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Legal Responsibility of the Regional Supervisory Council of Notaries for Sanctioning a Written Reprimand to a Notary Contrary to the Norms of Article 53 Paragraph (2) of the Law on **State Administrative Courts** 

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Abstract: This research aims to determine the legal responsibility of the notary regional supervisory board which has given a written warning sanction to the notary which is contrary to the norms of Article 53 paragraph (2) of the PTUN Law and to find out the legal remedies that the notary can take against the decision of the notary regional supervisory board which has been stated wrong by the PTUN according to Notarial Legal Perception. The research method used is normative juridical legal research. The results of the research show that the legal responsibility of the Notary MPW in giving written warning sanctions to notaries must be carried out carefully and under provisions aimed at maintaining the integrity of the notary profession, protecting the rights of notaries, and ensuring that the supervision process is carried out objectively and transparent. Notaries disadvantaged by MPW decisions declared wrong by the PTUN have several legal routes that can be taken to defend their rights. This step includes filing an appeal, a civil lawsuit, and efforts to rehabilitate the good name. Notaries need to follow proper legal procedures and obtain adequate legal advice to optimize the chances of success in their legal efforts. This legal route reflects justice and protection of notary rights in the notarial legal system in Indonesia..

Keyword: Legal Responsibility, Notary Regional Supervisory Council, Sanction of Written Reprimand, Notary, Article 53 paragraph (2) of the PTUN Law.

#### INTRODUCTION

Law is a system of rules regarding human behavior. Thus, law does not refer to a single rule, but to a set of rules that have a unity so that they can be understood as a system. The consequence is that it is impossible to understand the law if you only pay attention to one rule, (Safa'at, 2012) including the rules regarding Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries (hereinafter referred to as UUJN)

A notary is a public official who has the authority to make authentic deeds regarding certain legal acts in the field of civil law. A deed issued by a Notary is strong evidence in a case process because the deed made is a state document, and a Notary must also be devoted to God Almighty, physically and mentally healthy, and of course also have the status of an Indonesian citizen (WNI). (Kohar, 2005)

Notaries have the authority to make authentic deeds regarding all deeds, agreements and stipulations that are required by statutory regulations and/or that are desired by interested parties to be stated in authentic deeds, guarantee the certainty of the date of making the deed, store the deed, provide grosses, copies and quotations of the deed, all this as long as the making of the deed is not also assigned or excluded to another official or other person as determined by law. A notary has the status of a public official. The position of a notary as an official who makes authentic deeds is stated in Article 2 paragraph (1) of Law no. 2 of 2014 concerning Amendments to Law no. 30 of 2004 concerning the Position of Notaries, which states: a notary is a public official who has the authority to make authentic deeds and has other authorities as intended in this Law or based on other laws. (Chalim, 2017).

Notaries as public officials who have the authority to make authentic deeds must be able to take responsibility for the deeds they make if it turns out that problems arise from the authentic deeds in the future. Therefore, as a logical consequence, along with the large role of Notaries in carrying out the duties and authority of Notaries which is carried out continuously, as well as the application of sanctions, so that Notaries in carrying out their duties and authority must be in accordance with the legal corridors so that they can avoid abuse of the power granted by the State which can give rise to distrust from the public, ethical and legal values must be applied and upheld by Notaries in carrying out their positions in accordance with the law, even though notaries are state officials but in carrying out their profession they must also be closely supervised. (Purwani, 2016).

Currently, the monitoring mechanism that is carried out continuously for Notaries as public officials who must always carry out the authority and duties of their position in accordance with legal rules is implemented based on Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries, and Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number M.02.PR.08.10 of 2004 concerning Procedures for Appointing Members, Dismissing Members, Organizational Structure, Work Procedures, and Procedures for Examination of the Notary Supervisory Board (hereinafter abbreviated as Permenkumham Number M.02.PR 08.10 2004). Supervision of Notaries is under the authority of the Minister of Law and Human Rights of the Republic of Indonesia.

The Minister of Law and Human Rights has the task of assisting the president in carrying out some government affairs in the field of law and human rights. Thus, the supervisory authority over Notaries rests with the government, so it is related to how the government obtains this supervisory authority. The supervisory authority over Notaries is in the hands of the Minister of Law and Human Rights. However, in practice, the minister delegates this authority to the Notary Supervisory Council he formed. UUJN emphasizes that the minister supervises notaries and the minister's authority to carry out this supervision is given by UUJN in the form of a delegation to the minister to form the Notary Supervisory Council, not to carry out the functions of the Notary Supervisory Council which have been explicitly determined to be the authority of the Notary Supervisory Council.

