

THE POSITION OF REGIONAL NOTARY HONORARY COUNCIL IN PROVIDING THE APPROVAL TOWARD THE NOTARY AUDIT IN THE INVESTIGATION PROCESS

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Abstract: Notaries should maintain the confidentiality of the deed and the Notary Protocol that is to be stored based on the provisions of the Law on Notarial Position (UUJN) and the Notary Position Code of Ethics. In essence, the UUJN protects Notaries through Article 66 of the UUJN which stipulates that for the investigation, the Public Prosecutor and Judge with the approval of the Notary Honorary Council (MKN) can have a copy of the Minutes of Deed and/or letters attached to the Minutes of Deed or the Notary Protocol in the Notary's storage. Additionally, it also can summon the Notary to be present in the inspection related to the Notary Deed or Protocol that is in the Notary's storage. This study aims to explain the position of the Regional Notary Honorary Council (MKNW) in the Indonesian legal system related to the MKNW approval letter for the examination of a Notary in the Investigation process. This research used normative juridical law and it was analyzed using descriptive-analytic methods. The result of this study indicates that the position of MKNW in the Indonesian legal system related to the MKNW approval letter for the examination of a Notary in the Investigation process fulfills the elements as a State Administrative Agency/Officer based on the provisions of the Law on State Administration and the Law on the State Administrative Court.

Keywords: Regional Notary Honorary Council, MKNW Position, State Administrative Court, Notary, Investigation

Abstrak: Notaris mempunyai kewajiban untuk menjaga kerahasiaan terkait akta yang dibuatnya, oleh karenanya UUJN memberikan perlindungan terhadap Notaris melalui Pasal 66 yang menentukan bahwa untuk kepentingan Penyidikan, Penuntut Umum dan Hakim dengan persetujuan MKN dapat mengambil fotokopi Minuta Akta dan/atau surat-surat yang

dilekatkan pada Minuta Akta atau Protokol Notaris dalam penyimpanan Notaris dan memanggil Notaris untuk hadir dalam pemeriksaan yang berkaitan dengan Akta atau Protokol Notaris yang berada dalam penyimpanan Notaris. Penelitian ini bertujuan untuk mengetahui serta menjelaskan tentang kedudukan MKNW dalam sistem hukum Indonesia dalam memberikan surat persetujuan terhadap pemeriksaan Notaris dalam proses Penyidikan. Jenis penelitian yang digunakan adalah yuridis normatif dengan menggunakan metode deskriptif analitis. Hasil penelitian ini adalah bahwa kedudukan MKNW dalam memberikan surat persetujuan terhadap pemeriksaan Notaris dalam proses penyidikan adalah sebagai Badan/Pejabat Tata Usaha Negara. MKNW memenuhi unsur-unsur sebagai Badan/Pejabat Tata Usaha Negara yang diatur di dalam UU PTUN dan UU Administrasi Pemerintahan.

Kata Kunci: Majelis Kehormatan Notaris Wilayah, kedudukan MKNW, Pengadilan Tata Usaha Negara, Notaris, Penyidikan

INTRODUCTION

According to Article 1 point 1 Law on Notarial Position (UUJN), a notary is a public official who has the authority to make authentic deeds and has other powers based on the law delegated to him.¹ The nature of the deed made by a notary is evidence that has excellent evidentiary value. The Notary Deed exists because of the direct involvement of the parties who appear before the notary. The contents of a deed contain information and data. All of them come from the appears in which the notary then puts in the form of a deed to be authentic. "The deed made by a notary describes all actions authentically,

agreements, and stipulations witnessed by the appearers and witnesses."²

In practice, in performing his authority, there are moments when a notary is affected when a dispute occurs between the parties ending up in the police. In the dispute, the notary acts as a witness and even a suspect brought before the court for the deed he has made. Meanwhile, in carrying out his authority, the notary makes an authentic deed based on the will of the parties following the applicable legal rules related to the concerned legal act.³

Notaries have several obligations in implementing their authority as stipulated in

¹ Djoko Sukisno, "Pengambilan Foto Copi Minuta Akta Dan Pemanggilan Notaris," *Jurnal Mimbar Hukum*, 20. Notaris (Bandung: Refika Aditama, 2011), 2. (2008) 40504.

² Wawan Tunggul Alam, *Hukum Bicara: Kasus-Kasus Hukum Dalam Kehidupan Sehari-Hari* (Jakarta: Milenia Populer, 2001), 85.

