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The Role of the State Administrative Court in Realizing Good Governance

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Abstract
Indonesia is a state of Law based on Pancasila and the 1945 Constitution aimed at realizing a prosperous, safe, peaceful and peaceful life for the State and nation and ensuring the equal position of citizens in Law, providing the maintenance of harmonious, balanced, and cooperative relations between State bodies or officials and citizens, in an effort by the Government to organize people's lives to achieve the State's goal of protecting the entire Indonesian nation. All to promote the general welfare, educate the nation's life and all Indonesian bloodshed, promote the general welfare, educate the nation's energy, and participate in implementing world order based on independence, lasting peace, and social justice. The administration of Government should create a condition that leads to the goal that citizens can feel and enjoy the atmosphere and climate of order and legal certainty that is just. In its implementation, there are often conflicts of interest, disputes, and disputes between the State Administration Agency or Officer and citizens that harm or hinder the performance of the Government. The argument is resolved through the State Administrative Court, which must be able to uphold justice, truth, order, and legal certainty so as to provide protection to the community, especially in the relationship between the State Administrative Agency or Officer and the community because the position of the Government is stronger than the people, legal protection of the people must be carried out by a free and independent judicial process. The State Administrative Court resolves the dispute by Law Number 9 of 2004. The State Administrative Court is one of the independent free state judiciary bodies without the influence of other powers, adhering to Pancasila and the 1945 Constitution of the Republic of Indonesia and applicable laws and regulations to juridically control government actions that violate administrative provisions.

Keywords: The Role, State Administrative Court, Realizing, Good Governance.

Preliminary

Prof. Prajudi Admosudirdjo once said, that: "For Indonesia, which is now developing its society rapidly, the role of the Government is very prominent, both as a planner, guide, and implementer. Therefore, it is not surprising that the State Administrative Law rules are increasing daily. It may be difficult in today's atmosphere of life to find an area of Indonesian private life directly or indirectly exposed to a regulation or administrative policy". Unfortunately, the increase in the quantity of Indonesian Administrative Law has not been accompanied by a system update in the Indonesian Administrative Law because it is still embraced by the old theories of Van Vollenhoven, Prins, Logemann, and other more modern Dutch legal scholars, such as Van Praag, Stellinga, Van Poelje, and Crence le Roy.

May the time now come to look for which principles of State Administrative Law are currently in force in Indonesia, after we have adhered to Pancasila and the 1945 Constitution as the *grundnorm*; and after we have gone through the political and social history of the last 30 years, namely through the parliamentary system of Government in the fifties, the design of guided democracy that led to the totalitarian system of Government in the sixties, the New Order government system in 1965 led to the entire Pancasila government system.

In addition to the increasing number of regulations of the State Administrative Law in our country, the pattern of the rules of the State Administrative Law itself has begun to show new developments due to the

implementation the Five-Year Development Plan, which increasingly requires international cooperation. Therefore we see an increasing number of Joint Decrees issued by several ministers because the material governed by the decree requires close collaboration between several departments. For example, constructing low-cost houses is only possible with cooperation and division of tasks between the Agrarian Directorate of the Ministry of Home Affairs, the Regional Government, PUTL, and the Ministry of Justice. Similarly, the matter of donations requires the intervention of the minister and the Ministry of Finance, the minister and the Ministry of Education and Culture, and the Department of social affairs.

In the future, we may see more such joint decrees. Therefore, it is necessary to consider the joint decree's legal basis and force. And in the order of legislation, which rule of Law is the position of the Joint Decree? Is it the same position as the Ministerial Decree or higher? What is his work on the Presidential Decree in other ways?

The birth of Law Number 5 of 1986 concerning the State Administrative Court can be essential for the Indonesian nation, considering that this Law provides a basis for the judiciary to assess the actions of the executive body and contains legal protection for members of the public. The State Administrative Court was created to resolve disputes between the Government and its citizens, in this case, disputes arising as a result of government actions that violate the rights of the people. Thus, it can be said that the State Administrative Court is held to protect the people; in other words, the purpose of the State Administrative Court is not solely to provide protection for individual rights but to protect the rights of the community in general and also as a place for the district to control or supervise policies issued by the Government.

