

## Ratio Decadency Decision NO. 235/G/2019/PTUN.KT Against Notary Legal Remedies Affected with Notary Position Violations

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### ABSTRACT

Serious violations in the position of a notary are actions taken which are actions related to the obligations of a notary, the notary's code of ethics and the authority of a notary. The implication of committing a serious violation is dishonorably dismissed by those who have the authority, namely the Ministry of Law and Human Rights based on the recommendation of the MPWN. In the case with the PTUN Jakarta Decision in case No. 235/2019, the notary holding the protocol in his case has signed a deed outside his area of office, the report of the incident issued the Indonesian Minister of Law and Human Rights regarding dishonorably dismissing someone in his position as a Notary, for having committed an act that violates ethics as a Notary. Type the research used in this research is normative by using secondary data as legal material. The ratio decidendi of the PTUN Jakarta decision in case No. 235/2019 did not consider the attribution authority given directly by law to the Ministry of Law and Human Rights in issuing KTUN which had implications for the dishonorable dismissal of a person in said KTUN from his Notary position, besides that the ratio decidendi of the a quo case also did not take into account that there were no AAUP violations or ratio-Legis violations committed by the Tun Official in issuing a KTUN regarding the dishonorable discharge of a notary official in the a quo case

**Keywords:** Notary Legal Remedies, Violation of Notary Office

### INTRODUCTION

Within the scope of law, it is divided into private law and public law. Positioning the scope of the law, the State positions a notary in private law which aims to provide legal certainty values, in every existing legal subject. The government with attribution authority, namely giving authority to the position of Notary in issuing a letter that is authentic and can be used before the court as legal evidence. <sup>1</sup> A Notary Position based on statutory regulations is one of the public officials in making authentic letters and has this authority attribution in carrying out his duties as a notary and the legal product has strong documentary evidence before the law as a valid deed. <sup>2</sup>

<sup>1</sup>Herlina Suyati Bachtiar, Examples of Notary Deeds and Underhand Deeds Book I, (Bandung: CV. Mandar Maju, 2001) page 10

<sup>2</sup>Muhammad Luthfan Hadi Darus, Notary Law and Responsibilities of the Position of Notary Public, First Printing (Yogyakarta, UII Press, 2017), p. 1

The importance of the existence of a Notary, namely its function to make legal products in the form of written letters containing the agreement of the parties, place and time.<sup>3</sup> The existence of a Notary is required for the purpose of proving that the validity of the legal product is recognized. Article 1864 of the Civil Code has regulated proof using authentic letters, that is, authentic letters are letters made and signed in front of a Notary as a person who has the authority to make legal products in the form of authentic letters according to what has been ordered by attribution by law.<sup>4</sup> There are 2 types of authentic deed, namely *ambtelijk acte* and *party acte*. Authentic deed *Ambtelijk* a kta is a deed or legal product issued by a Notary holding a protocol made on the basis of having made observations, while *a party act* is a deed made in front of a Notary and made according to the needs and requests of the parties.

The position of Notary has authority in attribution, the Position of Notary has an important contribution to society, so that in carrying out their duties they are required to have good behavior, and all the attitudes required in the Notary Position Law and the notary's code of ethics. The position of a notary is required to have skills in mastering the law in the field of making authentic deeds and legal products that are related to and given authority by law for notary officials. In addition to issuing authentic deeds and other legal documents, the Notary also has the authority to provide legal advice (*legal advice*) to the parties who are using the services of a notary in order to know their rights and obligations.

Article 1365 of the Civil Code regulates unlawful acts for everyone. An action that has implications for harm to other people, must be responsible for the loss. The position of a notary is also vulnerable to unlawful acts, a notary's mistake in issuing an authentic deed has implications for material losses for the parties due to negligence. The code of ethics for the position of a notary public and the Law on the position of a notary public are regulations that contain clear arrangements for sanctions if a notary commits actions that are not permitted. Sanctions that can be given to notary officials according to the Law on Notary Position and the Notary Code of Ethics include temporarily dismissing a notary, dishonorably dismissing a notary official, giving a written warning, and also honorably dismissing.