³ Habib Adjie, *Kebatalan Dan Pembatalan Akta*

Article 16 of Law no. 2 of 2014 concerning Amendments to Law No. 30 of 2004 Notary Position (from now on referred to as UUJN). One of them is that the Notary is obliged to conceal everything about the deed he made and all information obtained to do the act following the oath/promise of affirmation unless the law provides otherwise. The retrieval of documents that are in the notary's storage cannot be done arbitrarily in the process of investigation, public prosecutors or judges in an examination process for legal purposes.⁴ Therefore, notaries are given protection by UUJN so that in giving testimony or information either in front of investigators, public prosecutors, or judges, they do not violate their obligations to maintain the confidentiality of the notary deed or protocol in their storage. Such protection is provided by the existence of "Article 66 UUJN which stipulates that for the judicial process, investigators, public prosecutors, or judges with the approval of the Honorary Notary Council are authorized":

1. Take a copy of the Minutes of Deed and/or letters attached to the Minutes of Deed or the notary protocol in the notary's depository; and;
2. Call a notary to attend an examination related to a notary deed or protocol that is in the notary's storage.

MKN approval to investigators is the legal basis for justifying a notary to reveal secrets from his position without being penalized.⁵ Further arrangements regarding the Notary Honorary Council (after this referred to as MKN) are regulated in Minister of Law and Human Rights Regulation Number 17 of 2021 concerning functions and duties, terms, and procedures for Appointment and Dismissal, Organizational Structure, Work Procedures and Budget of the Notary Honorary Council (hereinafter referred to as Law Ministerial Regulation No. 17 of 2021). Article 2 of the Minister of Law and Human Rights No. 17 of 2021 stipulates that the MKN consists of the Central Notary Honorary Council and the Regional Notary Honorary Council (starting now referred to as MKNW)". In connection with MKNW's approval of the notary's examination in the investigation process, some of the MKNW approval letters were sued by the notary to the court. The reason for the lawsuit is that the notary feels aggrieved or neglected his rights to obtain a transparent, fair, and balanced examination by MKNW in approving a notary examination in the investigation process. Several MKNW approval letters were sued to the State Administrative Court (hereinafter referred to as PTUN) and have also been examined and decided by the PTUN,

⁴ Ellise T Sulastini dan Wahyu Aditya, *Pertanggungjawaban Notaris Terhadap Akta Yang Berindikasi Pidana*, (Bandung: Refika Aditama, 2010),7.

⁵ Endah Sumiarti, Djodi Suranto dan Yennie K. Milono, "Fungsi Majelis Kehormatan Notaris Ditinjau Dalam Prespektif Perlindungan Jabatan Notaris Dan Kepentingan Umum", *Jurnal Pakuan Law Review*, 1, No.2 (2015).

including "Medan Administrative Court Decision Number: 77/G/2018/PTUN-MDN", the plaintiff is Notary Faisal, SH, Sp.N with the defendant the Chairman of the North Sumatra MKNW. Furthermore, the decision of the Tanjung Pinang Administrative Court with Decision Number: 13/G/2018/PTUN-TPI, the plaintiff's name is Notary Anly Cenggana, SH, and the defendant MKNW of Riau Islands Province and the decision of the Pekanbaru Administrative Court with Decision Number: 31/G/2018/PTUN.PBR, the plaintiff is Notary Dr. Khalidin, S.H., M.H., with the defendant is the Head of the Riau Province MKNW.

Regulations in positive Indonesian law have not clearly regulated the position of MKNW, whether they are TUN officials or not. This will also determine the position of the approval letter issued by the MKNW whether the approval letter is a TUN Decree or not. The definition of the TUN Decree has the following elements;⁶ a written determination, issued by a TUN agency/official, based on the applicable laws and regulations, concrete, individual and final, has legal consequences, against a person or civil legal entity.

Based on the description related to the background above, the identification of the problem in this study is as follows:

1. What is the position of MKNW in the Indonesian legal system?
2. What is the position of the MKNW approval letter on the examination of a notary in the investigation process?

In general, the purpose of the paper is to provide a comprehensive understanding by providing a more in-depth study of the position of MKNW in its authority to approve the examination of a notary in the investigation process. Specifically, this study aims to:

1. To find out and explain how the position of MKNW in the Indonesian legal system.
2. To explore and explain how the position of the MKNW approval letter for the notary examination in the investigation process.

