



Decisions Against Requests for Third Party Intervention and Legal Remedies in State Administrative Dispute

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Abstract

This study discusses the form of decisions on third party intervention requests and when third parties (interventions) can join the ongoing State administrative dispute and what legal remedies can be taken if a third party's request is rejected. This research is a normative legal research with the problem approach is the legislation approach and case approach. The results of his research are the Decisions handed down at the request of a third-party intervention and the final decision, namely the decision on the subject matter of the dispute. Whereas legal remedies that can be carried out by third parties are in the form of appeal remedies. Everyone who has an interest can enter a State Administration dispute. The entry of the Intervention can be due to their own desires, joining the Plaintiff or the Defendant, or at the initiative of the judge, by submitting an Intervention request.

Keywords: *Decision; Intervention Request; Legal Remedies*

Introduction

Administrative Court or commonly referred to as the State Administrative Court is a court that has the authority to resolve State Administration problems (State Administration Disputes).¹ The purpose of the Administrative Court is to provide legal protection and legal certainty, not only for the people but also for the State Administration in the sense of maintaining and maintaining the balance of the interests of the community with the interests of individuals as members of the community.

The State Administrative Court (PTUN) has a general duty to exercise judicial power is to receive, examine, and try and settle every case submitted to it. Specifically, PTUN has the task of adjudicating a lawsuit from an individual citizen or a private legal entity against a government agency regarding government actions in carrying out its obligations. Which action harms a person or legal entity.²

¹ Miriam Budiarto, *Dasar-dasar Ilmu Politik*, Gramedia, Jakarta, 1982, p. 57-58.

² M. Hadin Muhjad, *Beberapa Masalah Tentang Peradilan Tata Usaha Negara Di Indonesia*, Akademika Pressindo, first printing, Banjarmasin, 1985, p. 41-42.

So PTUN plays a role in resolving disputes arising from the issuance of a State Administrative Decree (KTUN) that is not in accordance with the rules in the issuance of the KTUN, causing losses to the public or private legal entities. The authority of the State Administrative Court is regulated in Article 47 of Law Number 5 of 1986 concerning State Administrative Court, which has been amended in Law Number 9 of 2004 concerning amendments to Law Number 5 of 1986 jo Law of Number 51 of 2009 concerning the second amendment to Law Number 5 of 1986, which reads “the court has the duty and authority to examine, decide upon, and resolve State Administration Disputes”, and According to Article 1 paragraph (4) of the Administrative Court Law the State Administrative Dispute is “disputes arising in the field of State administration between civil persons or legal entities and State administrative bodies or officials, both at the central and regional levels as personnel based on the applicable laws and regulations.”

The State Administrative Dispute arising arises because the issuance of the State Administration Decree (KTUN) which has been regulated in Article 1 paragraph (9) of Law Number 5 of 1986 concerning State Administrative Court, has been amended in Law Number 9 of 2004 concerning amendment to Law Number 5 of 1986 in conjunction with Law Number 51 of 2009 concerning the second amendment to Law Number 5 of 1986 which reads “a written stipulation issued by a state administrative body or agency containing administrative legal actions. countries that are based on applicable laws, which are concrete, individual, and final, which cause legal consequences for a person or private legal entity.

The Administrative Decree issued as referred to in the Article above causes losses so that the party who feels aggrieved can file a lawsuit on the issuance of the KTUN to the State Administrative Court. However, there are limits to litigants, where those who can act as Plaintiffs or who can file lawsuits are persons or Civil Legal Entities who feel their interests have been impaired due to the issuance of a State Administration Decree. While those who can be sued in the State Administrative Court are State Administration Bodies or Officers who have the authority to issue State Administration Decrees.

Apart from the parties who can file a case in the State Administrative Court, there are parties outside the dispute who can join in the ongoing State Administration dispute, that is, everyone who has an interest in the dispute of another party being examined by the court, to be included or participate in the ongoing examination process, because the participating party feels that its interests can be impaired if a court decision is issued for the dispute suit. The inclusion of parties outside the dispute or the so-called third parties (intervention) in the process of State Administration Dispute settlement for the other party being examined is to defend and defend their rights based on their own volition, or the entry of a third party caused by a request from one of the parties the dispute to defend the interests and strengthen the reasons of the party or this can happen on the initiative of the judge where the judge sees the interests of these third parties.

