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The nature of the expansion of the Authority of The State Administrative Court regarding Government Administration Law

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Abstract. This research is a normative juridical research. The nature of the expansion of the authority of the State Administrative Court as a result of the establishment of Law No. 30 of 2014 which expands the meaning of State Administrative Decrees and adds material for Government Administration Actions, causing an expansion of the authority of the State Administrative Court to receive, examine and adjudicate in resolving disputes over Government Actions which were previously not explicitly regulated in Law No. 51 of 2009.

Keywords. authority, administration law, state

Introduction

The existence of administrative courts in Indonesia is motivated by the existence of legal actions taken by the government in the form of decisions or decrees as government legal instruments that are made unilaterally and become the cause of legal violations for citizens, therefore legal protection is needed for citizens against government legal action. (Ridwan HR, 2009)

Philosophically, the birth of Law Number 30 of 2014 concerning Government Administration (Law No. 30 of 2014) which constructs administrative law as material law. Where based on the legal system enforced by the procedures or procedures regulated in Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts (Law No. 51 of 2009).

The discrepancy or disharmony between Law No. 51 of 2009 with Law No. 30 of 2014 appears in the formation of Law No. 30 of 2014 doesn't pay attention to the procedures and principles for the formation of laws and regulations as regulated in Article 5 of Law Number 12 of 2011 concerning the Establishment of Legislations, hereinafter referred to as the PPP Law, based on reasons that do not match the type, material content and the clarity of its formulation with Law No. 51 of 2009. The enactment of Law No. 30 of 2014 creates ambiguity in the enforcement of administrative law in the State Administrative Court. Ambiguity creates legal ambiguity within the authority of the State Administrative Court as a formal law which requires that Law No. 51 of 2009 accommodates the content and substance as well as the terms in Law No. 30 of 2014 as a material law of government administration. The enactment of Law

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No. 30 of 2014 expands the meaning of the State Administrative Decree and adds several substances of authority that have not been regulated in the State Administrative Court.

Answering these problems, the following questions are formulated: What is the nature of the establishment of the State Administrative Court and the Law on Government Administration?

Research Method

This research is a normative juridical research.(Yunianto & Michael, 2021)

Research Result

Expansion of the Meaning of State Administrative Decisions Related to Law No. 30 Year 2014

The essence of law is the essence of legislation. In Law No. 51 of 2009 is related to the existence of Law No. 30 of 2014 brought the impact of expanding and adding to the authority of the State Administrative Court. The expansion and addition of the nature of the formation of Law No. 30 of 2014, changing the meaning of the phrase State Administrative Decree in Article 1 point 9 of Law No. 51 of 2009 changed based on Article 87 of Law No. 30 of 2014, being (a) a written determination that also includes factual actions; (b) Decisions of State Administration Bodies and/or Officials in the executive, legislative, judicial, and other state administrators; (c) based on laws and regulations and general principles of good governance; (d) is final in a broader sense; (e) Decisions that have the potential to have legal consequences; and/or Decisions that apply to Community Members.

From the provisions of Article 87 of Law No. 30 of 2014, the meaning of State Administrative Decisions: First, it isn't limited to written decisions but includes factual actions. This means that Law No. 30 of 2014 equates the term decision with factual action and in accordance with Article 1 point 8 of Law No. 30 of 2014, Government Administration Actions called Actions are actions of Government Officials or other state administrators who perform and/or don't take concrete (factual) actions in the administration of government, so that Government Administrative Actions are interpreted as State administrative legal actions as Government Actions or legal acts of Entities or State Administrative Officers are based on the provisions of state administrative law that give rise to rights or obligations to other people.

Second, the decision of the State Administration Agency or Official isn't only within the scope of the government (executive), (Hadi & Michael, 2017) but is expanded within the executive, legislative, judicial and other state administration circles, so that the scope of regulating government actions isn't limited to the executive field, but acts government in a broad sense, namely executive, legislative, and judicial. The meaning of this provision is clearly contained in Article 4 of Law No. 30 of 2014, states that the scope of government administration arrangements includes all activities of Government Agencies or Officials who carry out government functions within the scope of executive, judicial, legislative, and other state institutions that carry out government functions.