The research discussed in this journal is still original because no journals specifically discuss the discussion of the problems above. Several journals that discuss with MKNW are more on the authority of MKNW and legal remedies against MKNW decisions, including:

1. Journal with the title "The Authority of MKN in Giving Approval to Summons of Investigators, Public Prosecutors, and Judges Relating to the Provisions of Article 66 Paragraph (1) of the Law on the Position of Notary by Iwaris Harefa".⁷ The study results conclude

⁶ Ridwan H.R, *Hukum Administrasi Negara* (Jakarta: Rajawali Press, 2017), 142. ⁷ Iwaris Harefa, "Kewenangan Majelis Kehormatan Notaris Dalam Memberikan Persetujuan Terhadap Pemanggilan Penyidik Penuntut Umum Dan Hakim Berkaitan Dengan

that the National Honorary Council (MKN) has the authority to guide if there are complaints from the public and/or notaries dealing with legal issues. The Regional Honorary Council has the authority to examine applications submitted in the investigation process, Public Prosecutors, or Judges in the context of giving or not giving approval to requests for summoning a notary to be present in the trial process.

2. Journal with the title "Efforts of Notary Objection Against MKNW on Approval of Requests by Investigators, Public Prosecutors and Judges in the Judicial Process by Layla Maysaroh. The result of this study is that the notary's legal efforts against MKNW's approval are to be able to defend themselves wherein the examination carried out by the examining board formed by the Chairperson of MKNW. A notary can take other legal remedies, namely filing a lawsuit to the State Administrative Court."⁸
3. Journal with the title "Summoning a Notary in the Context of Law Enforcement Post Amendment to the Law on Notary Positions by Laurensius

Arliman".⁹ The result of this study is that MKN was born in UUJN because of the need to protect notaries in making the deed. It is indispensable to have an institution whose function is to process the interests of the judiciary, where a notary must obtain approval from the MKN when summoned in a court session.

METHOD

This research is normative juridical research that analyzes the law, both written in the book (law in a book) and the law decided by the judge through the judicial process.¹⁰ The form of normative juridical research was law research conducted by examining literature. This study was analyzed using a descriptive-analytic method by describing the data to obtain conclusions.

The analysis process is carried out by interpreting data, translating languages, editing words, and then arranged in accordance with a logical systematic, so that the description to be built can be conveyed properly.

RESULTS AND DISCUSSION

The notary maintains the confidentiality of the deed as well as the use of its refusal

Ketentuan Pasal 66 Ayat (1) Undang-Undang Jabatan Notaris", ⁹ Laurensius Arliman, "Pemanggilan Notaris Dalam Tesis, Univeristas Sumatera Utara, 2017. Rangka Penegakan Hukum Paska Perubahan Undang-Undang

⁸ Layla Maysaroh, "Upaya Keberatan Notaris Terhadap Keputusan Notaris", Tesis, Universitas Andalas, 2016. ¹⁰ Zainal Amiruddin dan Asikin, Pengantar Metode Penelitian Hukum, (Jakarta: Raja Grafindo Persada, 2008), 118. ¹¹ Majelis Kehormatan Notaris Wilayah Atas Disetujuinya ¹² Zainal Amiruddin dan Asikin, Pengantar Metode Penelitian Hukum, (Jakarta: Raja Grafindo Persada, 2008), 118. ¹³ Proses Peradilan" Tesis, Universitas Sumatera Utara, 2018.

obligations. Investigators cannot impose their will on a notary to provide information and data needed in the investigation process. In this case, the notary does not need to give any reasons to the investigator. It is because the notary merely carries out the orders of the UUJN and the Code of Ethics for the Notary Position. Therefore, in order to examine a notary, the investigator is obliged to send a letter of application to MKNW regarding the application for approval of the examination of the notary.

Teuku Abdurahman, a member of MKNW Aceh who once served as chairman of MKNW Aceh, explained that the process of granting approval or rejection by MKNW to examination or summoning a notary in the investigation process was carried out after receiving a letter of application from the investigator. Within five working days, MKNW will hold an internal session for the first time with the agenda of determining whether the investigator's application letter is appropriate for the examination of the requested notary. If what is issued by the notary, for example, is *waarmerking*, as long as the *waarmerking* does not conflict with propriety, decency, and public order, then the investigator's application letter will be rejected. However, if the request from the investigator concerns a notary deed/authentic deed and fulfills three elements, namely:

1. There is a relevant relationship between the notary's deed and the things that will be examined against the notary in the investigation process;
2. Have a causal relationship;
3. There is urgency.