The Guidelines of the State Mandate that efforts to realize the aspired order of life are carried out through gradual, continuous, and sustainable national development. In an attempt to achieve this goal, in accordance with the system adopted in the 1945 Constitution and GBHN, the Government, through its apparatus in the field of State Administration, is required to play an active, positive role in people's lives.

With the authority for State administration to act freely in carrying out its duties, it does not rule out the possibility of State administration committing violations and loss of content that deviates from applicable rules so that it can cause harm to the community. The Government plays a vital role in the administration of the State even though it is recognized that the implementation of the State is not only able to rely on government performance, but at least the Government is a driver of government performance. For people's rights to be guaranteed, be it rights regarding individuals or the rights of the community in general, it is necessary to have control from the community itself. The discussion of social control has become a prominent symptom in which power itself is lacking or does not function in providing supervision to the state apparatus. This symptom of malfunctioning social control even gives rise to a state that redefines the loss of meaning itself.

To prevent the ruler from acting arbitrarily, the people still maintain sovereignty as the *supreme* power that can overcome the power possessed by the Government. However, the idea of people's freedom is not realized correctly when the Government or ruler tends to get out of the limits of its power, so many cases of abuse of power cannot be avoided. Such situations and circumstances cause a shift in the meaning of social control, where control is no longer interpreted and carried out as control by the community but as a control in society from the ruler or Government.

Research Methods

There are several legal research approaches; with this approach, the author will get information from various aspects of the issue that is being tried to find the answer. To answer the problems in this study, the approaches used include (1) the *Statute* approach, which is an approach carried out by examining laws and regulations related to State Administration issues; (2) the Conceptual approach, which is a broad approach from the point of view of views and doctrines that develop in legal science, especially those related to the problems discussed; and (3) *Historical approach*. The type of study in this study is normative-empirical. The normative is to review library materials, laws and regulations, and other library materials, while the empirical is to collect data in the field related to the issues discussed. The types and sources of legal materials used are primary legal materials and secondary legal materials, and tertiary legal materials. Data collection techniques in this study are literature studies, namely by searching, collecting, and reviewing laws and regulations, books, research results, scientific journals, scientific articles, and seminar papers, while field studies conduct interviews with

informants and responses related to research problems. Before analyzing legal materials, first processing legal materials is carried out, namely processing carried out deductively, concluding a general problem against the concrete problems faced, and looking at legal interpretation methods relevant to existing problems. Furthermore, the research objectives and problems discussed further process legal materials and existing data.

Discussion

A. Competence of the State Administrative Court

First the meaning of authority; according to Ateng Syafrudin, there is a difference between the definition of authority and authority. "Authority" is what is called formal power, which is a power granted by Law, while authority is only about an "*onderdeel*" (a certain part of the authority. In authority, there is the authority (*recherche voedheden*). A judicial body's competence (authority) to try a case can be distinguished by relative and absolute authority. Competence is the authority of a judicial body to examine and decide a claim based on the territory in its jurisdiction and the object of dispute. From the limitations mentioned above, the competence of this judicial body can be divided into two, namely relative competence and absolute competence.

1. Relative Competence

The relative competence of the state administrative court is "the authority of the court (state administrative court) to try cases by its jurisdiction. This means that the state administrative court / new high administrative court is authorized to try a lawsuit filed against it if the defendant and/or the plaintiff is domiciled in the jurisdiction of the relevant State administrative court / State administrative court. Article 6 states that: (1) The State Administrative Court is located in our capital, and its jurisdiction covers the territory of the city district. (2) The High Administrative Court shall be domiciled in the capital city of the Province, and its jurisdiction shall include the territory of the Province. Currently, PTUN is still limited to 26 courts, and there are 4 High Administrative Courts, namely the High Court of Tzta Usaha Negara Medan, Jakarta, Surabaya, and Makassar throughout Indonesia so that PTUN jurisdiction covers several regencies and cities.

