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Ratio Legis of the Execution Regulation of Administrative Court Decisions in Article 116 of Law Number 51 Year 2009

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Abstract

The execution of the Administrative Court decision is regulated in Article 116 of Law Number 51 Year 2009. Ratio legis of Article 116 of Law Number 51 Year 2009 are (1) respect for Administrative Court decisions by requiring government officials to execute and be subjected coercive measures if they do not carry out their obligations, and (2) involving the President and the representative institutions to make the Administrative Court decisions effective. However, the ratio legis is not reflected in the formulation of norms, so that resulting an incomplete execution regulation. It has implications that Administrative Court decisions is not executed by government officials.

Keywords: *Execution; Decision; Administrative Court; Ratio Legis*

Introduction

Indonesia is a rule of law. Brian Z Tamanaha said that the rule of law is the rule of law, not man; a government of laws, not men.[1] Therefore, the government is obliged to act in accordance with the law *(rechtsmatigheid van het bestuur)*. The law serves as the basis for government action and as a protector for the people from the arbitrary actions of the government. Nevertheless, there are also government actions are contrary to law *(onrechtmatige)*, thus causing harm to the people. In order to provide legal protection, the people has a right to submit a review of government actions to the judicial institution *(judicial review)*.

Based on this, in accordance with the provisions of Article 24 paragraph (2) of the Constitution of the Republic of Indonesia Year 1945, an Administrative Court was established as a court under the Supreme Court. F.J. Stahl said that the existence of the Administrative Court *(administratief rechtspraak)* was one of the characteristics of the rule of law.[2] The existence of the Administrative Court is to provide

[1] Brian Z. Tamanaha, *The History and Element of Rule of Law*, (Singapore Journal of Legal Studies, 2012), p. 243.
[2] A. Mukti Fajar, *Tipe Negara Hukum*, (Malang: Bayumedia Publishing, 2005), p. 42.

guarantees of legal protection for the people. Therefore, based on Article 47 of Law Number 5 Year 1986 the Administrative Court has an absolute competence to resolve administrative disputes that occur between the government and the people.[3]

After going through an examination, the Administrative Court gives a decision. One type of Administrative Court decision determined in Article 97 paragraph (7) and paragraph (9) of Law Number 5 Year 1986 is to grant the plaintiff's claim and oblige the government to revoke and/or issue a new administrative decision and pay compensation and/or conduct rehabilitation. But in practice, the decision of the Administrative Court is very difficult to execute. One example is the decision of the Administrative Court of Surabaya Number 127/ G/2017/PTUN.SBY *juncto* Decision Number 108/B/2010/PT.TUN.SBY between Ratna Endang Hartatiek T vs. Mayor of Surabaya.

Normatively, the execution of Administrative Court decisions has been regulated in Article 116 of Law Number 51 Year 2009. However, Article 116 of Law Number 51 Year 2009 has weaknesses in regulations, such as (1) the absence of an executing agency, (2) the preparation time given to the government to execute Administrative Court decisions is too long, (3) there is no mechanism for applying coercive fines and/or administrative sanctions, and (4) other weaknesses. The weakness of the regulation raises philosophical problems, that is no guarantee that Administrative Court decisions will be executed by the government so that it contrary with the principle of legal protection for the people as the philosophical basis for establishing an Administrative Court. Therefore, it is necessary to find and analyze the *ratio legis* of Article 116 of Law Number 51 Year 2009, so that the reasons and intent of the legislators in formulating the legal norms of Article 116 of Law Number 51 Year 2009 are found.

Problem Formulation

What is the ratio legis of the execution regulation of Administrative Court decisions in Article 116 of Law Number 51 Year 2009?

Research Method

This research is a legal research using a statutory, conceptual and philosophical approach. The legal materials used are primary, secondary, and tertiary which are analyzed using normative/prescriptive analysis.

Analysis

1. Types of Administrative Court Decisions

After the case examination process is completed, the authority of the Administrative Court is to give the judge's decision. Black's Law Dictionary defines the term decision/ judgment as The official and authentic decision of a court of justice upon the respective rights and claims of the parties to an action or suit there litigated and submitted to its determination.[4] Sudikno Mertokusumo said that the judge's

[3] Since the enactment of Law Number 30 Year 2014, the absolute competence of the Administrative Court is added namely (1) adjudicating whether or not there is an element of misuse of competence by government officials, (2) examining and deciding applications to obtain decisions and / or actions government agencies or officials, and (3) adjudicate disputes of unlawful acts by government bodies and/or officials (*Onrechtmatige Overheidsdaad*).