When those three elements have been fulfilled, then in the MKNW session, it will be decided to examine the notary by the Examining Council, which will then be formed in the session the Examining Council. "Before MKNW gives approval or refusal, an examination is carried out first by hearing direct information from the notary concerned to then give approval or rejection of the examination of a notary at the stage of the investigation, prosecution, or justice."¹¹ MKNW's authority related to the examination of notaries is contained in Article 24 letter a of Law Ministerial Regulation No. 17 of 2021. It is determined that MKNW's authority has the task of conducting examinations of notaries whose approval is requested from MKNW in the investigation process, public prosecutor, or judge. "The Examining Council is formed by the chairperson of the MKNW with three members, consisting of each element of the MKNW members consisting of one chairperson who is concurrently a member and two members. The formation of the Investigating Council shall be carried out no later than 5 five working days after the receipt

¹¹ Arief. Andi Nurfaejriani Riandini, Akub. Syukri, Puchdilan," Al-Adalah: Jurnal Hukum Dan Politik Islam 4, No. 1 Muchtar. Syamsuddin, "Persetujuan Majelis Kehormatan No(2019): 52–81. Wilayah Dalam Pengambilan Minuta Akta Dalam Proses

of the report/application from the investigator is received by MKNW.

The panel's authority is to examine and approve or reject requests from investigators, public prosecutors, or judges regarding the taking of copies of the minutes of deed and letters attached to the minutes of deed and/or notary protocols in the notary's depository. The notary concerned is then summoned for examination by the Examining Council. In the examination process, the Examining Council shall prepare the minutes of the examination with a note that it does not give a decision. However, its nature is only to collect facts from the examination results.

“In conducting an examination, the Investigating Council has the authority to summon a notary based on a request from an investigator. This application is about examining a notary in the investigation process related to the deed he made. Based on the request from the investigator, the Investigating Panel shall summon the notary utilizing a letter signed by the chairperson of the MKNW. If in an urgent situation, the summons may be made by facsimile and/or electronic mail, which is immediately followed by a summons. The summons to the notary shall be made within five days before the examination is conducted.”¹²

Notaries must be present to fulfill the summons of the Examining Council and may

not be represented. If the notary is not present after being summoned legally and properly twice in a row, the Examining Council may decide on the investigator's request. The procedure for applying for MKNW approval for the examination of a notary in the investigation process includes, among others, the application for a notary examination in the investigation process submitted to the Head of MKNW in accordance with the work area of the notary concerned.

1. "The application is submitted in writing in the Indonesian language. A copy is submitted to the notary concerned at least containing information regarding the name of the notary, the address of the notary's office, the number of the deed, and/or letter attached to the minutes of the deed or the protocol of the notary in the notary's storage; and the subject matter alleged".
2. "To the investigator's application, within a maximum period of thirty working days from the date of receipt of the application, the chairperson of the MKNW is obliged to provide an answer in the form of approval or rejection. If MKNW does not provide an answer within thirty days of receiving the request from the investigator, then MKNW is considered to have received the request for approval. The approval

¹² Sulastini and Aditya, *Pertanggungjawaban Notaris Terhadap Akta Yang Berindikasi Pidana*.

or refusal by MKNW is given after hearing direct information from the notary concerned, which is stated in the minutes of the examination.”

Each result of the examination conducted by the Examining Council is then made a report to the chairperson of the MKNW. The examination results from the Examining Council are used as a reference by MKNW in giving approval or rejection of the application for the summons of a notary by law enforcement. After the examination by the Examining Council, the chairperson of the MKNW will hold a plenary session attended by all members of the MKNW to hear the report on the examination results by the Examining Council against the notary. Furthermore, the chairperson gives a decision to approve or reject the application letter from the investigator.

MKNW provides a letter of approval for a notary examination in the investigation process carried out in the event that:

1. There is an allegation of a criminal act related to the minutes of the deed and/or the notary's letters in the notary's storage";
 2. "The right to sue has not been lost based on the provisions regarding expiration in the legislation in the field of criminal law";
 3. “There is a denial of the validity of the signature of one or more parties;
 4. “There is an allegation of reduction or addition to the minutes of the deed”;
 5. "There is an allegation that the notary has postponed the date or *antidatum*".
- The MKNW's considerations in rejecting the application for a notary examination in the investigation process include: The deed/document referred to in the Investigator's request after being examined by the Examining Council turns out to be:
1. "There is no relevance to the deed made by the notary concerned";
 2. "There is an error in mentioning the date or number of the deed between the one stated in the request of the investigator, public prosecutor, and judge and the one made by the notary concerned";
 3. "The deed made is not a notarial deed but a PPAT deed";
 4. "Agreement has been carried out with respect to the issues referred to in the investigation process by the parties in a settlement";
 5. "The object of the dispute is in the process of a civil case or the object of the dispute has been decided by the judge. Basically, the deed made by the notary concerned is in accordance with the applicable legal provisions";
 6. "The notary concerned in making the deed is based on a power of attorney or deed where the problem lies not in the deed made by the notary concerned but

based on the deed of power made by another notary";

