regional Supervisory Councils (MPD), regional Supervisory Councils (MPW), and Central Supervisory Councils (MPP). This monitoring mechanism is intended to maintain the integrity and professionalism of notaries, as well as provide legal protection for the community in legal services. This study is a normative study that studies the purpose of law, the values of justice, the validity of the rule of law, legal concepts, and legal norms. Normative legal research can also be said as a process to find the rule of law, legal principles, and legal doctrines in order to answer the legal issues faced. It can also be said that legal research is carried out to produce arguments, theories, or concepts as prescriptions or answers to the problems faced. The legal consequences of the inaccuracy of The Jakarta Provincial Supervisory Council that were canceled by the State Administrative Court (PTUN) are: first, the obligation to revoke the decision and restore the legal status of Notaries. Secondly, the correction of the supervisory governance of the regional supervisory Assembly and the affirmation of the functions of the Administrative Court as judicial control, thirdly, the strengthening of legal protection for notaries and the contribution to the formation of jurisprudence.

Keywords: Notary, Regional Supervisory Council, Unlawful Acts

INTRODUCTION

Notary is a public official appointed by the state and given the authority to make an authentic deed with full legal force not only because it is required by legislation, but also because of the will of the parties. In carrying out their duties, notaries are required to comply with the provisions of the Notary Office Law (UUJN), and are subject to layered supervision from supervisory institutions consisting of regional Supervisory Councils (MPD), regional Supervisory Councils (MPW), and Central Supervisory Councils (MPP). This monitoring mechanism is intended to maintain the integrity and professionalism of notaries, as well as provide legal protection for the community in legal services.

One form of inaccuracy of the DKI Jakarta Provincial Supervisory Council in the spotlight is the non-involvement of the parties listed in the deed as part of the examination process. In fact, the parties to the deed are legal subjects that have a direct relationship with the content of the deed, so their information is very important to give a complete picture of whether there are elements of violation in the creation of the deed. In addition, The Jakarta Provincial Supervisory Council also did not consider that the two deeds in question had been used and recognized in another legal process, namely the PKPU case which ended with a homologation/Peace decision. Recognition in this judicial forum indicates that the deed is valid and has been used officially.

But in practice, the implementation of such supervision is not always carried out carefully and accountably. This can be seen in the case of Notary Drs. Gunawan Tedjo, S.H., M.H., who was sentenced to a written reprimand by The Jakarta Provincial Supervisory Council based on Decision number: 05/PTS / Mj.PWN.Prov.DKI Jakarta/IX / 2020 dated September 14, 2020. This sanction decision was imposed based on a public report that disputed two notarial deeds, namely

the deed of sale and purchase of receivables number 50 and the deed of transfer of receivables (Cessie) number 51 made on November 26, 2019.

In its development, notary Drs. Gunawan Tedjo Sh.,MH sued the decision of The Jakarta Provincial Supervisory Council to The Jakarta State Administrative Court (PTUN). The case is registered under number: 190/G/2020 / PTUN.JKT. In its ruling, the panel of judges stated that the decision of The Jakarta Provincial Supervisory Council was flawed both procedurally and substantively, and therefore null and void.

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Furthermore, the Jakarta Provincial Supervisory Council did not adequately analyze the limits of legal responsibility of notaries. In fact, in Notarial Practice, the responsibility of notaries is limited only to the formal veracity of the identity and documents of the interlocutors. The notary is not obliged to materially investigate the legal relationship outside the deed, including notification to third parties such as the debtor in the transfer of receivables. The obligation of notification to the debtor is the responsibility of the party transferring the receivable, not the obligation of the notary office.

The decision of The Jakarta Provincial Supervisory Council to impose sanctions without thorough consideration raises an important question: How should a careful and objective form of supervision be carried out against notaries, and what are the legal consequences if the supervision decision imposed is proven to be invalid? The cancellation of the decision of The Jakarta Provincial Supervisory Council by the State Administrative Court not only has an impact on the restoration of the legal status of notaries, but also has broader implications for the governance of supervision and legal protection of the notary profession.

RESEARCH METHODS

This study is a normative study that studies the purpose of law, the values of justice, the validity of the rule of law, legal concepts, and legal norms. Normative legal research can also be said as a process to find the rule of law, legal principles, and legal doctrines in order to answer the legal issues faced. It can also be said that legal research is carried out to produce arguments, theories, or concepts as prescriptions or answers to the problems faced. (Peter M. Marzuki, 2023)

RESULT AND DISCUSSION

In the Indonesian legal system, legal protection is a fundamental principle inherent in every subject of law, including public officials such as notaries. This protection is not only preventive—that is, it guarantees that public officials will not be easily subjected to arbitrary administrative measures - but also repressive, that is, it provides a corrective mechanism against actions or decisions that prove to be unfair and unlawful.