Speaking about the relative competence of the State administrative court, article 54 of Law No. 5 of 1989 and No. 9 of 2004 stipulates that:

a. Claims for State Administration disputes are submitted to the competent courts whose jurisdiction includes the place of residence of the defendant
b. If the defendant is more than one State administrative agency or official and is not domiciled in one judicial jurisdiction whose area includes the seat of one of the State administrative bodies or officials
c. Suppose the defendant's residence is not within the court's jurisdiction where the defendant's justice is located. In that case, the lawsuit cannot be submitted to the court whose jurisdiction includes the plaintiff's residence to be forwarded to the relevant court.
d. In some instances, by the nature of the sanctioned State Administration dispute stipulated in government regulations, a lawsuit can be filed in the relevant court, whose jurisdiction includes the place of residence of the plaintiff.
e. If the plaintiff and defendant are domiciled or located abroad, the lawsuit is filed with the court in Jakarta.
f. If the defendant is domiciled in the country, the lawsuit is filed with the court where the defendant is located.

From these provisions, it can be seen that the judicial body authorized to prosecute and decide the words State Business is emphasized on the Negra Administrative Court / Ngara High Administrative Court, whose jurisdiction includes the defendant's place of residence, except for the following.

a. By the nature of the relevant State Administration dispute, which is regulated by government regulations
b. The defendant resides abroad

2. Absolute Competence

The absolute competence or authority of the court is the authority of the judicial body in examining specific types of cases and absolutely cannot be read by other judicial bodies by the provisions of the applicable laws and regulations. The absolute authority of the State Administrative Court is to examine, decide and resolve

cases over State Administrative disputes, in accordance with the provisions of article 4 of the State Administrative Court Law, namely: The State Administrative Court is one of the executors of judicial power for justice-seeking people, State Administrative disputes have a narrower and more special scope compared to disputes in the public law field due to Administrative disputes The State can only arise when there is a decision of the State Administration. Law Number 5 of 1986 jo Law Number 9 of 2004, the absolute authority of the State Administrative Court is: The Court is tasked with examining, deciding and resolving State Administrative disputes which in article 1 point 4 of the Law on State Administrative Court says: State Administrative disputes are disputes arising in the field of State Administration between persons or civil law entities and legal entities or State Administrative Officials either in central and regional as a result of the issuance of State Administration decisions including personnel disputes based on applicable laws and regulations. Thus, the absolute authority of the State Administrative Court applies to the settlement of State Administrative disputes.

Furthermore, regarding the subject matter of this dispute, among experts in the bag of State Administrative Law and State Administrative Law, there are differences of opinion which, in essence, can be classified into 2 (two) streams, namely narrow-sighted and broad-minded streams. The reasons put forward by the claimant of that view are as follows:

a. What often happens is that government actions violate unwritten laws.
b. If only written or formal decisions from the Government are used criteria, then it does not guarantee legal protection to the people for unlawful acts of the ruler.

About the matter of dispute that is the authority of the State administrative court, article 1 paragraph (3) of Law No. 5 of 1986 jo Law No. 9 of 2004 specifies that A State executive decision is a written determination issued by a State administrative agency or official containing State administrative law actions based on applicable laws and regulations, which is concrete, individual and final, which gives rise to legal consequences for a person or civil law entity.

Based on the provisions of the article, it is evident that the absolute competence of the State administrative court has the following characteristics:

a. The disputants (parties) are persons or civil law entities with State administrative bodies or officials.
b. The object of the dispute is a State administrative decision, namely a written determination issued by a State administrative agency or official.
c. The decision that was made by the object of the dispute contained an act of State administrative law.
d. The decision that is the object of the dispute is concrete, individual, and final, which has legal consequences for a person or civil entity.

To find a settlement of cases of citizens or civil law entities, justice seekers must submit their problems to the State Administrative Court as a place to accommodate and resolve issues related to irregularities committed by state administrative bodies/officials about their position, duties, and functions as state apparatus. This is by article 47 of Law No. 9 of 2004 concerning the power of the state administrative court, which reads as follows:

"The court is competent and has the authority to examine, decide, and resolve administrative disputes."

B. **The Role of State Administrative Court in Governance Perspective**

Legal subjects as bearers of rights and obligations (de *drager van de rechten en plichten),* be it human (*naturlijke person),* ukum body *(rechtspersoon), or position (*ambt), *can carry out legal actions based on ability* (bekwaam) *or* authority *(bevoegdheid)* which he has. In the community circle, many legal relationships arise due to legal actions from the subjects of the Law. This legal action begins the birth of legal relations *(rechtsbetrekking),* namely interactions between legal issues that have legal relevance or have legal consequences.