7. "The notary in making the deed is based on the certificate of inheritance. In making the deed, it is in accordance with the applicable provisions, but it turns out that there is an error in the certificate of inheritance";

8. "The object in the deed before the deed was made was carried out in accordance with the procedures following the applicable provisions. For example, a check has been carried out at the land office for not yet certified land. A letter of no dispute has been requested from the urban village head and subdistrict head. Also, a physical control letter has been issued known by the head of the village where the object is located as well as proof of perfect and coherent ownership checked by the notary concerned.

"Based on Article 33 paragraph 3 Law Ministerial Regulation No. 17 of 2021, it is stated that the MKNW approves a notary in the investigation process. MKNW can assist the notary in the examination process before the investigator. MKNW is authorized to approve or reject a notary examination in the investigation process based on the request given by the investigator to MKNW. The approval or rejection issued by MKNW is not

to declare the notary guilty or not in a case. MKNW is only authorized to give approval or rejection of an investigator's application for examination of a notary".

MKNW's Position in the Indonesian Legal System

Article 1 point 8 of the Administrative Court Law stipulates that the TUN Agency or Official is an agency or official who carries out government affairs based on the applicable laws and regulations.¹³ Furthermore, Law no. 30 of 2014 concerning Government Administration (hereinafter referred to as the Government Administration Law), namely Article 11, stipulates that the authority of Government Bodies/Officials is obtained through three ways, namely attribution, delegation, and mandate". In addition, Indroharto grouped government organs or TUN officials as follows:¹⁴

1. Official government agencies under the president are chief executives;
2. Agencies within the state environment outside the sphere of executive power based on government affairs;
3. Civil legal entities established by the government with the intention of carrying out government duties;

¹³ Republik Indonesia, Undang-Undang Nomor 51 Tahun 2009 Tentang Perubahan Kedua Atas Undang-Undang Nomor 5 Tahun 1986 Tentang Peradilan Tata Usaha Negara. ¹⁴ Indoharto, Usaha Memahami Undang-Undang Tentang Peradilan Tata Usaha Negara, (Jakarta: Pustaka Sinar Harapan, 2000), 137.

4. Agencies that are a collaboration between the government and the private sector carry out government duties;
5. Private legal institutions based on statutory regulations and licensing systems carry out government duties.

Based on the provisions in the Administrative Court Law, the Government Administration Law, and the opinions of the experts described above; it can be concluded that in addition to having the duty to carry out government affairs, a new Agency or Official can be said to be a State Administration Agency/Official if its authority has come from attribution, delegation or mandate. In the same manner, the opinion of the O.C. Kaligis stated that "TUN Agency or Official is an agency or official based on the prevailing laws and regulations that have the authority to carry out government affairs, such authority can be obtained by way of attribution, delegation or mandate."¹⁵ Therefore, to determine whether MKNW is a State Administration Agency/Official three important elements must be achieved, namely:

1. It is an agency/official.

"Article 1 point 1 Law Ministerial Regulation No. 17 of 2021 stipulates that MKN is an agency that has the authority to carry out notary development and the obligation to give approval or rejection for the purposes

of investigation and judicial proceedings, for taking a photocopy of the Minutes of Deed and summoning a notary to attend an examination related to the deed or notary protocol existing in the notary's storage".

2. Carrying out government affairs based on applicable laws and regulations.

A notary is a public official who has the authority to make authentic deeds and other authorities regulated by law. In carrying out their authority, notaries aim to provide services to the community and keep the minutes of deeds which are state's documents. Therefore, in carrying out its authority, the state must protect notaries. The state formed MKN through UUJN as a form of state protection against notaries. So it can be said that MKN carries out government affairs to protect notaries.