Philipus M. Hadjon in his thought stated that legal protection is a form of state recognition of the dignity, dignity, and human rights possessed by every subject of law in the face of arbitrary

actions from officials or state administration bodies. In this framework, the position of the Notary as a public official also has the constitutional right to be protected from acts that are unauthorized, unfair or carried out without proper procedure. Philipus M. Hadjon divides the forms of legal protection into two, namely preventive protection and repressive protection. Preventive protection is given before an administrative decision is finally established, where individuals are given space to express opinions, objections, or defend themselves before being sentenced to decisions that have legal implications.

Meanwhile, the doctrine of legal protection as developed by Satjipto Rahardjo, is a concept that not only rests on the text of the law alone, but also on the purpose of the law itself, which is to realize substantive justice in the community. In his theory of legal protection, Satjipto Rahardjo took inspiration from Fitzgerald, who stated that the purpose of law is to integrate and coordinate the various interests of society by regulating the protection and restrictions on these various interests. That is, law is not just a static rule, but a living means of regulating social dynamics and guaranteeing a sense of justice for each subject of law.

Furthermore, Satjipto Rahardjo interpreted legal protection as the allocation of power to individuals to act in order to defend and protect their interests, especially when their basic rights are threatened or violated. Legal protection in this context is not only understood as a “defense” after someone's rights have been violated, but also as a space of action provided by the legal system so that individuals can fight for and defend their interests in a legitimate and dignified way.

Legal protection is not just a normative protector, but must be a means of corrective and strengthening the legal position of the individual in the midst of administrative power that could be overstepping. In this framework, Satjipto Rahardjo's theory shows the face of the law in favor of real justice, not just procedural formalities.

As a public official subject to a system of administrative supervision, notaries have the right to legal protection from erroneous, hasty or unbiased decisions. Therefore, the cancellation of the decision of The Jakarta Provincial Supervisory Council by the State Administrative Court resulted in the Jakarta Provincial Supervisory Council having to revoke the decision that had been issued and ensure that there were no further legal consequences from the decision.

According to the principle of "ex tunc" in administrative law, the annulment of a decision by the administrative judiciary takes effect from the moment it is born, not from the moment the court decision is established. This means that any form of record, judgment or administrative impact of a written reprimand sanction against a notary must be removed and considered as never existing. This result is very important because it concerns the position of honor and credibility of the notary profession which depends heavily on the reputation and integrity that is maintained through the supervision system.

Furthermore, this revocation is not only limited to the formal aspects of administrative law, but also touches on the constitutional rights of notaries to the protection of the good name, the guarantee of fair law, and the right to be treated appropriately in an objective examination process. This is also in line with Article 28 d paragraph (1) of the 1945 Constitution, which guarantees everyone the right to fair recognition, guarantee, protection and legal certainty.

According to Hans Kelsen, legal responsibility is not a moral responsibility but a normative responsibility that arises when there is a violation of the norms of positive law in force. In the legal system, when a norm is violated, there must be a normative reaction in the form of sanctions aimed at restoring legal order.

The regional supervisory council as an administrative organ of the state, which was formed under Article 67 of the Notary Office law, has powers that are attributable, that is, they come directly from the law. Therefore, when the regional supervisory Assembly uses its authority to impose sanctions on notaries, each such action must be subject to the positive legal norms in force, both in terms of the legal basis, procedure and substance of the decision.

Within the framework of Hans Kelsen's theory, this condition indicates that the Jakarta Provincial Supervisory Council has committed legal acts that violate positive legal norms, and therefore, must be held legally accountable. The liability is not carried out in criminal or civil form, but in the form of cancellation of administrative decisions by the competent court (in this case the Administrative Court), and the obligation to revoke the canceled decision and restore the situation as before (*restitutio in integrum*).

CONCLUSION

That the form of carelessness of the regional Supervisory Council (MPW) notary of DKI Jakarta province in sanctioning a written warning against notary Drs. Gunawan Tedjo, S.H., M.H., are as follows: First, the substance of the assessment that ignores important legal facts is in the form of a disproportionate assessment in terms of the legal responsibility of notaries in making the deed of transfer of receivables (*Cessie*) and ignoring the homologation/Peace decision in the Commercial Court Number 59/Pdt.Sus-PKPU/2020 / Fr.Commerce.Jkt.Pst. Second, the regional Supervisory Council of DKI Jakarta province ignored the legal standing provisions of the rapporteur that did not meet the elements of direct losses. Third, The Regional Supervisory Assembly.

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