On the other hand, in state administrative disputes, this intervention arrangement actually raises a problem in examining the position of the parties in the dispute, aside from protecting the interests of third parties who are not involved in the case and the basic principles of the Erga Omnes principle, third parties should not need to be included in the cases because their interests have been protected in the verdict.

Based on the Administrative Procedure Law of PTUN, the KTUN that the lawsuit conducts will go through procedures that will later be decided, and the sound of a decision can be in the form of: a lawsuit is rejected, a lawsuit is granted, a lawsuit is not accepted, a lawsuit is dropped.

The implementation of the decision of the State Administrative Court is contained in Article 116 stating that the implementation commences from the time the decision was announced (Article 116 Paragraph [1]) sent to the parties by order of the head of the court who tried him in the first tier no later

than 14 (fourteen) working days. An important element in the Indonesian Administrative Procedure Code is contained in Article 116, which must be followed if the defendant ignores the decision - that is, if he refuses to make a new decision. If this dispute is only related to the cancellation of a decision, this procedure cannot be enforced because the decision will automatically become invalid after 4 months based on Article 116 paragraph (3).³

The role of the State Administrative Court in the practice of resolving “Government Administration” disputes in Indonesia due to the absence of an executorial institution, as well as a strong legal basis, results in the decision of the State Administrative Court not having force. The State Administrative Court Law does not explicitly and clearly regulate the issue of the forced power of the State Administrative Court's decision, so that the implementation of the Decision really depends on the good faith of the State Administration Agency or Official in obeying the law. The situation is quite alarming, because the principle of a State Administrative Court, to place juridical control in government is losing meaning in the Indonesian state bureaucratic system.

Result and Discussion

1. Understanding of Court Decisions

Court decisions are the hallmark of the products produced by the judiciary in deciding cases, from the first court to the appeal, to the level of cassation in the Supreme Court, all of which use the term “decision”. This is different from the term used by other institutions that use the term decision. In Law Number 5 of 1986 concerning State Administrative Court, amended in Law Number 9 of 2004 concerning amendments to Law Number 5 of 1986 jo Law of Number 51 of 2009 concerning the second amendment to Law Number 5 of 1986, the term “court decision” is used starting from article 108 to article 132.

In Law Number 5 of 1986 Concerning State Administrative Courts, has been amended in Act Number 9 of 2004 concerning amendments to Law Number 5 of 1986 jo Law Number 51 of 2009 concerning the second amendment to Law Number 5 of 1986, no definition of “court decision” was found. According to J.C.T Simorangkir and friends, in his legal dictionary, said that the decision was the result of an investigation of a case while Sudikno Mertokusumo used the term “judge's decision”. What is meant by a judge's decision is a statement which the judge, as an official of the state authorized for this purpose, is pronounced at the hearing and aims to end or resolve a case or dispute between the parties.

Decisions are made based on the results of the panel of judges' deliberations. The deliberation was held in a closed room and the decision was taken after considering everything about the dispute. The verdict in the panel of judges' deliberations is the result of the unanimous consensus of the judges. If unanimous agreement cannot be reached, then the decision is taken with the most votes. If in the deliberations the panel of judges cannot produce a decision, the deliberation is adjourned, and if it is also unsuccessful, the final vote of the judge presiding over the panel determines the decision.

Regarding the issue of this ruling in terms of finding or finding the law 3 it merely seeks out the law to be applied to concrete events that are sought by law, but objectively knows the facts or events as actual cases as the basis for a court decision.

Basically it shows that before passing a decision, the judge conducts research on facts or events that can be obtained from evidence presented by the parties to the dispute in order to find the law (judge Made low / *Rechtsvinding*), which then the judge must determine the legal rules that can be applied. Thus, the judge has tried as much as possible to be able to drop an objective, fair and not influenced by any

³ Adrian W. Bedner, *Peradilan Tata Usaha Negara Di Indonesia*, Huma, van Vollenhoven institute, KITLV-Jakarta, Jakarta 2010, p. 178.

element except an attitude of objectivity and a sense of justice. The objectivity of the decision must also mean that the resulting decision is able to take account of changes in circumstances, because it relates to the effectiveness of the resulting decision.