3. The authority of the Agency/Official comes from attribution, delegation or mandate.

Based on the provisions of Article 66, UUJN authorizes MKNW to give the approval to take a photocopy of the Minutes of Deed and/or letters attached to the Minutes of Deed or the notary protocol in the notary's archive. Also, MKNW summons a notary to attend an

¹⁵ Wiyono R, *Hukum Acara Peradilan Tata Usaha Negara*, (Jakarta: Sinar Grafika, 2019) 103.

examination related to a Notary Deed or Protocol in the custody of the notary in the investigation process, the public prosecutor or the judge. It can be said that MKNW obtains its authority through the attribution method; namely, UUJN grants authority to MKNW based on the provisions of Article 66 of the UUJN. Yanis Rinaldi, a lecturer at the Faculty of Law at Syiah Kuala University, said that if an authority is obtained directly by the Constitution and the Law, then that authority can be said to come from attribution or original authority. As a result, when UUJN mentions the authority of MKNW as contained in Article 66 of the UUJN, the authority of MKNW comes from attribution.

Article 1 number 22 of the Government Administration Law¹⁶ stipulates that attribution is granting authority to Government Agencies and/or Officials by the 1945 Constitution of the Republic of Indonesia or the Act. If we describe the elements in Article 1 number 22 of the Government Administration Law, they are related to the authority of MKNW, namely as follows:

a. "Giving authority: in this case, the authority given is to approve of

taking a photocopy of the Minutes of Deed and/or letters attached to the Minutes of Deed or the Notary Protocol in the notary's archive. Furthermore, it summons a notary to attend an examination related to a Notary Deed or Protocol that is in the custody of the notary in the investigation process, the public prosecutor or the judge".

b. To government agencies/officials: the authority is given to MKNW as a government agency.

c. "By the 1945 Constitution of the Republic of Indonesia or the Law: in this case, the authority is given by law called UUJN".

Based on the description and explanation above, it can be concluded that MKNW has fulfilled the elements as a State Administrative Body as regulated in the Administrative Court Law and the Government Administration Law. The position of MKNW in the legal system is as a TUN Agency/Official whose source of authority is obtained through attribution called UUJN.

The position of the MKNW Approval Letter in the Indonesian Legal System.

Article 1 point 9 of the Administrative Court Law stipulates that a State

¹⁶ Republik Indonesia, Undang-Undang Nomor. 30 Tahun 2014 Tentang Administrasi Pemerintahan.

Administrative Court Decision is a written determination issued by a State Administration Agency or official. It contains state administrative legal actions based on applicable laws and regulations, which are concrete, individual, and final that have legal consequences for a person or civil law entity. Based on the definition of the TUN Decree, it can be seen that the State Administrative Decree has the following elements along with their explanation: "First, written stipulation is issued by the TUN Agency/Official. Second, it contains state administrative legal actions based on applicable laws and regulations, concrete, individual, and final. Lastly, it causes legal consequences against a person or civil legal entity".

Provisions on the meaning of TUN Decisions apart from being regulated in the Administrative Court Law, it is also further regulated in the Government Administration Law. "Article 1 point 7 stipulates that Government Administration Decrees, which are also called State Administration Decrees referred to as decisions, are written decisions issued by Government Agencies and/or Officials in the administration of government. Article 87 of the Government Administration Law stipulates that with the enactment of this Law, the State Administration Decree as referred to in the Administrative Court Law must first be interpreted as a written determination that includes factual actions. Secondly, the Decisions of the TUN Agency

and/or Officials in the executive, legislative, judicial, and other state administrators. Thirdly, based on the provisions of laws and general principles of good governance (hereinafter referred to as AUPB). Fourth, it is final in a broader sense and five decisions that have the potential to cause legal consequences; and/or decisions that apply to the citizens".

Referring to the Lex Posterior Derogat Legi Priori principle, the most recent legal provisions override the old legal provisions. The Administrative Court Law and the Government Administration Law have an equal position and the Government Administration Law. This is a newer legal provision than the Administrative Court Law, so the provisions in the Government Administration Law override the provisions contained in the Administrative Court Law. However, the provisions stipulated in the Administrative Court Law remain valid as long as they are not regulated in the Government Administration Law.

Based on these provisions, the concept of State Administration Decree that is applied is "the concept of State Administration Decree which is regulated in the Government Administration Law. The concept of TUN Decisions in the Administrative Court Law is still valid as long as it is interpreted more broadly following the provisions in Article 87

of the Government Administration Law. So that the TUN decision is interpreted as:"¹⁷

1. Written determination, including factual action;
2. Issued by the State Administration Agency and/or TUN Officials in the executive, legislative, judicial, and other organizers; (using the notion of government in a broad sense);
3. Contains state administrative legal actions;
4. Based on the prevailing laws and regulations and AUPB;
5. It is concrete, individual and final; (the final phrase here has a broader meaning);
6. Has caused legal consequences and has the potential to cause legal consequences;
7. The decision is addressed to a person or civil legal entity.

