

NOTARY HONORARY ASSEMBLY AS THE STATE ADMINISTRATIVE OFFICIAL AND ITS DECISIONS AS THE STATE ADMINISTRATIVE DECISION

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ABSTRACT

Notaries in performing their duties are supervised and also guided by the Notary Supervisory Board, Notary Honorary Assembly and Notary Honorary Board. All three institutions have their respective authorities according to the rules of law applicable to the institutions concerned. Supervision of Notary is done by the Minister of Law and Human Rights of the Republic of Indonesia, then attributively, Minister forming Notary Supervisory Board, Notary Honorary Council. Both institutions, although established by the Minister, have different powers. Notary Honorary Assembly has special authority that is concerning the invitation of Notary by Investigator, Public Prosecutor or Judge in connection with the duties of Notary. Notary Honorary Assembly as an institution established by the Minister shall have the position of state administrative officer and its decision as the decision of the state administration officer, this is in accordance with the Minister's position as the executive. As the product of the administrative officer of the State, if any objections to his decision, the bias shall be filed suit to the State administrative court.

Key words: Notary Supervisory Board, Notary Honorary Assembly, State Administration Official

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1. INTRODUCTION

The notary institution was born in the Unitary State of the Republic of Indonesia is the will of the state. The Notary's Office is an institution created by the State to exercise some state authority in the field of civil law, by making written evidence recognized by the state, therefore to the Notary may be permitted to use the state emblem in the performance of their duties, and according to law, the state shall also be responsible by providing protection to those who are notaries who are willing to accept and exercise part of the authority of that state (Manan, 2004). Notary is not a handyman to make a deed or a person who has a license to

make a deed, but a notary in carrying out his duties of office is constituted or equipped with various legal sciences and other sciences which must be mastered in an integrated manner by notary and deed made before or by notary having the position as evidence, therefore the notary must have a good Capital Intellectual in performing his / her job duties. The examination of the notary is inadequate if it is done by those who have not studied the notary world, meaning that those who will examine the notary must be able to prove a major mistake made by the notary intellectually, in this case the logical legal power required in examining the notary, not the power logic, but the legal power required in checking a notary.

There are three institutions supervising notary, that are Notary Supervisory Board, Notary Honorary Assembly, and Notary Honorary Board with different authority on the performance of their official duties, with the intention that the notary must fulfil all the provisions in performing their duties so that the deeds made by and before the notary can be maintained as a complete and perfect written evidence. With the guidance and supervision as mentioned above, Indonesian notary should not have any problems, if all are obedient and comply with the rules of legislation in Notary Code of Ethics. Position of notary is also a special position that can be seen from three questions that must be considered, such as (1) do other human beings believe in other human beings to entrust their speech / action / intention / desire to be made / poured into written form (authentic deed) according to the laws and regulations in order to have perfect proof power besides the notary? (2) is there any state / government (outside the government structure) to the relevant post, on the post seal using the symbol of the country than the notary? (3) will there be an State Administration to be irresponsible to fellow human beings, the state and God during the duty of office as a notary?. Based on these problem, this study formulates the discussion into does the notary honorary assembly be categorized as the state administration officer?. Lastly, is the decision of the Notary Honorary Assembly in the qualification as a State Administrative Decree which may be the object of the State Administration dispute?

2. NOTARY ADMINISTRATION IN INDONESIA

Notary in performing his / her official duties is institutionally supervised and nurtured by three institutions, namely based on the Notary Law through Notary Supervisory Board and Notary Honorary Assembly and by Notary Honorary Board. These three institutions have different authorities as set forth in the legal rules governing them. In Article 67 paragraph (1) Notary Law affirmed that the supervision of the Notary is done by the Minister. In conducting such supervision, the Minister established the Notary Supervisory Board - (Article 67 paragraph (2) Notary Law, namely:

- (1) Supervision over a notary is performed by the Minister.
- (2) In conducting the supervision as referred to in paragraph (1) the Minister shall establish the Supervisory Board.
- (3) The Supervisory Board as referred to in paragraph (2) shall be 9 (nine) persons, consisting of:
 - a. government as much as 3 (three) people;
 - b. Notary organizations of 3 (three) persons; and
 - c. experts / academics as much as 3 (three) people.
- (4) In the case of a region, there is no element of government agency as referred to in paragraph (3) letter a, membership in the Supervisory Board shall be filled from other elements appointed by the Minister.
- (5) Supervision as referred to in paragraph (1) covers the behaviour of Notary Public and the implementation of Notary's office.