In carrying out guidance and supervision by Notaries, the Minister of Law and Human Rights of the Republic of Indonesia formed a Notary Supervisory Council. This body consists of the Regional Supervisory Council, the Provincial Supervisory Council and the Supervisory Council in the National Capital region. The supervisory council itself is a body that has the authority to provide guidance and supervision of Notaries regarding their behavior and

implementation in carrying out their office. Apart from also supervising and examining Notaries, the Notary Supervisory Council has the authority to impose certain sanctions on Notaries who are proven guilty in carrying out and carrying out the duties of the Notary position so that the Notary can be punished. However, the authority to impose sanctions is only the authority of the Regional Supervisory Council and the Central Supervisory Council.

As is known, Notary Inspections by the Notary Supervisory Board are carried out to ensure that Notaries carry out their duties and positions in accordance with applicable laws and regulations. This inspection is also carried out to prevent Notaries from deviating from their authority. The main function of the Supervisory Council is to ensure that the rights, authority and obligations given to Notaries are in accordance with applicable laws and regulations. The supervision carried out is not only based on legal channels, but also prioritizes morals and ethics. This aims to provide legal protection and legal certainty to parties involved in transactions involving Notaries.

The working relationship between the Notary Regional Supervisory Council (MPW) and the notary is related to the supervision and guidance of the implementation of the duties of the notary position in accordance with the laws and regulations in force in Indonesia, especially the UUJN. Several aspects of the working relationship between the MPW and the notary are related to supervision, coaching, enforcing the code of ethics, resolving disputes and complaints, allowing leave and transfers. Through this MPW role, it is hoped that notaries can carry out their duties professionally and with high integrity in accordance with applicable law. (I Wayan Parsa, 2016)

As is known, MPD and MPW are not government organizations in the same sense as ministries or central/regional government agencies. The position of the MPD and MPW is more of a supervisory institution whose function is to supervise the implementation of the office of notary, with authority regulated by statutory regulations. The MPD structure usually consists of regional government representatives, appointed senior notaries, as well as members from notary professional organizations. MPW consists of representatives from the provincial government, academics and notary organizations. Even though the MPD and MPW are not pure government institutions, they were both formed by the government through the Ministry of Law and Human Rights and have administrative and supervisory authority. They function as an independent administrative supervisory body in terms of supervising the implementation of notary positions. Both also have the authority to investigate violations of the code of ethics and legal provisions committed by notaries. So, even though the MPD and MPW are under the supervision of the Ministry of Law and Human Rights, they are not directly part of the government structure like ministries or other state institutions, but are autonomous professional supervisory institutions. (Madyastuti, 2020)

The position of the Regional Supervisory Council (MPD) and Regional Supervisory Council (MPW) in government according to the State Administrative Court Law (UU PTUN) can be seen from its function and role as an administrative supervisory institution for notaries. Based on the PTUN Law, which is regulated in Law Number 5 of 1986 concerning State Administrative Courts, as amended by Law Number 9 of 2004 and Law Number 51 of 2009, MPD and MPW have the characteristics of administrative bodies or officials. State Enterprises whose decisions can be tested or questioned at the State Administrative Court (PTUN). Even though they are not executive institutions, the MPD and MPW have important administrative oversight functions and are in the government hierarchy related to the supervision of the notary profession.

Regarding the authority of the Regional Supervisory Council in giving sanctions, the Regional Supervisory Council only has the authority to give sanctions in the form of verbal warnings or written warnings. However, based on facts in the field, there is a decision from the Notary Regional Supervisory Council of the Special Capital Region of Jakarta Province regarding the

case of a Notary (Drs. Gunawan Tedjo, S.H., M.H) who was suspected of transferring receivables to a third party, and this was reported by the party who felt aggrieved (PT Karya Citra Nusantara), the Plaintiff/Notary was reported to the Notary Regional Supervisory Council of the Special Capital Region of Jakarta Province.

This started on September 14 2020, the Notary Regional Supervisory Council of the Special Capital Region of Jakarta Province issued Decision Number: 05/PTS/Mj.PWN.Prov.DKIJakarta/IX/2020 by giving a written warning in the form of an administrative sanction to the Plaintiff/Notary. As a result of the decision of the Defendant (Regional Supervisory Council of Notaries in the Special Capital Region of Jakarta), the Plaintiff/Notary lost his honor, integrity, professionalism, idealism and pride as a notary and was unable to carry out his activities/authorities as usual as stipulated in Article 15 of the Revised UUJN.