Third, the meaning of the State Administrative Decree in Law No. 51 of 2009, based on Article 87 letter c of Law No. 30 of 2014 must be based on statutory provisions and general principles of good governance, having the understanding that a State Administrative Decree is an act of government administration is an act or action of a government official or state administrator must be based on the provisions of laws and regulations and general principles of government good, based on Article 10 of Law No. 30 of 2014 and Article 53 paragraph (2) letter b of Law No. 9 of 2004. Fourth, previous decisions must be concrete, individual and final, cumulatively changing based on Article 87 letter d, must be interpreted as "final in a broader

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sense", this is in accordance with the provisions of Article 1 point 8 of Law No. 30 of 2014 is interpreted as an administrative act or action, both concrete and non-concrete, as a factual action, as long as its not limited to an action by the government or other state administrators.

Fifth, State Administrative Decisions no longer have to cause legal consequences for a person or civil legal entity, but if the State Administrative Decision has the potential to cause legal consequences, and/or applies to citizens, then the State Administrative Decision has the potential to harm the community.(Poteryaiko, 2021) This can be used as a basis for individuals or community members to examine the decisions or actions of state administrators in the State Administrative Court. Changes in the meaning of the State Administrative Decree related to Law no.30 of 2014 is an expansion of the meaning of the State Administrative Decree in Law No. 51 of 2009.

Addition of Material Authority of the State Administrative Court Related to Law No. 30 Year 2014

Administrative justice in Indonesia is motivated by legal action by the government in the form of decisions or decisions made unilaterally and is the cause of law violations for citizens, therefore legal protection is needed for citizens against government legal actions. The provisions of Article 1 number 18 of Law No. 30 of 2014 states that the Court is the State Administrative Court. Administrative decisions or government actions that apply and/or have the potential to cause legal consequences and/or cause losses and/or cause dissatisfaction of the community can be carried out by administrative efforts.

Administrative Effort

The definition of administrative effort in Article 1 point 16 of Law no. 30 of 2014 is a dispute resolution process carried out within the Government Administration as a result of the issuance of Decisions and/or Actions that are detrimental to the community. Administrative efforts are regulated in Articles 75 to 78 of Law No. 30 of 2014, through the stages of administrative objections and appeals.

This preventive legal protection system encourages the government to be more careful in making or not making a decision.(Noor et al., 2021) On the other hand, repressive legal protection aims to resolve disputes, if you are not satisfied with the administrative efforts, you can file a lawsuit to the Court. This last legal protection was used after a government decision was issued and the decision turned out to result in a dispute that required settlement.

Provisions for administrative efforts have not been explicitly regulated in Law No. 51 of 2009 although Article 48 paragraph (2) of Law No. 5 of 1986 states that the Court will only have the authority to examine, decide, and resolve State Administrative disputes as referred to in paragraph (1), if all administrative efforts have been used. The new State Administrative Court has the authority to adjudicate when the community members have taken administrative efforts.

Application for Decisions and/or Actions Considered Legally Granted Gives rise to Fictitious Positive Decisions

In line with the opinion of S.F. Marbun, stated that authority implies the ability to take public legal action, or juridically its the ability to act given by the applicable law to carry out characters which include: (a) *express implied*; (b) clear intent and purpose; (c) bound for a certain time; (d) subject to written and unwritten legal restrictions; and (e) the content of authority can be general (abstract) and concrete.(Marbun & Moh. Mahfud, 1987)

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In Article 3 of Law No. 5 of 1986 regulates the application to obtain a decision, if the State Administration Agency or Official doesn't issue a decision which is its obligation, within the requested period as stipulated in the legislation, doesn't issue a decision, its considered to have refused to issue a State Administrative Decree negative fictitious. Changes were made through Article 53 of Law No. 30 of 2014 and amended again by Article 175, number 6 of Law Number 11 of 2020 on Job Creation (Law No. 11 of 2020). Article 53 of Law No. 30 of 2014 as amended by Law No. 11 of 2020 states that if the laws and regulations don't specify a time limit for the obligation to determine and/or carry out the requested Decision and/or Action, then the time limit of 5 (five) working days after the application is received by the Agency or Government Official, doesn't determine and/or make a Decision and/or Action, then the application is considered legally granted, giving rise to the term positive fictitious decision.