[4] Henry Campbell Black, *Black's Law Dictionary*, 4ed (St. Paul, Minn: West Publishing Co, 1968), p. 977.

decision is a judge's statement, pronounced at the hearing and aimed at ending or resolving a case or dispute between the parties.[5] Irfan Fachruddin also said that the dicision was the essence of the judiciary, the core and purpose of all judicial activities or processes, containing the settlement of the case which had begun to burden the parties.[6]

There are 2 types of Administrative Court decision, namely interim decision *(tussen vonnis)* and final decision *(eind vonnis)*. The interim decision is regulated in Article 67, Article 83, and Article 107 of Law Number 5 Year 1986. The final decision is the decision of the Administrative Court which ended the dispute regulated in Article 97 of Law Number 5 Year 1986. In Article 97 paragraph (7) of Law Number 5 Year 1986 determined 4 types of Administrative Court decisions, that is rejected, granted, not accepted, and dropped.

In the event that a claim is granted, in accordance with Article 97 paragraph (8) of Law Number 5 Year 1986 the judge can determine the obligation that must be carried out by the government. This obligation is regulated in Article 97 paragraph (9) of Law Number 5 Year 1986, namely (1) Revoke the administrative decision; or (2) Revoke the administrative decision and issue a new administrative decision; or (3) Issuing an administrative decision in the case of a negative fictitious suit. Furthermore, according to Article 97 paragraph (9) of Law Number 5 Year 1986 all three forms of obligation can be accompanied by compensation, and rehabilitation for employment disputes. This type of decision developed along with the development of absolute competence of Administrative Court as regulated in Law Number 30 Year 2014.

Theoretically, the Administrative Court final decision can be divided into 3 types, namely:

a. Declaratory decision, such as a statement of rejection of a claim or petition, statement of failure of claim/petition, or statement of non-acceptance of the claim/petition.

b. The constitutive decision, such as a dictum that determines the administrative actions and/or decisions is invalid.

c. Condemnatoir decision, such as the orders to the government to revoke the administrative decision or issue a new decision.

If seen from the binding force of decision, the decision of the Administrative Court is divided into 2 types, namely the decision which has no permanent legal force and the decision which has permanent legal force *(inkracht vam gewisde)*. Administrative Court's decision does not have legal force because ordinary legal efforts are still being carried out such as an appeal or cassation. The Administrative Court's decision that have permanent legal force is the Administrative Court's decision that have binding and compelling power for the parties to the dispute, such as the Administrative Court decision that are not appealed or cassation, cassation decisions, and etc.

2. Execution Regulation of Administrative Court Decisions in Article 116 of Law Number 51 Year 2009

Based on the provisions of Article 116 of Law Number 51 Year 2009, Administrative Court decision are executed with the following conditions:

a. The Registrar of the Administrative Court, by order of the head of the court, sends a copy of the decision of the Administrative Court that has permanent legal force to the parties no later than 14 days.

[5] Sudikno Mertokusumo, Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, (Yogyakarta: Liberty, 1988), p. 167.
[6] Irfan Fachruddin, *Pengawasan Peradilan Administrasi Terhadap Tindakan Pemerintah*, (Bandung: Alumni, 2004), p. 227.

b. If within 60 days the officials/government agencies does not carry out the obligation to revoke the disputed administrative decision as stipulated in Article 97 paragraph (9):a, then automatic execution applies, wherein the invalid administrative decision has no legal force.

c. If within 90 days officials/government agencies do not carry out the obligation to revoke the disputed administrative decision and issue a administrative decision or issue a administrative decision related to Article 3 as specified in Article 97 paragraph (9): b and c, then the plaintiff submitted an application to the head of the Administrative Court to order the government to execute the Administrative Court decision.

d. If officials/government agencies is still unwilling to execute the Administrative Court decision which has permanent legal force (*inkracht*), then it can be subjected to forced measures such as *dwangsom* (coercive fines) and/or administrative sanctions.

e. Officials/government agencies that do not execute the Administrative Court decision that have permanent legal force (*inkracht*), announced by the Registrar in the local print media.

f. In addition to being announced in the print media, officials/government agencies that do not execute the Administrative Court decision that have been *inkracht* must be reported by the Head of the Administrative Court to the President to order officials/government agencies to execute and to the people's representative institutions to carry out the controlling function.