(6) The provisions concerning the supervision as referred to in paragraph (5) shall apply to the Notary Substitute, Notary of the Special Substitute, and the Notary Public Official.

Article 66A of Law No. 2 of 2014 concerning Amendment to Law No. 30 of 2004 concerning Notary Law by creating new institution with the same function, namely the Notary Honorary Assembly, namely:

(1) In conducting the guidance, the Minister shall establish an honorary board of Notary.

(2) The Notary's Honorary Board shall be 7 (seven) members, consisting of:

- a. Notary of 3 (three) persons;
- b. Government of 2 (two) people; and
- c. experts or academics as much as 2 (two) persons.

(3) Further provisions on the duties and functions, requirements and procedures for appointment and dismissal, organizational structure, working procedures, and budget of honorary board of Notary shall be regulated by Minister Regulation.

Article 10 of the Articles of Association the Indonesian Notaries Association states that the association has the following equipment:

- a. Meeting of members;
- b. Stewardship;
- c. Honorary Board;
- d. Union Court.

In Article 12 of the Articles of Association of the Indonesian Notaries Association also affirmed the authority of the Notary Honorary Board, namely:

1. The Honorary Board represents the Association in terms of guidance, supervision and sanction in enforcing the Notary Code of Conduct.

2. The Honorary Council has the duty and authority to:

- - conduct guidance, supervision, coaching members in enforcing and upholding the Notary's Code of Conduct;
- - to examine and decide upon the alleged violation of the provisions of the Notary Code of Conduct; provide advice and opinion to the Supervisory Board and / or the Notary Honorary Council on the alleged violation of the Notary's Code of Ethics and the position of Notary;
- - coordinate, communicate, and relate directly to members or parties relating to the implementation and enforcement of the Notary Code of Ethics;
- - Establish regulations in the framework of enforcing the Notary Code of Ethics together with the Central Board.

3. The Honorary Board shall consist of several members elected from Ordinary Members, dedicated and loyal to the Society, good personality, wise and wise, so as to be role models for members and appointed by Congress for the same term of office as the term of office.

4. Honorary Board consists of

4.1. The Central Honorary Board is the Honorary Council at the Central level;

4.2. The Regional Honorary Board is the Honorary Council at the Provincial level;

4.3. The Regional Honorary Board is the Honorary Council at the Regency / City level.

5. The procedures for nomination, election and termination of membership of the Central Honorary Board Members, Regional Honorary Board, and Regional Honorary Board shall be further stipulated in the Bylaws.

3. NOTARY HONORARY ASSEMBLY AS THE STATE ADMINISTRATION COUNCIL

In Law No. 5 of 1986, it is known as the Agency or State Administration Officer, as the agency or official performing governmental affairs based on the prevailing laws and regulations when conducting a government affairs (Indroharto, 1996). The rule of law shall not be determined by the name of the office which may be qualified as the Board or the State Administration Officer. In the Elucidation of Article 1 Sub-Article 2 of the Act, the meaning of government affairs is an executive activity, and the meaning of the government is the overall activity which is the task and implemented by the State Administration Bodies and Offices which is not the rule-making and judgment. Philipus M. Hadjon (2006), Fahmal (2006) proposed that government can be seen from two angles, namely government in the sense of function, ie activities that include government activities, and government in the organizational sense, which is a collection of governmental entities. The State Administration or Administrative Officer is the principal and largest element of the rulers among the many administrators of government affairs. The so-called rulers are primarily located and originated from the executive environment at the centre as well as in the regions, from the President to the lowest one, village administrators. The structure of government in Indonesia, there is the Central Government and Regional Government, mentioned in Article 1 No. 1 of the Law of the Republic of Indonesia No. 23 of 2014 About Local Government. The Central Government is the President of the Republic of Indonesia which holds the power of the government of the Republic of Indonesia assisted by the Vice President and the minister as referred to in the 1945 Constitution of the State of the Republic of Indonesia. At the level of the Central Government, the President exercises power in the administrative (executive) field, in order to exercise the power, the President may establish a body or agency with certain authority which is adapted to the need at that time as the administration of the state government. This is as mentioned in Presidential Regulation No. 9/2005 concerning Position, Duties, Functions, Organizational Structures, and Working Procedures of State Ministries of the Republic of Indonesia, Regulation of the President of the Republic of Indonesia No. 10 Of 2005 concerning Organization Unit, and Task of Echelon I of State Ministry of the Republic of Indonesia, Regulation of the President of the Republic of Indonesia No. 11 Of 2005 regarding the Fifth Amendment of Presidential Decree No. 103 Of 2001 Concerning Position, Duties, Functions, Authority, Organizational Structure, and Working Procedures of Non-departmental Government Institutions, Presidential Regulation No. 12/2005 concerning the Sixth Amendment to Presidential Decree No. 110 on Organization Units and Duties of Echelon I of Non-departmental Government Institutions. On the other hand in order to implement the implementation of government affairs by local governments to organize and manage their own governmental affairs according to the principle of autonomy and assistance task, the provincial and regency or municipal areas may designate agencies or agencies with certain authorities that are tailored to the needs of local government as Regional Device or Local Government Work Unit, which in the procedures, requirements, criteria for the establishment of a regional apparatus organization shall be stipulated in regional regulations referring to the guidelines established by the government.