The entry into force of Article 53 of Law No. 30 of 2014 in Law No. 11 of 2020 doesn't abolish Article 3 of Law No. 51 of 2009, but the addition of the authority of the State Administrative Court, creates disharmony and horizontal inconsistency in terms of substance in a regulation of the same nature, regulates requests for decisions and/or actions by government agencies and/or officials, but differs in the procedure for obtaining results. Decisions and/or Actions proposed in Law No. 51 of 2009 as a formal law with Law No. 30 of 2014 as material law. Based on the legal principle of *lex posterior derogate legi priori* with the understanding of the legal principle, the newer regulations will override the previous regulations.

Positive fictitious decisions or negative fictitious decisions, the term "fictitious" means that in fact Government Bodies and/or Officials don't issue Decisions and/or Actions, but are deemed to have carried out or issued Decisions and/or Actions on what is requested, while the term "positive" means the decision being applied for is considered a decision that is legally granted for what is being applied for. Against negative fictitious, the term "negative" means that not issuing a decision is considered to have issued a rejection decision.(Coglianese, 2021)

Changes to the provisions of Article 53 of Law No. 30 of 2014 by Law No. 11 of 2020, abolishing Article 53 paragraph (4) of Law No. 30 of 2014 concerning Petitioners may submit an application to the Court to obtain a decision on the acceptance of the application and delete Article 53 paragraph (5) concerning the obligation of the Court to decide on the application no later than 21 (twenty one) working days. The decision to accept the application is legally granted in order to obtain Decisions and/or Actions can no longer be submitted directly to the State Administrative Court, but must return to the administrative effort procedures regulated in the provisions of Article 75 to Article 77 of Law no. 30 of 2014.

Application to assess the presence or absence of an element of abuse of authority

Law No. 30 of 2014 provides additional authority to the State Administrative Court, to assess whether or not there is an element of abuse of authority committed by a Government Agency or Official based on the provisions of Article 21 of Law No. 30 of 2014, giving authority to the State Administrative Court, namely: The Court has the authority to receive, examine, and decide whether or not there is an element of abuse of authority committed by Government Officials and Government Agencies and/or Officials may submit an application to the Court to assess whether or not there is an abuse of authority there is no element of abuse of Authority in Decisions and/or Actions. The court is obliged to decide on the application as referred to in no later than 21 (twenty one) working days after the application is submitted.(Androniceanu, 2021)

Based on these provisions, Article 20 of Law **N**o. 30 of 2014 as a form of advice on preventive legal protection, providing opportunities for Government Agencies and/or Officials as legal subjects, before submitting an application to the Court to first request the results of the supervision of the Government Internal Supervisory Apparatus. The decision based on Article

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20 paragraph (1) of Law No. 30 of 2014, can be in the form of a decision: (a) there is no error; (b) there was an administrative error; or (c) there is an administrative error that causes state financial losses.

Michael Allen and Brian Thoompshon stated that the authority to conduct assessments and examinations is the jurisdiction of the judiciary *(superior court)*.(Thoompshon, 2002) To ensure that the law is strictly adhered to in practice, a *judicial* institution is needed that maintains the function of guarding and supervising, and therefore the State Administrative Court is given the authority to hear, examine, and decide cases related to government action, especially in the administrative sphere.