An important principle that must be considered with regard to court decisions is that court decisions must be pronounced in hearings that are open to the public (article 108 paragraph (1) of Law Number 5 of 1986 concerning State Administrative Courts, amended in Law Number 9 of the Year 2004 concerning amendments to Law Number 5 of 1986 jo Law Number 51 of 2009 concerning the second amendment to Law Number 5 of 1986). In addition, it is also necessary to pay attention to the principle of prudence and equality in making decisions in state administrative disputes, because in the decision of the State Administrative Court there are principles of court decisions that have binding power “*Erga Omnes*”, meaning that it can apply to anyone not only for the disputing party, according to the nature of the public law of the State administration dispute.

In Dutch literature, the terms verdict and *gewijsde* are known, what is meant by a verdict is a decision that does not yet have a definite legal force, so that ordinary legal remedies are still available (such as appeal and cassation), whereas *gewijsde* is a decision that has definite legal force, so that it is only available special remedies, where the use of special remedies is based on the philosophical background, namely in the context of providing maximum legal protection to people who seek justice. So the court's decision is the final goal for every party to the dispute before the court, but the court's decision can not only end a dispute or case, but there are also decisions that are not ending a dispute namely: Interlocutory decision or decision between those also pronounced in the hearing which is open to the public.

2. Decisions Against Third Party Intervention Requests

In accordance with the provisions in Article 185 paragraph (1) HIR of the court's decision on the entry of a third party in an ongoing dispute is distinguished from:

1. An interim decision, which is handed down at the request of a third-party intervention.
2. The final verdict is a decision on the subject matter of the dispute.

1. *Interim decision*

In accordance with the provisions in the explanation of Article 83 which states that if a third party's request to take part or be included as a party in an ongoing dispute is granted by the judge, then the decision is in the form of an Interlocutory Award that is included in the minutes of the hearing.

Interlocutory decision is a decision that serves to facilitate the process of handling a case or dispute. Interlocutory decisions are not made as separate decisions, but are only included in minutes of hearings (Article 83 paragraph (2) and Article 113 paragraph (1) of Law Number 5 of 1986 Concerning State Administrative Courts, amended in Law Number 9 2004 concerning amendments to Law Number 5 of 1986 jo Law Number 51 of 2009 concerning the second amendment to Law Number 5 of 1986). In case there is an interim decision, then the decision does not mention the amount of the case fee but is deferred and will be calculated on the final decision.

Interlocutory or interim decisions in Law Number 5 of 1986 concerning State Administrative Court, have been amended in Law Number 9 of 2004 concerning amendments to Law Number 5 of 1986 jo Law of Number 51 of 2009 concerning amendments secondly, Law Number 5 of 1986 can be seen in relation to Article 77 which regulates the Exception and Article 83 which regulates intervention. If a party feels dissatisfied or objected to the interlocutory decision, he or she may take an appeal against the

decision on the subject matter or final decision. Therefore, this interim decision will not delay the examination of further cases.

Interlocutory decisions or interim decisions can also terminate a dispute in matters relating to interlocutory decisions stating that the court is not in absolute or relative authority, because in this case the subject matter or the subject matter of the dispute is not further examined by the court.

Decisions on third party intervention requests in accordance with the provisions in article 83 must be made in the form of an interim decision, not in the form of a stipulation, this is to protect the interests of the third party itself, because if the decision on the request for a third party intervention is in the form of a decision, the party thirdly, they cannot take legal action if their application for intervention is rejected by the court. It is different if in the form of an interim decision, a third party can submit legal remedies if the petition is rejected, although the appeal is carried out jointly with the main decision of the case.

2. *Final decision*

Final decisions are decisions that end a dispute or case at a certain level of justice. The procedural law in the State Administrative Court also recognizes both types of decisions namely interlocutory and final decisions inspired by the provisions in civil procedural law, as explained in Explanation number 5 of Law Number 5 of 1986 concerning State Administrative Court, has been amended in Law Number 9 of 2004 concerning amendments to Law Number 5 of 1986 jo Law Number 51 of 2009 concerning the second amendment to Law Number 5 of 1986 which states that procedural law used in State Administrative Court have similarities with the procedural law used in the General Courts for civil cases, with several differences.