Structural governmental affairs may be undertaken by those authorized to do so for and on behalf of a defined body under applicable law (Indroharto, 1996). All persons within the ranks of government who can and are authorized to do so constitute government personnel who in large groups are civil servants or are state officials. According to Article 3 paragraph (1) of Law No. 43 of 1999, the public servant is located as a state element, with the task of providing services to the community professionally, honestly, fairly and equitably in the implementation of state, government and development duties. The task of providing services

to the public is the main task of Civil Servants (Hadjon et al., 2006). Limitation of Civil Servant according to Article 1 No. 1 of Law No. 43 Of 1999, that the Civil Servant is every citizen of the Republic of Indonesia who has fulfilled the conditions specified; appointed by the competent authority; assigned duties in a state office. or other state duties; paid under applicable laws and regulations. However, the name of the State Administration Officer is not only directed to those who structurally hold a State Administration Office but can also be addressed to anyone who is in accordance with the legislation to carry out functional governmental affair, so doing so may be regarded as agency or state administration officer, so that all decisions they issue that qualify as state administrative decisions, if harm to certain parties, the decision can be the object of lawsuit to the Administrative Court. Basically having the authority to conduct supervision and inspection and guidance to the Notary is the Minister of Law and Human Rights in the implementation of the Minister to form Notary Supervisory Board and Notary Honorary Assembly with their respective authorities. The Minister as head of the Ministry of Justice and Human Rights has the duty of assisting the President in carrying out some government affairs in the field of law and human rights. Thus, the authority of supervision and examination and guidance of the notary is in the government, so it relates to the way the government obtains the authority of such supervision.

There are two main ways to obtain government authority, namely attribution and delegation. The mandate is also placed as a separate method of obtaining authority, but when it is associated with a lawsuit to the state administrative court, the mandate is not placed separately because the mandate's recipient cannot become a defendant in the administrative court of the state. Attribution is the formation of certain authority and its giving to a particular organ or also formulated to attribution occurs granting the authority of the new government by a provision in the legislation (Rokhmad & Sulistiyono, 2017). The attribution of the formation or granting of governmental authority is based on the rule of law that can be distinguished from its origin, that is, the origin of the government at the central level derives from the People's Consultative Assembly, the Constitution or the law, and originally from the local government sourced from the Regional House of Representatives or the Regional Regulation (Marbun, 1997). The attribution of authority established or created or created by the relevant law or attribution is defined by the rule of law stating in it. The delegation represents an assignment of an existing authority by the state administration agency which has obtained an attributive governmental authority to the other state administration. In another formulation that the delegation as a transfer of authority by a government official (state administration official) to another party and the authority is the responsibility of the other party. The first opinion, that the delegation must be from the agency or state administration position to other bodies, meaning that both the delegator and the delegation must be both the agency or the state administration. The second opinion that the delegation may occur from the agency or official state administration to another party not necessarily the agency or state administration. It is possible that the agency or state administration's office may delegate its authority to a non-state administration agency or office. A delegate is always preceded by an attribution of authority. agency or state administration offices that do not have the attribution of authority cannot delegate authority to the other party. Delegates must meet the following conditions:

- a. Delegates must be definitive, meaning the recipient of delegation can no longer use their own delegated authority;
- b. Delegation must be based on the provisions of legislation, meaning that the delegation is only possible if there is a provision for it in the legislation;
- c. Delegates are not to subordinates, meaning that in the hierarchy of personnel relationships no delegations are allowed;

- d. The obligation to provide explanation (explanation), meaning that the recipient of delegation are authorized to request an explanation of the exercise of such authority;
- e. Regulatory policy (*beleidsregel*), meaning the recipient of delegation provide instructions (instructions) about the use of such authority.

Based on the aforementioned understanding, that the authority to supervise notary is attributively present to the Minister himself, created, created and ordered in the law as mentioned in Article 67 paragraph (1) Notary Law. The position of the Minister as the state administration body which carries out the governmental affairs under the prevailing laws and regulations brings consequences to the notary supervisory board and notary honorary assembly is also positioned as the agency or state administration office, as it receives a delegation from a body or a position domiciled as an agency or state administration.

Thus, notary supervisory board and notary honorary assembly as body or official state administration that carries out government affairs based on applicable legislation, namely to supervise Notary in accordance with Notary Law. In conducting supervision, inspection and guidance of notary supervisory board and notary honorary assembly based on the authority that has been determined notary law as a reference for decision making, this needs to be understood because notary supervisory board and notary honorary assembly members are not all from notary, so the action or decision from notary supervisory board / notary honorary assembly must reflects the actions of an notary supervisory board and notary honorary assembly as a body, not the actions of notary supervisory board and notary honorary assembly members who are regarded as acts of notary supervisory board and notary honorary assembly. The position of the Minister as an executive (government) that exercises the authority of the government in the qualification as the Agency or the State Administration Office:

1. Pursuant to Article 67 paragraph (2) Notary Law, the Minister shall delegate the authority of such supervision to a body with the name of the Notary Supervisory Board. Supervisory Board according to Article 1 paragraph (1) of Regulation of the Minister of Justice and Human Rights of the Republic of Indonesia No. M.02.PR.08.10 of 2004, is a body having the authority and obligation to conduct supervision and guidance on notary.

2. Pursuant to Article 66 A Notary Law Minister delegates the authority of such coaching to a body with the name of the Notary Honorary Assembly. The Assembly has the authority to exercise notary's supervision and obligation to give approval or rejection for the interest of investigation and judicial process, for taking photocopies of deed and calling notary to attend in the examination relating to deed or notary protocol which is in the notary's depository (Adjie, 2007).

Based on the foregoing, the authority to conduct supervision, inspection and guidance of Notary is attributively attributed to the Minister himself, created, created and ordered in Notary Law. The position of the Minister as an executive (government) that exercises the authority of the government in qualification as the Agency or the State Administration Office. The Minister shall delegate the authority of such coaching to a body by the name of Notary Supervisory Board and Notary Honorary Assembly. Thus, the Minister as the authority and Notary Supervisory Board-Notary Honorary Assembly as the recipient of delegation. Notary Supervisory Board and Notary Honorary Assembly As the authority have the authority to conduct supervision, notary guidance inspection completely, without need to restore authority to the recipient of delegation. So that notary supervisory board and notary honorary assembly can be qualified as Agency or State Administration Officer.

4. DECISION OF STATE ADMINISTRATION

In Article 1 Sub-Article 3 of Law No. 5 Of 1986 regarding the State Administrative Court is mentioned that the Administrative Decision of the State is a written stipulation issued by the State Administration Officer or Administrative Officer which contains the act of State Administrative law which, by virtue of a concrete, individual, and final legal regulation, which has a legal effect on a person or entity civil law.

Decisions (Beschkking) can be given limitations, among others, that it is a legal act carried out by the means of government, the statements of the will of the apparatus of immorality in the exercise of privilege, with the intention of making changes in the field of relationships of the law. Beschkking is a one-sided act of public law carried out by means of government on the basis of a special power. Bescjkking as a unilateral law in the field of government conducted by the government tools based on the authority that exist on the tool or organ. Based on these three Beschkking limits, that Beschkking is a public law act unilaterally done by the government and not the result of the agreement of both parties that have the nature of public law is derived from / under special authority or power with the intention of a change in the field of legal relations (Utrecht, 1957; Prins, 1975).