In this case the Notary did not feel he had made a mistake so he filed a lawsuit with the State Administrative Court (PTUN) through PTUN Decision No. 190/G/2020/PTUN.Jkt, where the notary was declared wrong by the PTUN, but in his decision the judge granted the Plaintiff's lawsuit and declared the decision of the DKI Jakarta Provincial Notary Supervisory Council Number: 05/PTS/Mj.PWN.Prov.DKI null. Jakarta/IX/2020, dated 14 September 2020 regarding giving written warning sanctions to Notaries/Drs. Gunawan Tedjo, SH., MH and obliged the Defendant to revoke the decision of the Notary Regional Supervisory Council of the Special Capital Region of Jakarta Province Number: 05/PTS/Mj.PWN.Prov.DKI Jakarta/IX/2020, dated 14 September 2020 regarding giving a written warning sanction to Notary Drs. Gunawan Tedjo, SH., MH.

The author's reason for raising this case is based on the decision of the DKI Jakarta Provincial Notary Supervisory Council No.05/PTS /Mj.PWN.Prov.DKIJakarta/IX/2020 dated 14 September 2020 regarding giving a written warning sanction to Notary/Drs.Gunawan Tedjo, SH .MH. which is clearly legally flawed because it does not comply with the provisions of Article 74 of Law No. 30/2004 in conjunction with Article 19 paragraph (4) of the Regulation of the Minister of Law and Human Rights Number 15 of 2020 concerning Procedures for Examinations by the Supervisory Board of Notaries. On the other hand, the decision of the DKI Jakarta Provincial Notary Supervisory Council Number 05/PTS/Mj.PWN.Prov.DKI Jakarta/IX/2020 has violated the general principles of good governance, as one of the grounds for filing a lawsuit to cancel the MPW decision to PTUN is guided by Article 53 paragraph (2) of the PTUN Law, because the lawsuit filed by the Notary as the Plaintiff uses two reasons, namely: contrary to applicable laws and regulations, and; contrary to the general principles of good governance.

The problems faced in this writing are:

- 1. What is the legal responsibility of the notary regional supervisory council which has given a written warning sanction to a notary which is contrary to the norms of Article 53 paragraph (2) of the PTUN Law
- 2. What legal remedies can a notary take against the decision of the regional notary supervisory board which has been declared wrong by the PTUN according to the Perception of Notarial Law?

# **METHOD**

This research is normative legal research, namely a process of finding legal rules, legal principles and legal doctrines to answer the legal issues faced. (Marzuki, 2005) The research specifications in this study are descriptive. The type of data used by researchers is secondary data consisting of primary, secondary and tertiary legal materials. Data collection techniques are a method used by researchers to collect data related to research problems. The approaches used are a statutory approach and a conceptual approach.

The materials obtained or materials collected during the research process in the form of primary legal materials and secondary legal materials are analyzed qualitatively and then presented descriptively, namely explaining, describing and illustrating according to problems that are closely related to the research carried out by the author. Thus, it is hoped that the results of this research will be able to provide an explanation regarding the Notary's legal efforts regarding the decision of the Regional Supervisory Council according to the perception of notarial law.

### **RESULTS AND DISCUSSION**

Legal Responsibility of the Notary Regional Supervisory Council which has given written warning sanctions to Notaries who are contrary to the norms of Article 53 paragraph (2) of the PTUN Law

Notaries in carrying out their duties and positions are required to submit and obey all the rules outlined in the UUJN, the Code of Ethics of the Indonesian Notary Association and other laws relating to the duties of a Notary. Supervision of Notaries is carried out by the Notary Supervisory Board in stages. The Notary Supervisory Council is an extension of the Minister of Law and Human Rights of the Republic of Indonesia.

The purpose of this supervision is so that Notaries when carrying out their official duties fulfill the requirements relating to the implementation of the duties of a Notary in order to safeguard the interests of the community, because Notaries are appointed by the government not for the interests of the Notary himself but for the interests of the community he serves. (Tobing, 2003) Notaries in carrying out their positions as public officials who have the authority to make authentic deeds are supervised by the Notary Supervisory Council formed by the minister. Provisions regarding supervision of Notaries are regulated in UUJN Chapter IX concerning Supervision. Supervision is generally understood as activities carried out by supervisors in seeing, paying attention, observing, controlling, observing and looking after and providing wise direction.