The next step is to determine whether the MKNW's approval letter for the examination of a notary in the investigation process is included in the TUN Decision as regulated in the Administrative Court Law and the Government Administration Law or not. In this case, to answer this question, it must be seen whether the elements of the State Administration Decree as regulated in the Administrative Court Law and the Government Administration Law have been

fulfilled or not. The following are the elements of the State TUN Decree associated with the MKNW approval letter, namely:

1. A written determination that also includes factual actions.

MKNW's approval of the notary's examination in the investigation process is given in the form of an approval letter. In the explanation of "Article 1, point 3 of the Administrative Court Law, it is determined that the term written determination refers to the content, not to the form of the decision issued by the State Administration Agency/Official. The decision is required to be in writing, but what is required is not the format, such as a letter of appointment and so on. The written requirements are required for ease of proof. Therefore, a memo or memorandum can fulfill the written requirements and will be a decision of the State Administration Agency/TUN Official according to this law if it is clear:

- a. The TUN Agency/Official issued.

As described in the discussion on the position of MKNW in the Indonesian legal system, MKNW is a State Administration Agency.
- b. Meaning and about what the written content is.

¹⁷ Dola Riza, "Keputusan Tata Usaha Negara Menurut Undang-Undang Administrasi Pemerintahan," *Jurnal Bina Mulia Hukum* No. 1 (2018): 85–102.

In the MKNW approval letter, the purpose and content of the approval letter is to give approval to the investigator's application to conduct an examination of the notary related to the notary deed or protocol that is in the notary's archive.

- c. To whom the writing is addressed and what is stipulated in it.

The MKNW approval letter is addressed to the investigator of the General Criminal Investigation Agency of the Indonesian National Police.

2. Issued by the State Administration Agency/Official in the executive, legislative, judicial, and other state administrators.

Article 1 point 8 of the Administrative Court Law stipulates that the TUN Agency or Official is an agency or official who carries out government affairs based on the applicable laws and regulations. His explanation determines that what is meant by government affairs is an activity of an executive nature. However, after the enactment of the Government Administration Law, the decisions of the TUN Agency/Officials are not only to carry out government affairs in the executive field but also in the legislative and judicial fields”.

Based on the description in the discussion about the position of MKNW in the Indonesian legal system, it is concluded that MKNW is a State Administration Agency whose authority is given directly by the UUJN. MKNW, as the TUN Agency, carries out government affairs in the executive field, namely, carrying out some of the authorities in the Ministry of Law and Human Rights.

3. Contains state administrative legal actions.

Legal action for State Administration is a legal act of a State Administration Agency or Official originating from a provision of State Administration law which can provide rights or obligations to other people. MKNW is the State Administration Agency whose authority is regulated in UUJN and Law Ministerial Regulation No. 17 of 2021. The MKNW approval letter has created a legal relationship of a State Administrative nature. It is with the approval of the MKNW giving authority/rights to the investigators of the Indonesian National Police General Criminal Investigation Agency to examine a notary related to the existing Notary deed or protocol in the notary's storage.

4. Based on the prevailing laws and regulations and AUPB.

"In a state of law, every government's legal action must be based on the principle of legality, which means that the government is subject to the law. Concerning the implementation of tasks, the government must comply with the principle of legality as it has been formulated separately in the principle of the rule of law through the principle of government based on law.¹⁸ "Furthermore, Article 10 paragraph (1) of the Government Administration Law stipulates that AUPB includes the principles of legal certainty, expediency, impartiality, accuracy, not abusing authority, openness, public interest; and good service."

MKNW as the TUN Agency in issuing a letter of approval for examining a notary in the Investigation process based on the provisions in UUJN and Law Ministerial Regulation No. 17 of 2021. Also, in carrying out its authority, it is subject to AUPB.