Submission of an application to the Court, as the last form of advice for repressive legal protection for Government Agencies and/or Officials, to test the assessment of whether or not there is an element of abuse of authority over Decisions and/or Actions.(Zoran R. Jovanovic & Andonović, 2021) Have Government Agencies and/or Officials violated the provisions of Article 17 of Law No. 30 of 2014 concerning the prohibition against Government Agencies and/or Officials abusing their Authority, namely: (a) prohibition of exceeding the Authority; (b) prohibition of confounding the Authority; and/or (c) prohibition of acting arbitrarily.(Hufron & Hajjatulloh, 2020)

Provisions on whether or not a decision and/or action of a government agency and/or government official are void or legal are regulated in Article 19 of Law No. 30 of 2014 is an expansion and addition of the competence of the State Administrative Court. The explanation as referred to in Article 19 paragraph (1) of Law No. 30 of 2014 declared "illegitimate" is a Decision and/or Action that is determined and/or carried out by an unauthorized Government Agency and/or Official so that its deemed to have never existed or is returned to its original state before the Decision and/or Action is enacted and/or carried out and all legal consequences that arise are deemed to have never existed. In Article 19 paragraph (2) of Law No. 30 of 2014 referred to as "cancellable" is the cancellation of Decisions and/or Actions through testing by the Official's Superior or judicial body.

From the description above, it can be concluded that the application that must be fulfilled by the Agency or Government Official submits an application to the Court to assess whether or not there is an element of abuse of Authority in a Decision and/or Action as referred to in Article 21 of Law No. 30 of 2014. The procedure for submitting an application must include: (a) a Government Agency or Official as the applicant; (b) Alleged elements of abuse of authority; (c) The results of supervision in accordance with Article 20 paragraph (2) of Law No. 30 of 2014 which has been carried out by the Government Internal Supervisory Apparatus; (d) Whether or not there is an element of abuse of authority in the provisions of Article 17 and Article 18 of Law No. 30 of 2014.

Authority to Judge Government Actions and Unlawful Acts by Government Agencies and/or Officials

The function of legislation in the concept (Patlachuk, 2019)of the rule of law is one of the important elements that must be fulfilled, the element of the rule of law is that every government/government action must be based on applicable laws and regulations. The state is not run by the will of the ruler alone, but is ordered based on laws that have been made and provided in advance. It can also be understood that the nature of law is also the nature of legislation. (Vitrianingsih & Budiarsih, 2019)

The form of repressive legal protection in terms of abuse of authority carried out by Government Agencies and/or Officials related to prohibited decisions and/or actions is regulated in the provisions of Article 17, Article 18 and Article 19 of Law No. 30 of 2014 is an

act of violating the provisions of laws and regulations and general principles of good governance. Where if its violated, it can be interpreted as an act of violating the law *(onrechtmatige overheidsdaad)* (Bimasakti, 2018)which is an expansion and addition of the competence of the State Administrative Court Article 53 of Law No. 9 of 2004 provides an opportunity for individuals or civil legal entities who feel that their interests have been harmed by a State Administrative Decision including discretionary actions, can be filed in court, based on legal reasons in Article 53 paragraph (2) which states: (a) Administrative decisions. The country that can be sued must be in conflict with the applicable laws and regulations; and (b) the State Administrative Decision being sued is contrary to the general principles of good governance. This is interpreted if it violates the provisions of Article 19 of Law No. 30 of 2014, acts of abuse of authority regulated in Article 17 and Article 18 of Law No. 30 of 2014 and violates the obligation to carry out the general principles of good governance in Article 7 of Law No. 30 of 2014 in the administration of Government Administration, can be declared invalid or canceled, if it has been tested and there is a Court Decision that has permanent legal force.

The authority to adjudicate is based on the provisions of Article 19 and Article 1 number 18 of Law No. 30 of 2014 and Article 53 of Law No. 51 of 2009 and Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2019 concerning Guidelines for Dispute Settlement of Government Actions and the Authority to Adjudicate Unlawful Acts by Government Agencies and/or Officials *(onrechtmatige Overheidsdaad)* (Meijer, 2017) and Regulation of the Supreme Court of the Republic of Indonesia Number 6 of 2018 concerning Guidelines for Administrative Disputes Governance After Undertaking Administrative Efforts.