Final decisions are different from those that have permanent legal force. The final verdict can be a first-level court decision, or an appeal court-level decision, thus indicating the availability of legal remedies. Whereas for decisions that have permanent legal force, legal remedies are not available, except for extraordinary (special) legal remedies.

In the final ruling only includes the demands of third parties in its considerations, not in the ruling of the ruling, because what is demanded by the third party is the same as the arguments of the defendant namely that the court declares the validity of the disputed State administration decision, even though all the arguments of the parties third in the decision and considered by the judge.

3. **Conditions of Decision**

Both the interim decision and the final court decision must contain elements as referred to in article 109 paragraph (1) of Law Number 5 of 1986 concerning State Administrative Court, as amended in Law Number 9 of 2004 concerning amendments to the Law Law Number 5 of 1986 jo Law Number 51 of 2009 concerning the second amendment to Law Number 5 of 1986 namely:

- a. Head of Decision (rhyme) which reads: "FOR JUSTICE BASED ON ALMIGHTY GOD".
- b. Identity of the parties (the plaintiff and the Defendant), which includes:
 - 1) The plaintiff's name, nationality, occupation and residence;
 - 2) Name of office / state administrative body and place of office / State Administrative Agency sued.
- c. A summary of the claim and the defendant's response clearly.
- d. Consideration and evaluation of every evidence submitted and matters that occur during the trial during the dispute are examined.
- e. Legal reasons that form the basis of the decision.
- f. Amendments to decisions regarding disputes and court fees.
- g. Day, date of decision, name of judge who decides, name of clerk, and information on the presence or absence of the parties.

Failure to fulfill any of the provisions mentioned above may result in the cancellation of the decision.

From the provisions in Article 83 and the operational guidelines of the Indonesian Supreme Court it has been clearly stated that the granting or refusal of a request by a third party to enter the ongoing dispute examination process is made by interim decision contained in the minutes of trial, because the decision was made before the final decision with the aim is to expedite the examination of cases by involving third parties outside the disputing parties. With the inclusion of a third party in the dispute it is hoped that clarity can be obtained regarding the sitting of the case and the facts so that the case can be completely resolved.

Examples of interlocutory decisions on requests for third party intervention into an ongoing dispute, such as interlocutory decision Number 02 / G / 2020 / PTUN.MTR dated March 5, 2020. Third parties namely: Hj. KALSUM, through its attorney requested that it be included in the dispute between NURMA RUSIDA, against the Head of the West Sumbawa Regency Land Office, the verdict is:⁴

TO ADJUDICATE

- a. Grant the request of the Intervention applicant on behalf of Hj. Kalsum to become a party in dispute 02 / G / 2020 / PTUN.MTR;
- b. Establish Intervention Applicant in dispute Number: 02 / G / 2020 / PTUN.MTR on behalf of Hj. Defendant II's party Calcium Intervention 5;
- c. Defer the costs incurred until the final decision of this case;

The court's opinion about whether what is rightly argued and requested by the third party can only be included in consideration of the decision but not in the final decision dictum. A third party intervention may not demand something that can be stated in the dictum of the final decision of the court in the dispute, because if the third party's claim is the same as what was defended by the Defendant, then such a claim would be the same as allowing reconvention demands on the process in the Administrative Court State Enterprises, which are not possible. As an example, in the final decision of the Mataram State Administrative Court, in the decision 02 / G / 2020 / PTUN.MTR dated March 5, 2020. Where the Panel of Judges considers the arguments and evidence submitted by third parties the intervention is only in legal consideration of that ruling.