Oversight of the Notary organization is carried out under the auspices of the Ministry of Law and Human Rights, in the supervision process the Ministry of Law and Human Rights establishes 3 levels namely MPND, MPNW and MPNP. MPN is an element of Notary supervision consisting of *Government* elements (Kemkumham) in their respective regions, Academics and several Notaries who were selected to become MPNs at the Regional, Regional and Central levels. The Notary Supervisory Council has the authority to propose the imposition of sanctions on the Minister of Law and Human Rights for notary officials who are reported to have committed acts prohibited by law or the code of ethics for notary positions. or commit a criminal act in carrying out their duties as a notary that harms other parties.

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<sup>3</sup>Herlien Budiono, "Notaries and their Code of Ethics", Presented at the National Upgrading and Refreshing Course of the Indonesian Notary Association, (Medan, Indonesian Notary Association, 2007), p. 3.

<sup>4</sup>R. Subekti and R. Tjitrosudibio, Civil Code, (Jakarta, PT. Pradnya Paramita, 2009), p. 475.

The mechanism for imposing penalties on notary officials who violate them is giving a written warning, temporarily dismissing, honorably dismissing, and also dishonorably dismissing. Several types of sanctions are given to a notary if a notary is found to have violated the office of a notary.<sup>5</sup> If the notary in carrying out his duties does not maintain confidentiality. Travel outside the work area for more than one week continuously by not applying for leave and if the Notary in carrying out their duties outside their work area or authority, giving minutes of deeds to other people who have no legal relationship with minutes of deeds and notary positions makes authentic letters for personal use, besides that notaries are not allowed to carry out the position of notary together with a substitute notary or other positions which may have implications for the morale and integrity of the notary.

Serious violations are actions taken which are actions related to the obligations of a notary and the authority of a notary, bankruptcy based on an *inkracht court envoy*, imprisonment, and committing acts that demean the honor of a notary, this is contained in the Law on Notary positions. The implication of committing a serious violation is dishonorably dismissed by the Ministry of Law and Human Rights based on the recommendation of the central notary supervisory board.

In the case of the Administrative Court decision with case No. 235 of 2019 the notary holding the protocol in his case had signed a deed outside his territory of office, the report of the incident issued a Decree of the Minister of Law and Human Rights of the Republic of Indonesia regarding the dishonorable dismissal of a notary official, for has committed a violation of the notary's code of ethics. Apart from that, the authority of the Minister to dismiss the position of Notary is also contained in Article 10 and Article 11 of Permenkumham No. 61 of 2016 which explains that the Minister has the authority obtained from Article 2 The Law on Notary Office stipulates that the appointment and dismissal of notary positions are carried out by the Minister. However, the amar of *the a quo* envoy decided that the Ministry of Justice and Human Rights as the defendant in the case, was ordered to revoke the Ministerial Decree and the Ministerial Decree was declared null and void in the case. so that the problem is how legal remedies can be taken by a Notary who has been penalized for breach of notary office based on the Law on Notary Position and How *ratio decidendi* Decision No 235/G/2019/PTUN.KT on the authority of the notary supervisor in imposing sanctions on the position of notary.

## METHOD

The type of research used in this research is normative by using secondary data as legal material.<sup>6</sup>The research specifications used are analytical descriptive with deductive

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<sup>5</sup>Dera Reswara Santiaji, " *The Role of the Supervisory Board on Notary Obedience in Efforts to Enforce the Code of Ethics*," Journal, Actuality 3, no. 1, 2019, p 81

<sup>6</sup>Peter Mahmud Marzuki, Legal Research, (Jakarta, Prenada Medai Grub, 2013) page 9

thinking methods, while the research approach used is the *case approach*, *conceptual approach* and *statute approach*.