Based on the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number: M.02.PR.08.10 of 2004 concerning Procedures for Appointing Members, Dismissing Members of Organizational Structures, Working Procedures and Examination Procedures for the Notary Supervisory Board Article 1 number 5 defines the meaning of supervision which states, Supervision is a preventive and curative activity including coaching activities carried out by the Supervisory Council for Notaries.

Basically, the person who has the authority (Hadjon, 1998) to supervise and examine Notaries is the Minister of Law and Human Rights of the Republic of Indonesia, in whose implementation the Minister formed the Notary Supervisory Council. The Minister of Law and Human Rights has the task of assisting the president in carrying out some government affairs in the field of law and human rights. Thus, the supervisory authority over Notaries rests with the government, so it is related to how the government obtains this supervisory authority.

The supervisory authority over Notaries is in the hands of the Minister of Law and Human Rights. However, in practice, the minister delegates this authority to the Notary Supervisory Council he formed. UUJN emphasizes that the minister supervises notaries and the minister's authority to carry out this supervision is given by UUJN in the form of a delegation to the minister to form the Notary Supervisory Council, not to carry out the functions of the Notary Supervisory Council which have been explicitly determined to be the authority of the Notary Supervisory Council.

The aim of preventive supervision carried out by the Notary Supervisory Council in carrying out its supervisory duties over Notaries in carrying out their office is to prevent violations of authority by Notaries. The forms of implementation are:

First, hold a seminar on notarialism to increase knowledge and provide information about the world of Notaries and hold a joint meeting once a month which is attended by the Regional

Supervisory Council which aims to provide direction so that Notaries implement UUJN and the Notary Code of Ethics, as well as the Regional Supervisory Council visiting Notary's office to check the writing of the Notary's protocol at least once a year.

Second, the Notary Supervisory Council also carries out outreach to Notaries, the public, the police and academics. This socialization aims to ensure that these parties know and understand the existence of a Notary supervisory institution. The aim of socialization for the community is so that the public knows the rights and obligations of Notaries. If at any time the public is harmed by a Notary, they can report it to the Notary Supervisory Council as the institution that has the authority to carry out inspections and receive complaints. Notary Supervision is carried out as a sense of moral responsibility given by the Notary Supervision Council to the public even though the law does not state the form or method of preventive supervision carried out by the Notary Supervision Council.

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The legal responsibility of the Notary Regional Supervisory Council which has given written warning sanctions to notaries regarding violations of the norms of Article 53 paragraph (2) of the Law on State Administrative Courts (UU PTUN) is very important to understand. There are several core points explaining this, including:

1. Legal Basis and Authority UU Notaris:

The Notary Regional Supervisory Council (MPW) has the authority to supervise notaries in carrying out their duties and profession. The sanctions given, such as written warnings, are regulated in the relevant legal provisions.

Article 53 paragraph (2) of the PTUN Law: States that decisions or actions of officials in the nature of state administrative decisions (KTUN) must be based on applicable legal provisions. Otherwise, the decision could become the object of a lawsuit in court.

2. Written warning sanctions

A written warning is a form of administrative sanction which aims to remind the notary not to repeat the same violation. This can happen if the notary is deemed to have violated professional norms or ethics according to applicable regulations. This reprimand may also include a warning that further violations may result in more severe sanctions, such as revocation of the license to practice. MPW Legal Responsibilities.

- a. Administrative Responsibility: MPW must be accountable for every supervisory action taken, including sanctions imposed. If the sanctions are not in accordance with the applicable procedures or legal basis, then the MPW can be held accountable administratively.
- b. Civil Liability: If MPW's actions harm the notary or a third party, the sanctioned notary can file a civil lawsuit against MPW on the basis of an unlawful act (onrechtmatige daad) if it is deemed unreasonable.
- c. Criminal Liability: In certain situations, if there is an abuse of authority or a more serious violation of the law, MPW members may be faced with criminal responsibility in accordance with applicable legal provisions.

# 3. Legal Process

A notary who feels disadvantaged by the warning has the right to file an objection or lawsuit. This process must be carried out in accordance with applicable legal procedures. In this case, the notary can file a lawsuit with the State Administrative Court to review the MPW's decision which is considered detrimental.

# 4. The Importance of Transparency and Justice

MPW is obliged to carry out its duties with transparency and fairness. The process of imposing sanctions must be carried out based on sufficient facts and evidence, and in accordance with established procedures. Openness in the supervision and sanctions process will increase public trust in the notary profession and supervisory institutions.