Then, for example, the next interlocutory decision on a request for third party intervention into an ongoing dispute, such as interlocutory decision Number: 4 / G / 2020 / PTUN.MTR dated April 2, 2020. Third parties, namely: KAWIYAH HJ. AINUL LATIEF, ZUL ASPI (represented by his heirs MUHIRIN), FAIZUDDIN, SYAMSUL HADI (represented by his son named M. QAZWINI HADI), KURATUL AINI, KHAIRUL AZMI, KAMALUDDIN (represented by his heirs called ZMAH) requesting AHMAD for AHMAD) included in the dispute between NURAWIT, against the Head of the East Lombok Regency Land Office, the verdict is:⁵

TO ADJUDICATE

- a. To grant the Intervention applicant's request submitted by the Intervention Applicant on behalf of KAWIYAH HJ. AINUL LATIEF, et al;
- b. Placing the Intervention Applicants as Intervention Defendants II in case Number: 4 / G / 2020 / PTUN.MTR
- c. Defer all costs arising from this Interim Verdict until the final verdict;

⁴ Interim Decision of PTUN Mataram Number 02 / G / 2020 / PTUN.MTR dated March 5, 2020.

⁵ Decision on Interim of PTUN Mataram Number: 4 / G / 2020 / PTUN.MTR on 2 April 2020.

4. Legal Remedy Against Intervention Application Decision

With the issuance of a final court decision, the dispute between the Plaintiff and the Defendant has not ended, because one of the parties or both are still not satisfied with the decision handed down by the court, then the person concerned can exercise his right by taking a legal remedy to fight the court's ruling.

There are several legal remedies that can be taken by the parties in resolving State Administration disputes, both against court decisions that do not have permanent legal force, or against court decisions that have permanent legal force. Legal remedies that can be taken against court decisions that do not have permanent legal force are appeals, and cassation, known as ordinary legal remedies. Whereas the legal remedies that can be taken against court decisions that have permanent legal force are Reques Civil, known as extraordinary legal remedies.

With respect to interlocutory decisions that reject third party intervention requests, legal remedies that can be carried out are those mentioned in Article 83 paragraph (3) of Law Number 5 of 1986 concerning State Administrative Courts, amended in Law Number 9 of 2004 concerning amendments Law Number 5 of 1986 jo Law Number 51 of 2009 concerning the second amendment to Law Number 5 of 1986, which reads "An appeal for a court decision as referred to in paragraph (2) cannot be submitted separately, but must be submitted together with the appeal for a final decision on the subject matter of the dispute". Whereas in the explanation of Article 83 paragraphs (1) and (2) it is stated that "If the request of a third party is granted, he or she will be an independent party in the case process and is called the intervention plaintiff. If the petition is not granted, then the interlocutory verdict cannot be appealed".

Furthermore, what is also a matter of the process of entering a third party into an ongoing dispute is, what if a third party's request to enter the ongoing examination process is rejected by the State Administrative Court (First Level Court) and the third party then requests an appeal or cassation, while henceforth it turns out that the High Court or the Supreme Court is of the opinion that the request for third party intervention should be granted.

That, due to the decision on the request for third party intervention, according to Article 83 paragraph (3) of Law Number 5 of 1986 concerning State Administrative Court, it has been amended in Law Number 9 of 2004 concerning amendments to Law Number 5 of Year 1986 in conjunction with Law Number 51 of 2009 concerning the second amendment to Law Number 5 of 1986, individual appeals cannot be filed so in this case 2 (two) methods can be adopted, as stated in the Supreme Court 4.1 Supreme Court Juklak No. : 051 / Td.TUN / III / 1992 dated March 26, 1992, namely:

- 1) The High Court takes an interim decision before deciding on the subject matter by ordering the relevant court to examine matters relevant to the case (intervention).
- 2) After the results of the examination are received by the High Court, a final decision is made on the subject matter of the High Court.
- 3) The High Court can conduct its own examination and make a final decision on the subject matter.

Conclusion

From the descriptions above, it can be concluded that the form of the decision on the request for a third-party intervention is an interim decision, namely:

1. Decisions handed down at the request of a third-party intervention and final decision, namely the decision on the subject matter of the dispute. While legal remedies that can be carried out by third parties are in the form of legal remedies.
2. The party outside the dispute or the so-called third party (intervention) can enter the process of dispute resolution of the State Party of the other party that is being investigated, when he wants to defend and defend his rights based on his own free will, or at the request of one of the parties the dispute to defend the interests and strengthen the reasons of the parties as well as on the initiative of the judge where the judge sees the interests of third parties.

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