Beschkking has the following characteristics. First, Beschkking is always of a public legal nature. As with any other administrative decision, this beschkking is also always issued under the authority granted by a rule of law or state administration law, so it is always public law. Second, Beschkking is always unilateral. Beschkking is like any other administrative decision is always always said to be unilateral. Although it is not uncommon for a Beschkking to occur due to a request from the party subject to Beschkking (*inspraak*) or on the basis of the achievement of an agreement or cooperation with the affected parties in the Beschkking concerned (*zusimmung, mittwirkung*). Third, Beschkking is individual, concrete and final. Individual means about the person or persons or things or circumstances that are clearly individualized. Concrete means not abstract. Final means it is definitive in nature and does not require a decision or action of others either whether it is from officials who do or other agencies.

A decision is definitive, if the decision is capable of causing the desired legal consequences. For in reality a definitive decision is actually one of the most important set of decisions and the nature of which is expected to have the desired legal effect (circuit theory). In Article 1 Sub-Article 3 of Law No. 5 Of 1986 concerning State Administration Court of Written Decision has element in the form of determination shall be in writing. The term of Written Confirmation refers primarily to the content and not to the decision form issued by the Board or the State Administration Officer. The decision is required to be written, but the required written is not a formal form such as a letter of appointment and so on. Written requirements are required for ease of evidence. Therefore, a memorandum may meet the written requirement and shall constitute a Decision of the Board or Administrative Officer of the State by virtue of this law when it is clear which State Agency or Administrative Officer issued it; the purpose as well as on what content of the article; to whom the writing is addressed and what is set therein. Second, it is issued by the State Administration or Office of Administration. Agency or State Administration Officer is an Agency or Officials at the central and regional level conducting an executive activity. Third, it contains State Administration law. The act of State Administrative law is the Legal Acts of the Board or the State Administration Officer stemming from a provision of State Administration law which may cause rights or obligations to others. Fourth, it is based on the prevailing laws and regulations, that the act of law done by the Agency or the State Administration Officer must be sourced or based on a provision of laws and regulations. Fifth, it is concrete, individual and final. Concrete, meaning that the objects decided in the Decision of State Administration are

not abstract, but tangible, certain or can be determined, eg decisions about A's house, administration permit for the B, dismissal of A as civil servant. It is individual meaning that the State Administrative Decision is not intended for public purposes, but certain address and destination. If the destination is more than one, each name of the person affected by the decision is mentioned. For example, a decision on the making or widening of the road with an attachment that mentions the names of the persons affected by the decision. Lastly, it includes legal consequences for a person or a civil legal entity. Final, meaning is definitive and therefore may result in legal consequences. Decisions that still require the approval of the superior or other agencies are not final and therefore cannot result in a right or obligation to the party concerned. For example, the decision to appoint a civil servant requires the approval of the State Personnel Administration Board.

That by fulfilling all the elements mentioned above, the decree of notary supervisory board and notary honorary assembly has fulfilled all the elements as the decision of the agency or the State Administration Officer.

5. DECISION OF NOTARY HONORARY ASSEMBLY AS ADMINISTRATION DISPUTE OBJECT

Notary Supervisory Board and Notary Honorary Assembly in the position of the Board or State Administration's Office have the authority to make or issue a Decree without showing its formalities relating to the results of supervision, examination or imposition of sanctions or granting of licenses addressed to the notary concerned. By complying with the provisions of Article 1 Sub-Article 3 of Law No. 5 Of 1986 regarding State Administrative Court. In such, a position the Decree of Notary Supervisory Board and Notary Honorary Assembly can be made object of lawsuit by Notary to the State Administrative Court as a state administration dispute. In Article 1 paragraph (4) of Law No. 5 Of 1986 states that what is meant by the State Administrative Dispute is a dispute arising in the field of State Administration between a civilian person or legal entity or a State Administrative Officer, either at the central or regional level, as a result of the issuance of a State Administrative Decision, including a civil service dispute under applicable laws and regulations. If the Notary feels that the decision of notary supervisory board and notary honorary assembly is inaccurate or incriminates the notary in question or not done transparently and in an examination. Applications to the Administrative Court remain open after all administrative efforts, provided by administrative or administrative appeals, have been imposed, although in the relevant law it has determined that the decisions of the body or state administration have been declared final or otherwise unavailable. because basically that the use of administrative efforts in the state administrative dispute stems from a disgruntled attitude towards the state administrative act. Against the decision of notary supervisory board and notary honorary assembly can be done if the notary concerned feels disadvantaged, on the decision there is no administrative objection or administrative objection, but the notary can directly sue Notary Supervisory Board and Notary Honorary Assembly to the State Administrative Court.