Law. According to Sudikno Mertokusumo, the Law functions as the protection of human interests. For human interests to be protected, regulations must be implemented. The execution of the Law can take place typically and peacefully, but it can also occur due to violations of the Law. Violation of Law occurs when a particular

legal subject does not perform the obligations that should be carried out, or because it violates the rights of the legal subject whose rights are violated, his requests must be subject to legal protection.

The Law that regulates the legal relationship between the Government and citizens is the State Administration Law or civil Law, depending on the nature and position of the Government in carrying out these legal actions. It has been mentioned that the Government has two legal places, namely as a representative of a public legal entity *(publiek rechtspersoon, public legal entity)* and an official *(ambtsdrager)* of a government position. When the Government takes legal action as a legal entity representative, the act is regulated and subject to the provisions of Civil Law. In contrast, when the Government acts as an official, it is held and subject to the State Administration Law. Both civil and public law actions from the Government can be an opportunity for the emergence of acts contrary to the Law, which violate the rights of citizens. Therefore, the Law must provide legal protection for citizens. F.H. van Der Burg and company say that, '*De mogelijkheden van rechtsbescherming zijn van striped wanneer de -d erheid iets heeft gedaan of nagelaten of voornemens is bepaalde handelingen:e verrichten en bepaalde personen ofgroepen zich daardoorgegriefd ach't* (the possibility of providing legal protection is important when the government intends to do or not to do a certain act against something, which by virtue of his act or omission infringes the {rights} of certain persons or: groups).

Legal protection for the people is a universal concept in that it is embraced and applied by every country that puts forward itself as a state of Law. Still, as mentioned by Paul E. Lotulung, each country has its ways and mechanisms of realizing legal protection and to what extent it is given. This paper will not be discussed the means and tools of legal protection.

The special position of Government, mainly because of its inherent special qualities, which ordinary people do not possess, has led to prolonged disagreements in the history of legal thought, namely about whether or not the State can be sued before a judge. In carrying out its duties, the Government requires freedom of action and has a privileged position compared to ordinary people. Therefore, the issue of suing the Government before a judge cannot be equated with suing ordinary people. Sue the familiar people. The point of suing the Government is considered one of the problematic parts of civil Law and State Administration Law.' Theoretically, Kranenburg explained chronologically the existence of seven concepts regarding the issue of whether the State can be sued before a civil judge, namely: *first*, the concept of the State as an institution of power is associated with the idea of Law as a decision of the will embodied by power, stating that there is no state responsibility; *Second,* the concept that distinguishes the State as ruler and State as fiscus. The State cannot be sued as a ruler, and vice versa. As Fiscus, it can be sued; *third,* a concept that presents the criteria for the nature of rights, namely whether public Law or civil Law protects a right; *fourth,* concepts that give the requirements of legal interest that are violated; *Fifth,* the idea that is based on unlawful acts *(onrechtmatigedaad)* as the basis for suing the State. This concept does not matter whether what is violated is the regulation of public Law or the rule of civil Law; *Sixth, the* idea separates function and function execution. Functions cannot be sued, but their execution that gives birth to losses can be sued; *Seventh*, the concept that presents a basic assumption that the State and its instruments are obliged in its actions, whatever aspects (public law and civil Law) pay attention to normal human behavior. Justice seekers can demand that the State and its instruments usually behave. Any behavior that alters normal behavior and gives rise to damages can be sued. Legal protection for the people against the Government's legal actions, in its capacity as representatives of the public legal body, is carried out through the general judiciary. The position of the Government or state administration, in this case, is no different from a person or civil law entity, which is parallel so that the Government can be a defendant or plaintiff. In this context, the principle of equal standing before the *law (equality before* the Law), which is one of the elements of the rule of Law, is implemented. In other words, civil Law gives the same protection to both the Government and to a person or civil law entity.

Government legal actions are those that, by their nature, cause legal consequences. The most essential characteristic of legal action taken by the Government is unilateral government decisions. It is said to be unilateral because whether or not a government legal action is carried out depends on the unilateral will of the Government, does not depend on the choice of other parties, and there is no need for conformity of will *(wilsovereenstemming)* with other parties.