# 5. Recommendations for MPW

MPW needs to ensure that all sanctions given are based on clear and fair procedures, and are accompanied by adequate evidence. The implementation of sanctions must be accompanied by a mechanism to facilitate notaries who wish to defend their rights, including the right to appeal or object to decisions taken.

# Legal Remedies That Can Be Taken by Notaries Against Decisions of Notary Regional Supervisory Councils that have been Declared Wrong by PTUN according to Perceptions of Notarial Law

Legal action is an action that can be taken by a party who feels aggrieved or a party who wants to enforce their rights through a legal process. Legal action is usually taken when a person or legal entity is dissatisfied with a legal decision that has been issued, feels that their rights have been violated, or wants to defend themselves against an accusation.

Notaries who feel materially or immaterially disadvantaged can file a civil lawsuit against MPW on the basis of "acts against the law" in accordance with Article 1365 of the Civil Code (Civil Code). Notaries who feel their reputation has been tarnished due to wrong decisions can apply for rehabilitation. This application aims to restore the good name of notaries, both in the eyes of the public and in their professional circles.

If the notary feels there is a violation of authority or abuse of process in the MPW decision, the notary can report this to the relevant agency, such as the Ministry of Law and Human Rights (Kemenkumham) or the Central Notary Supervisory Council (MPP). If the PTUN decision does not have permanent legal force, the notary or the MPW can file an appeal to the State Administrative High Court (PTTUN). This appeal allows review by a higher court to ensure a fair final decision.

Notaries can ask for support from professional organizations, such as the Indonesian Notary Association (INI). This organization can provide advocacy assistance, legal assistance, or public support regarding notaries' efforts to maintain their reputation. INI can also provide protection for its members affected by unfair supervisory decisions, as well as help negotiate settlements or reviews of decisions issued by MPW. The steps taken are:

# 1. Filing an Appeal to the High Court

If the PTUN has issued a decision stating that the MPW's decision is wrong, the notary can file an appeal to the State Administrative High Court (PTTUN) if the decision is detrimental to his or her rights. An appeal must be submitted within a certain period of time after the PTUN decision.

### 2. Civil Lawsuit

A notary can file a civil lawsuit against MPW if they feel they have been materially harmed as a result of MPW's decision. In this lawsuit, the notary can ask for compensation for losses incurred as a result of sanctions imposed by MPW. In this case, the notary needs to include evidence showing the losses suffered and that the sanctions are not based on applicable law.

3. Application for Rehabilitation or Restoration of Good Name

Notaries can submit a request for rehabilitation to restore their good name which may have been tarnished as a result of the MPW's decision. This rehabilitation can be carried out through institutions or agencies that have authority in the field of notarial law.

This rehabilitation process can involve public clarification of the decisions taken and restoration of the notary's reputation.

# 4. Report to Relevant Agencies

If there are allegations of violations of the code of ethics or abuse of authority by MPW members, the notary can report the matter to the authorized agency, such as the Ministry of Law and Human Rights.

This report can be the first step to investigate and evaluate MPW actions that are deemed not in accordance with legal provisions.

# 5. Legal Consultation

Notaries are advised to consult with a lawyer or legal advisor who is experienced in the field of notarial and state administrative law. Legal opinions from experts can help in determining the appropriate steps to challenge MPW and PTUN decisions.

6. Submission of Application to Review the Decision

A notary can submit a request for review (PK) of a PTUN decision if there are valid and substantial reasons. For example, if relevant new evidence is discovered or there is an error in the application of the law that could affect the decision.

7. Advocacy through Professional Organizations

Notaries can complain about this situation to professional notary organizations in Indonesia, such as the Indonesian Notary Association (INI). This organization can help provide support, advocacy, or defense for members who experience legal problems.

# **CONCLUSION**

The legal responsibility of the Regional Notary Supervisory Council in providing written warning sanctions to notaries must be carried out carefully and in accordance with applicable regulations. This aims to maintain the integrity of the notary profession, protect notary rights, and ensure that the supervision process is carried out objectively and transparently. Sanctions must be accountable, and notaries affected by sanctions must have channels to raise objections or file lawsuits in accordance with the PTUN Law and applicable legal provisions.

Notaries who are disadvantaged by MPW decisions which are declared wrong by the PTUN have several legal routes that can be taken to defend their rights. These steps include filing an appeal, civil lawsuit, and reputation rehabilitation efforts. It is important for notaries to follow proper legal procedures and obtain adequate legal advice to optimize the chances of success in their legal efforts. The existence of this legal route reflects the principle of justice and protection of notary rights in the notarial legal system in Indonesia.

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