Specifically in this connection that Notary Supervisory Board and Notary Honorary Assembly have different authorities, the emphasis Notary Honorary Assembly as State Administrative Officer and its Decision as Decision of Administrative Officer is at Notary Honorary Assembly, because Notary Honorary Assembly has the authority to check Notary in certain matters upon the Investigation, Prosecutor and Judge's request, while Notary Supervisory Board has no authority like Notary Honorary Assembly. So, if Notary Honorary Assembly decides to make a decision to pass a notary to be examined by the investigator, prosecutor or in court, as the implementation of Article 66A Notary Law, there is no possibility to appeal for examination to more such as to the Central Notary Publicity Council

of Notary Supervisory Board because such a mechanism, specifically for the implementation of Article 66A notary Law is not specified or there is no objection or appeal legal action. However, if the notary is passed by Notary Honorary Assembly, then the notary concerned may file a legal action to the State Administrative Court with the object of the lawsuit namely Notary Honorary Assembly Letter passing the notary. This will become a state administrative dispute. This can be done because the Assembly is located as a body or an Administrative Office. State Administration has issued a decision as a Decision of State Administration.

The final result of the examination conducted by notary honorary assembly in the form of a decree (which is a written stipulation). If it is examined, the Decision Letter is concrete, individual, final and legal. Concrete means that the object decided is not an abstract thing, but in this case the object is a certain deed is examined by the Assembly made by notary in question. Individual means the decision is not addressed to the public or to everyone, but to the name of the Notary in question. Final means it is definitive, which does not require approval from other parties or institutions superior, so that this can cause a legal effect for the Notary concerned. Such provisions apply only to the Assembly Decree as the application of Article 66A of the Notary Law.

Thus, the Assembly's action that passes the Notary to be examined by another party as the implementation of Article 66A Notary Law, if not satisfactory to the notary concerned to the reasons known by Notary itself, for example the Assembly cannot explain such matters as what is the relevance between the complainant and the deed made by notary?, is there a legal relationship between the complainant and the notary?, not done transparently when examined, and whether there are procedures that are not in accordance with the provisions applicable in inspection by the Assembly. The Notary concerned may sue the Assembly to the State Administrative Court. The Assembly Decree is the object of a lawsuit in the State Administrative Court. Therefore, if the notary filed a lawsuit to the Administrative Court, then as long as the lawsuit proceeds until it has a permanent legal force, the Notary does not need to fulfil the call. This can be done as a legal safeguard for notaries, and the consequences of such the Assembly position. Thus it is not impossible that if the Assembly is not able to position itself in performing its duties properly, in accordance with the applicable law rules, then one day the Assembly will flood the lawsuit to the Administrative Court of Notary which puts the Assembly as defendant (institutionally), and personally will affect the relationships - partnerships of other Notary, and this has become a burden for the Assembly members who come from Notary, while for other members of the Assembly become a gamble of science in a court of law. Internally in the Assembly, there will be a seizure of interest, whether the the Assembly members who come from Notaries will help fellow Notary? Or will it act to cross with other the Assembly members who are not from notary?. Therefore, notaries need not worry, if passed by the Assembly give approval so that Notary can be examined by other institution, because there is already exit as mentioned above. This needs to be done to safeguard the dignity of Notary public, as well as notaries to protect themselves.

6. CONCLUSION

This study reveals that the authority of supervision and guidance exists on the Minister of Law and Human Rights as an executive, which then the Minister delegates his authority to the Notary Honorary Assembly. So, the Assembly as delegates will be domiciled or categorized as the Agency or State Administration Officer. Whereas by categorizing the Notary Honorary Assembly as the State Administration Officer or Agency, the Decision of State Administration as a State Administration Decision which may be the object of dispute in the Administrative Court of the State.

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