Upaya hukum notaris terhadap putusan pemberhentian Majelis Pengawas Pusat Notaris = Legal effort of notary against the decision on dismissal of central supervisory board of notary

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Abstrak

Berlakunya Undang-Undang Republik Indonesia Nomor 30 Tahun 2004 tentang Jabatan Notaris, telah membawa perubahan yang cukup besar terhadap dunia notariat khususnya dalam bidang pengawasan notaris. Bila sebelum berlakunya Undang-Undang Republik Indonesia Nomor 30 Tahun 2004 tentang Jabatan Notaris pengawasan terhadap notaris dilakukan oleh Pengadilan Negeri, maka sejak berlakunya Undang-Undang Republik indonesia Nomor 30 Tahun 2004 tentang Jabatan Notaris pengawasan dilakukan oleh Menteri Hukum dan Hak Asasi Manusia dengan membentuk Majelis Pengawas Notaris. Kedudukan Menteri selaku pejabat Tata Usaha Negara mengakibatkan Majelis Pengawas Notaris selaku perpanjangan tangan Menteri berkedudukan pula sebagai Badan Tata Usaha Negara. Dengan demikian secara otomatis keputusan Majelis Pengawas Notaris adalah Keputusan Tata Usaha Negara. Bahwa dalam kedudukannya sebagai Badan Tata Usaha Negara, Surat Keputusan Majelis Pengawas dapat dijadikan objek gugatan oleh notaris ke Pengadilan Tata Usaha Negara (PTUN) sebagai sengketa tata usaha negara, jika notaris merasa bahwa keputusan tidak tepat atau memberatkan notaris yang bersangkutan atau tidak dilakukan yang transparan dan berimbang dalam pemeriksaan.
Upaya hukum untuk mengajukan ke Pengadilan Tata Usaha Negara tetap terbuka setelah semua upaya administrasi, yang disediakan baik keberatan administratif maupun banding administratif telah ditempuh, meskipun dalam aturan hukum yang bersangkutan telah menentukan bahwa putusan dari badan atau jabatan tata usaha negara tersebut telah final atau tidak dapat ditempuh upaya hukum lain karena pada dasarnya bahwa penggunaan upaya aministratif dalam sengketa tata usaha negara bermula dari sikap tidak puas terhadap perbuatan tata usaha negara. Aspek positif yang didapat dari upaya ini adalah penilaian perbuatan tata usaha negara yang dimohonkan tidak dapat dinilai dari segi penerapan hukum, tapi juga dari segi kebijaksanaan serta memungkinkan dibuatnya keputusan lain yang menggantikan keputusan tata usaha negara tersebut. Bahwa setelah seluruh upaya banding administratif dilalui maka Pengadilan Tinggi Tata Usaha Negara yang bertugas dan berwenang memeriksa, memutus.
.....The effective application of Law of the Republic of Indonesia Number 30 of the Year 2004 regarding Notary Office has brought quite major changes towards notary community especially in the sector of notary supervision. If previously before the effective application of Law of the Republic of Indonesia Number 30 of the Year 2004 regarding Notary Office, supervision towards notary was carried out by the District Court, then, after the effective application of Law of the Republic of Indonesia Number 30 of the Year 2004 regarding Notary Office, the supervision is carried out by the Minister of Law and Human Rights by establishing Notary Supervisory Board. The position of the Minister as the State Administrative official has resulted in the condition that the Notary Supervisory Board is the extension of the Minister which is also serving as State Administrative Agency. Therefore, automatically, the decision of the Notary Supervisory Board is a State Administrative Decision. Whereas in its position as State Administrative Agency, the Decree of the Supervisory Board can become the object of a lawsuit filed by notary to the State

Administrative Court (Pengadilan Tata Usaha Negara [PTUN]) as a state administrative dispute, if the relevant notary considers that the decision is in appropriate or impairing the relevant notary or not carried out transparently and balanced during the examination.

The probability to file a lawsuit to the State Administrative Court remains open after all available administrative efforts being provided, either administrative objection or administrative appeal has been taken, even though in the relevant legal rules, it has been stipulated that the decision of such state administrative agency or office is final or that there is not any other legal effort against it, because basically the utilization of administrative effort in state administrative dispute derives from the feeling of dissatisfaction towards state administrative action. The positive aspect which can be gained from this effort is that the assessment against state administrative action being petitioned cannot only be assessed from the perspective of legal application, but also from the perspective of policy as well as whether it is possible to issue other decision in substitution to such state administrative decision. Whereas after the entire administrative appeal effort has been undertaken, the State Administrative High Court will be the body which is assigned and authorized to examine, decide and settle such State Administrative dispute at the first level.