5. It is concrete, individual, and final (the phrase final here has a broader meaning).

"In State Administrative Law and Constitutional Law, decisions have the

nature of individual-concrete legal norms from a series of general-abstract legal norms. In order to put general and abstract things into concrete events, decisions are issued to lead these general events so that they can be implemented.¹⁹

a. "It is concrete that means the object decided in the TUN Decision is not abstract but has a certain form or can be determined. For example, the decision regarding A's house, B's business license, A's dismissal as a civil servant". The MKNW approval letter for the notary examination in the investigation process is concrete. This is because the MKNW approval letter is tangible or can be determined, such as approving a notary examination in the investigation process.

b. "Individual meaning that the TUN decision is not intended for the general public but is specific, both in terms of address and destination. If more than one person is addressed, each name of the person affected by the decision is mentioned. For example, a decision regarding the act or widening a road with an attachment mentions the names of the people affected by the decision.

¹⁸ Ridwan, *Op.,Cit*, 151.

¹⁹ Marbun S.F dan Moh. Mahfud MD, *Pokok-Pokok Hukum Administrasi Negara*, (Yogyakarta: Liberty, 2006). 94.

The MKNW approval letter is individual because it is directly addressed to the person named in the approval letter. It is named to the General Criminal Investigation Agency Investigator of the Republic of Indonesia Police as the party submitting the application to MKNW to conduct an examination of the notary.

- c. "It is final in a broad sense. Final means that it is definitive and therefore can have legal consequences. In the Supreme Court Circular No. 4 of 2016, 9 December 2016 concerning the Implementation of the Formulation of the Results of the 2016 Supreme Court Plenary Meeting as a Guide to the Implementation of Duties for the Court, it determines that the meaning of TUN's decisions and/or actions that are final in a broad sense meaning TUN decisions have legal consequences even though it still requires approval from superior agencies or other agencies. For example, licensing of investment facilities by the Investment Coordinating Board (BKPM), environmental permits, and so on." The MKNW approval letter is final because it no longer requires approval from other TUN

bodies/officials. In addition, the MKNW approval letter has resulted in legal consequences, namely the authority/right for the General Criminal Investigation Agency Investigator of the Republic of Indonesia to examine a Notary.

6. "It creates legal consequences against a person or civil legal entity or decisions that have the potential to cause legal consequences. To cause this legal consequence is to cause some changes to existed rights, obligations, or authorities. It also means that causing a change in the legal position of a person or civil object, certain rights, obligations, authorities, or status that are determined.

In carrying out legal actions, "TUN bodies and/or officials indeed intend to take actions that will cause certain legal consequences. For example, notification of Building Permits (IMB), Ownership Certificates (SHM), various kinds of Employment Decrees (SK), etc. In the Government Administration Law, the decisions referred to are not only decisions that have legal consequences but also decisions that have the potential to cause legal consequences for a person or civil legal entity".

In law, especially in the civil field, the term legal subject is known as

support of rights and obligations. Legal subjects consist of people and legal entities. In this case, legal entities referred to civil legal entities such as limited liability companies, foundations, cooperation, and other civil legal entities. However, in this case, it does not include civil legal entities or private institutions carrying out a government task whose status is considered a State Administration Agency/Official.²⁰

Regarding the MKNW approval letter, the MKNW approval letter has caused legal consequences for the Notary. Notaries have an obligation to be examined in the Investigation process of the General Criminal Investigation Agency of the Indonesian National Police.

Based on the description and explanation above, the MKNW approval letter has fulfilled the elements as a TUN Decree as regulated in the Administrative Court Law and the Government Administration Law. So it can be concluded that the position of the MKNW approval letter in the legal system is a TUN decision.

CONCLUSION

MKNW has the authority to give approval to a notary examination in the investigation process which is regulated in Article 66 of the UUJN and further regulated

in Law Ministerial Regulation No. 17 of 2021. The position of MKNW in the Indonesian legal system is as a State Administration Agency that carries out government affairs based on applicable laws and regulations whose source of authority is obtained through attribution, namely UUJN. The MKNW approval letter for the examination of a notary in the investigation process is issued after an examination of the notary that has been carried out by the Examining Council based on an application letter from the investigator. The position of the MKNW approval letter on the notary's examination in the investigation process is under the provisions in the Administrative Court Law and the Government Administration Law which is as a TUN Decree.

Based on the conclusion above, it is stated that MKNW is a TUN Agency and the MKNW approval letter is a TUN Decree. In this case, if in granting MKNW approval to the Notary's examination in the Investigation process there is a violation of the provisions in Law Ministerial Regulation No. 17 of 2021 and AUPB, a notary can file a lawsuit to the State Administrative Court.

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²⁰ Indroharto, *Op.,Cit*, 177.

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