3. *Ratio Legis* of Article 116 Law Number 51 Year 2009

Black's Law Dictioanary defines ratio legis as the reason or occasion of law; the occasion of making a law; the reason of law is the soul of law.[7] In line with this, Verena Klappstein defines ratio legis as real intention of a lawgiver or judge (reason provided or implied); consideration that caused a lawgiver to enact certain legislative acts or a judge to impose a certain sentence; objective aim of a statute (or sentence)….[8]

Based on the research of the minutes of the discussion session of Law Number 51 Year 2009, the *ratio legis* of Article 116, in general, are 2 namely (a) respect for the Administrative Cout decision with an obligation for government officials to execute, and they can be subjected coercive measures such as coercive fines and/or administrative sanctions and announcements in local print media if they do not carry out their obligations; and (b) involve the President by instructing government officials to execute the decisions of the Administrative Court and the representative body of the people in order to carry out the controlling function. These two *ratio legis* can be described as follows:

1. Granting obligations to government officials to execute Administrative Court decision that have permanent legal force.

2. Automatic execution if the Administrative Court decision only requires government officials to revoke the administrative decision.

3. Given 60 days in paragraph (2) and 90 days in paragraph (3) for government officials to prepare the implementation of the Administrative Court decision.

[7] Hanry Campbell Black, *Op.Cit*, p. 1429
[8] Verena Klappstein & Maciej Dybowski (Editor), *Ratio Legis: Philosopical and Theoretical Perspective*, (Switzerland: Springer, 2018), p. 9

4. Imposition of coercive measures efforts, such as coercive fines and/or administrative sanctions in paragraph (4) as coercion/pressure for government officials to execute Administrative Court decisions. Even in the context of providing coercion, it also regulates announcements in the local print media in paragraph (5). The regulation is intended to respect the Administrative Court decision, that so justice and legal certainty could create and preserve the authority of the Administrative Court as judicial power.

5. Involvement of the President as the holder of government power to order government officials to execute Administrative Court decisions. This is aimed of fostering government officials.

6. Reporting to representative institutions in the context of strengthening the implementation of the controlling function.

Based on the description of the ratio legis of Article 116 of Law Number 51 Year 2009 above, the legal principles implicitly used are as follows:

1. The principle of *contrarius actus*

Based on the contrarius actus principle, the execution of the Administrative Court decision in Article 116 of Law Number 51 Year 2009 is carried out by the government that issued the decision *(*execution by government*)*. Therefore, the execution of the Administrative Court decision is a government obligation. However, the principle is used inconsistently in Article 116 paragraph (2) of Law Number 51 Year 2009, because in this provision regulated automatic execution. With this automatic execution, the administrative decision declared null and void has no legal force if the government does not revoke within 60 days.

2. The principle of *res judicata pro veritate habetur*

The principle of *res judicata pro veritate habetur* means that the decision must be considered correct, because it has binding power and must be respected by everyone. In order to respect the Administrative Court decision, the government official is obliged to carry out what is required by the Administrative Court decision. Therefore, in order to uphold this principle, it was agreed that government officials who did not execute the Administrative Court decision can be subjected coercive measures as regulated in Article 116 paragraph (4) of Law Number 51 Year 2009. However, the imposition of coercive measures is not effective, because there are no implementing regulations.

3. The principle of *concentration of power and responsibility upon the President*

Based on this principle, the President is the highest authority of government. One of the manifestation is that the President is responsible for ensuring that government officials execute coercive measures. Therefore, the House of Representatives agreed to involve the President to ensure the Administrative Court decision was executed. This is regulated in Article 116 paragraph (6) of Law Number 51 Year 2009. The involvement of the President is very precise, but the regulation is more on *moral obligation*, not on *legal obligation* for the President.

Conclusion

Administrative Court's decision which is *inkracht* has an executorial power. Therefore, the issue of execution has been regulated in Article 116 of Law Number 51 Year 2009. *Ratio legis* of Article 116 of Law Number 51 Year 2009 is (1) respect for Administrative Court decision by requiring government officials to execute. If government officials do not carry out these obligations, they may be subject to

coercive measures; and (2) involving the President and the people's representative institutions. With these 2 basic *ratio legis*, Article 116 of Law Number 51 Year 2009 reflects 3 legal principles, namely *contrarius actus principle*, *res judicata pro veritate habetur principle*, and *concentration of power and responsibility upon the President principle*. However, the three principles are not used in formulating legal norm completely, so that Article 116 have weaknesses which have implications for the absence of guarantees that Administrative Court decision are executed by government officials.

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