Conclusion

The nature of the expansion of the authority of the State Administrative Court as a result of the establishment of Law No. 30 of 2014 which expands the meaning of State Administrative Decrees and adds material for Government Administration Actions, causing an expansion of the authority of the State Administrative Court to receive, examine and adjudicate in resolving disputes over Government Actions which were previously not explicitly regulated in Law No. 51 of 2009.

References

[1] Androniceanu, A. (2021). Transparency in public administration as a challenge for a good democratic governance. *Administratie Si Management Public*, *2021*(36). https://doi.org/10.24818/AMP/2021.36-09

[2] Bimasakti, M. A. (2018). Onrechtmatige Overheidsdaad oleh Pemerintah dari Sudut Pandang Undang-Undang Administrasi Pemerintahan. *Jurnal Hukum Peratun*, *1*(2).

[3] Coglianese, C. (2021). Administrative law in the automated state. *Daedalus*, *150*(3). https://doi.org/10.1162/DAED_a_01862

[4] Hadi, S., & Michael, T. (2017). *Principles of Defense (Rechtmatigheid) In Decision Standing of State Administration* □. *5*(2), 383–400. https://doi.org/10.15408/jch.v5i2.7096

[5] Hufron, H., & Hajjatulloh, H. (2020). Aktualisasi Negara Hukum Pancasila Dalam Memberantas Komunisme Di Indonesia. *Mimbar Keadilan*, *13*(1), 68. https://doi.org/10.30996/mk.v13i1.2949

[6] Marbun, S. F., & Moh. Mahfud, M. (1987). *Pokok-Pokok Hukum Administrasi Negara*. Liberty.

[7] Meijer, R. (2017). De relativiteit van wettelijke normen en de toepassing van de

vereisten van causaliteit, relativiteit en toerekening bij de onrechtmatige overheidsdaad. *Maandblad Voor Vermogensrecht*, *15*(1). https://doi.org/10.5553/mvv/157457672017015001002

[8] Noor, H. J., Afkar, K., & Glaser, H. (2021). Application of Sanctions Against State Administrative Officials in Failure to Implement Administrative Court Decisions. *BESTUUR*, *9*(1). https://doi.org/10.20961/bestuur.v9i1.49686

[9] Patlachuk, A. (2019). The concept, principles and functions of the legal technique of environmental legislation. *Legal Ukraine*, *11*, 36–48. https://doi.org/10.37749/2308-9636-2019-11(203)-5

[10] Poteryaiko, S. P. (2021). PUBLIC ADMINISTRATION DECISION-MAKING'S MECHANISMS IN STATE SECURITY. *"Scientific Notes of Taurida V.I. Vernadsky University", Series "Public Administration," 3*. https://doi.org/10.32838/tnu-2663-6468/2021.3/18

[11] Ridwan HR. (2009). Hukum Administrasi Negara (Law of State Administration). *FH UII Press*. https://doi.org/10.1089/apc.2015.0126

[12] Thoompshon, M. A. and B. (2002). *Case and Material on Constitutional and Administrative Law*. Oxford University Press.

[13] Vitrianingsih, Y., & Budiarsih, B. (2019). PELIMPAHAN WEWENANG DOKTER KEPADA PROFESI PERAWAT DALAM TINDAKAN MEDIS DARI PERSPEKTIF HUKUM. *Jurnal Hukum Magnum Opus*. https://doi.org/10.30996/jhmo.v2i2.2545

[14] Yunianto, B., & Michael, T. (2021). KEBERLAKUAN ASAS EQUALITY BEFORE THE LAW BAGI PEJABAT PELAKSANA KEBIJAKAN PENANGANAN COVID-19. *Mimbar Keadilan*. https://doi.org/10.30996/mk.v14i1.4334

[15] Zoran R. Jovanovic, & Andonović, S. (2021). AUTOMATED DECISION MAKING IN ADMINISTRATIVE PROCEDURE – MYTH OR REALITY? *Nauka Bezbednost Policija*, *25*(3). https://doi.org/10.5937/nabepo25-28953