In the context of legal protection, the existence of these general principles of good Governance has a vital role in connection with the presence *of trusted van de whatever* or step back of lawmakers, which gives authority to the state administration to make laws and regulations, and the provision of Ermessen free to the Government. On the one hand, granting legislative power to the Government for administrative purposes is quite helpful, especially for relaxation of the rigidity of clan predigital laws, but on the other hand, granting this authority can be an opportunity for violations of public life by the Government, based on laws and regulations. A.A.H. Struycken lamented the existence of this trusted (*between deze charged)* and considered it useless to supervise judges who were only authorized to examine the legal aspects *(rechtmatigheid)*. In contrast, the policy aspects that accompanied the laws and regulations escaped the judges' attention.

Based on the jurisprudence of the Supreme Court mentioned above, it is expressly stated that the acts of discretion of the ruler do not include judicial competence. According to Philipus M. Hadjo. The front of the ruler's policy does not have the competition of the court to judge it unless there is an element of 'willekekeur *and 'detournement de pouvoir*.' The ruler's policy cannot be challenged based on the principle of "beleidsvrijheid" in the ruler. *Beleidsvrijheid* rulers include; military, politicize, foreign relations, work in the public interest, circumstances that cannot be foreseen, or, in general, taking emergency measures. The test tool for this aspect of government policy is the general principles of good Governance. Thus, he would have immediately changed his opinion if only the present structure of life in which the general principles of Government had become an essential part of the administrative and judicial process. Because with the emergence of the general tenets of good Governance as a touchstone for government action, these principles are in addition to counterbalancing the granting of legislative authority. For the Government and especially government policy, the most essential thing is as an important instrument in order to provide legal protection for the people.

There are two kinds of legal protection for the people, namely preventive and repressive legal protection. In preventive legal guardian, the people are given the opportunity to menu: objections (inspraak) or opinions before a government decision gets a definitive form. It means protection. Preventive Law aims to prevent disputes from occurring, while repressive security is for resolving disputes. Preventive legal protection is very significant for government actions based on freedom of movement because, with a preventive legal guardian, the Government is encouraged to be careful in making decisions based on discretion.

Why should citizens get legal protection from government actions? There are several reasons, namely:

First: In many cases, citizens and civil law entities depend on government decisions, such as the need for permits required for trading, corporate, or mining businesses. Therefore, citizens and civil law entities need legal protection to obtain legal certainty and security guarantees, which determine business life factors.
Second: The relationship between Government and citizen State does not operate in an equal position between citizens and Government.
Third: Various disputes between citizens and the Government regarding decisions as instruments of Government are related to decisions as unilateral instruments of Government in intervening in the lives of citizens. Decision-making based on free authority will open opportunities to violate citizens' rights. However, the Government still needs to be given legal protection. As Sjachran Basah mentioned, legal protection of the administration of the State itself is carried out against its attitude of conduct properly and correctly according to Law.

In Indonesia, legal protection for the people due to government legal action is possible, depending on the legal instrument used by the Government when carrying out lawful activities. It has been mentioned that the legal tools commonly used are laws and regulations. Legal protection due to the issuance of rules and regulations is taken through the Supreme Court using the right to judicial review by Article 5 paragraph 2 Tap MPR/III/MPR/2000 concerning sources of Law and statutory order, which confirms that the Supreme Court has the authority to examine material laws and regulations under the Law.

Theoretically, the limitation of the right to judicial review only applies to this Law's regulations. It is a manifestation of one of the principles in the State of Law, namely separation or division of powers, which implies that between organs of State, might, one with another must respect each other and not intervene with each other. It's just that in its development, the theoretical reason is no longer tenable; this is proven by almost

most countries in the world, including Indonesia, having formed a Constitutional Court, which is given the authority to examine the work of the Legislature.

Conclusion

1. A judicial body's competence (authority) to try a case can be distinguished from relative competence and absolute competence. Relative competence relates to the power of the court to try a claim by its jurisdiction. While fundamental competence is the authority of the court to test a patient according to the object, material, or subject matter
2. The role of the State Administrative Court in the perspective of Government is to build good Governance and an understanding of the principles of good Governance. Thus, the administration of Government becomes good, polite, fair, and honorable free from KKN. The court's role is transparent, honest, and unbiased, so every court decision brings peace to the community.

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