## RESULTS AND DISCUSSION

Notary is one of the public officials who are given the authority to carry out tasks based on their authority which is subject to UUJN. All legal products issued by notary officials in the form of authentic letters are evidence with strong legal force before the Court, in the event of a civil dispute related to an authentic deed. Notary is one of the public officials in making authentic agreements desired by the parties in need, Notaries are appointed through Kepmenkumham . The government has general authority ( *openbaar zezag* ) which acts in providing public services as an embodiment of the creation of public interest, so that notaries have positional responsibilities ( *ambtsplicht* ), neglect of duties or carry out actions that are not mandated by UUJN. The oath of office of a Notary is one of the foundations of notary ethics in carrying out their duties.

The position of Notary has been given exclusive authority by law on a direct attribution basis, the granting of exclusive authority is borne by trust that intersects with the personal interests of individuals and the public interest. Accountability for positions is based on a *legal* and moral/ *ethic ratio* . Ethical standards and applying ethical values which constitute a Notary's code of ethics, are one of the indicators of carrying out the duties of a notary's position in addition to legal knowledge in carrying out duties as a notary. <sup>7</sup>The notary's code of ethics contains moral ethics regulated and agreed upon by the notary's organization, which is then to be upheld in carrying out the position of a notary, violations of the notary 's code of ethics are also subject to sanctions. <sup>8</sup>The position of a notary is prone to committing a violation of the notary's position, namely if he does not carry out his duties and responsibilities or has violated the code of ethics . Violating ethical norms or internal code of ethics the position of a notary is one of the acts that humiliates the dignity of a notary official. In regulations, especially the Notary Office Law, committing or demeaning the position of a notary is a serious violation of the position of a notary.

The State of Indonesia is a country of laws, so all actions must be based on applicable regulations. subject to administrative or criminal penalties . If the notary violates the norms regulated in the code of ethics or the Law on Notary Position In carrying out their duties, whether intentional or negligent, the community using notary services has the right to submit a report to the notary blood inspector. <sup>9</sup>However, the state gives rights to citizens to defend the alleged actions, in the form of legal remedies. There are several stages of legal action that can be taken by a notary who has been given sanctions for violations he has

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<sup>7</sup>Lorika Cahaya Intan, "Consequences of a Violation by a Notary on the Making of a Notary Deed", Cakrawala Hukum Journal, Vol 7, No 2, 2016, Faculty of Law, Merdeka University, Malang, p. 87

<sup>8</sup>Alfiyan Mardiansyah et al., "The Authority of the Notary Honorary Council in the Investigation Process of a Criminal Case Involving a Notary," Repertorium: Scientific Journal of Notary Law 9, no. 1 (2020):

<sup>9</sup>Pratiwi Ayuningtyas, sanctions against notaries for violating the code of ethics, journal repertorium, Vol 9, No 2, 2020, page 99

committed, both violations of prohibitions by law and violations of the code of ethics, namely as follows:

a. Administrative Efforts

In the government administration law , administrative efforts can be pursued by (1) objections, (2) administrative appeals , this is contained in the government Administration Law as amended by the Job Creation Law in Article 75

(1) Objection , is one of the legal remedies that can be taken by individuals or civil legal entities against state administrative decisions issued by state administration officials. Submission of objections is addressed to the TUN official who issued the KTUN

(2) Administrative appeal is one of the legal remedies that can also be carried out by individuals or civil legal entities against state administrative decisions issued by TUN officials. Submission of an administrative appeal is addressed to the superior of the TUN official who issued the KTUN.

b. Lawsuit

Lawsuit is a form of legal effort that is taken if administrative efforts are taken and do not find a solution to the problem of the implications of issuing a KTUN. The lawsuit is in the form of demands for the rights of individuals and civil legal entities for the actions of the KTUN which according to him have had a detrimental effect. Sarwono argues<sup>10</sup> Prosecution of rights by way of filing a lawsuit can be done through the courts.

In the case of the Administrative Court decision with case number 235 of 2019, the ruling on the *a quo case* declared null and void the KTUN issued by the Ministry of Law and Human Rights to a notary official who was sanctioned by a dishonorable dismissal from the position of Notary. In the ratio decidendi of the *a quo decision* , there is no judge's consideration regarding the attribution authority granted by law on authority to the Ministry of Justice and Human Rights has the right to issue a KTUN for the appointment or dismissal of a notary who commits an offense based on the recommendation of the central notary supervisor from the results of the examination starting from the supervisor regional, regional and central notaries. In fact, the imposition of sanctions on the notary office is based on absolute authority issued by law to the notary supervisory board in conducting examinations of violations committed by the notary office which then submits to the Ministry of Justice and Human Rights in the form of recommendations for sanctions to be given to the notary.<sup>11</sup>

The state provides legal remedies for people against decisions issued by TUN officials, however, the court as a form of final decision maker on disputes between people and civil legal entities or the government, still pays attention to the absolute authority granted by law. In fact, the submission of a lawsuit to the Administrative Court in the *dismissal* process must be able to immediately dismiss the lawsuit with an analysis (1) in the decision it has been considered that, the issuance of a KTUN for the dishonorable dismissal of a notary position is carried out according to the procedure, (2) Issuance of a KTUN with

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<sup>10</sup>Sarwono, Civil procedural law (theory and practice), (Jakarta: Sinar Graphic, 2011), Pg. 31

<sup>11</sup>Jobton Pangaribuan, Legal remedies for Notaries who are subject to sanctions for the provisions of article 13 UUJN by the Indonesian Ministry of Law and Human Rights, vol 1no 1, 2022, page 69

the correct mechanism describing that there is no violation of the AAUPB by the Tun official, in this case the Ministry of Law and Human Rights in issuing the KTUN, dishonorably dismissing the TUN official. In addition, in the exception or rebuttal of the lawsuit, it is clear that *the legal ratio* for sanctions for notaries who commit violations, even this point was not considered by the judges in the *ratio decidendi of the a quo* case decision.

## CONCLUSION

The ratio decidendi for the decision of the PTUN Jakarta case number 235 of 2019 does not take into account the authority attribution given directly by law to the Ministry of Law and Human Rights in issuing KTUN to provide sanctions for violations committed by the position of notary, besides that the ratio decidendi of the a quo case also does not consider that *there is* no violation AAUP as well as ratio legal violations committed by Tun Officials in issuing KTUN regarding the dishonorable dismissal of notary officials in the a quo case.

## BIBLIOGRAPHY

- Alfian Mardiansyah et al., 2020 , "The Authority of the Notary Honorary Council in the Investigation Process of a Criminal Case Involving a Notary," Repertorium: Scientific Journal of Notary Law 9, no. 1
- Dera Reswara Santiaji, 2019 , " *The Role of the Supervisory Board on Notary Obedience in Efforts to Enforce the Code of Ethics*," Journal, Actuality 3, no. 1
- Herlien Budiono, 2007 , "Notaries and their Code of Ethics", Presented at the Upgrading and Refreshing Course of the National Indonesian Notary Association, Medan, Indonesian Notary Association
- Herlina Suyati Bachtiar, 2001 , Examples of Notary Deeds and Underhand Deeds Book I, Bandung: CV. Forward Mandar,
- Jobton Pangaribuan, 2022, Legal remedies for Notaries who are subject to sanctions for the provisions of Article 13 UUJN by the Indonesian Ministry of Law and Human Rights, vol 1no 1
- Lorika Cahaya Intan, 2016 , "Consequences of Violations by a Notary Against the Making of a Notary Deed", Cakrawala Hukum Journal, Vol 7, No 2
- Muhammad Luthfan Hadi Darus, 2017 , Notary Law and Notary Position Responsibilities, First Print , Yogyakarta, UII Press,
- Peter Mahmud Marzuki, 2013 , Legal Research, Jakarta, Prenada Medi Grub
- Pratiwi Ayuningtyas, 2020, sanctions against notaries for violating the code of ethics, journal repertorium, Vol 9, No 2
- R. Subekti and R. Tjitrosudibio, 2009 , Civil Code, Jakarta, PT. Pradnya Paramita
- Sarwono, 2011 , Civil procedural law (theory and practice), Jakarta: Sinar Graphic