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The Authority of Administrative Justice as the Executor of Judicial Authority

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Abstract

The existence of Administrative Court is very closely related to the rule of law. Administrative justice has a role to uphold the principle of legal protection for the people through repressive supervision of government actions. For this reason, the main authority of the Administrative Court is to hear, examine and decide government disputes. This authority has increased since the enactment of No.30 of 2014 namely authorized to adjudicate whether or not there is an element of abuse of authority, requests for positive fictitious decisions/actions, and lawsuits against unlawful acts by the government.

Keywords: *Authority; Administrative Justice; Government Disputes; Legal Protection*

Introduction

Indonesia is a state of law. Brian Z Tamanaha states 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 arbitrary actions by the government. Although the law has set limits on government actions, it is not uncommon for government actions not to comply with the law *(onrechtmatige)*. These conditions must reduce the principle of legal protection for the people, because of losses for the people.

For this reason, in the rule of law the people are guaranteed legal protection in the form of the right to submit a test of government actions to a judicial institution or known as a "judicial review". The test is one way to test whether the actions of the government are contrary/not contrary to the law, so the testing is a means of protection for the people from the arbitrariness of the government.[2]

[1] Brian Z. Tamanaha, *The History and Element of Rule of Law*, (Singapore Journal of Legal Studies, 2012), 243.
[2] Juli Ponce, *Good Administration and Administrative Procedure*, (Indiana Journal of Global Legal Studies, Volume 12 Issue 2, 2005), 554.

In order to guarantee legal protection for the people, an Administrative Court was established as one of the courts under the Supreme Court. The Administrative Court is given the authority to resolve government disputes. However, the authority of the Administrative Court has increased since the enactment of Law Number 30 of 2014. For this reason, this paper will analyze the authority of the Administrative Court as the executor of judicial authority in Indonesia.

Formulation of the Problem

That is the authority of the Administrative Court as the executor of judicial authority?

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

The Existence of Administrative Justice

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia determines "the State of Indonesia is a state of law". The basic idea of the birth of the rule of law is to prevent absolute power. To achieve these objectives, the government is obliged to submit to and obey the law in carrying out all its actions. Obligation to obey and obey the law is not only the government's obligation, but also the people's obligation. Brian Z. Tamanaha stated the *rule of law means that government officials and citizens are bound by and abide by the law*.[3] In a state of law, law is something supreme from (*power)*, even *legitimate* power is formed and must be in accordance with the law. Therefore, Brian Z Tamanaha also stated *the rule of law, not man; a government of laws, not men.*

Therefore, the government is obliged to act based on the law, which in administrative law is known as the *rechtmatigheid van het bestuur* principle on the principle of legality. This indicates that the law has a very important function in the administration of the law. Law has a very central function, namely as the basis for the government to act *(bestuursnorm)* as well as a limitation on the authority of the government so that it does not act outside its authority, is not arbitrary, and does not abuse authority. Related to this function, Brian Z Tamanaha stated there are 2 (two) legal functions namely *(1) to impose legal restrain on government officials*. In two different ways a). by requiring compliance with existing law, b). by imposing legal limits on law making power, and (2) *to maintain orders and coordinate behavior and transactions among citizens*.[4] Furthermore, Brian Z Tamanaha stated the type of limitation of government power by law, namely (1) *government officials must be abide by valid positive laws in force at the time of any given action*. For this reason, the government must have the authority determined by law, if there is no such authority, then the action will be invalid and there must be no government action that is contrary to the prohibition on restrictions determined by law. (2) *imposes restrictions on the law itself, erecting limitations on the law making power of government,* which can be done through restrictions determined by the constitution, and so forth.

[3] Brian Z. Tamanaha, *Loc.Cit*

[4] Brian Z Tamanaha, *A Concise Guide to the Rule of Law*, (School of Law St. John's University: Legal Studies Research Paper Series, September 2007), 3-7.

In addition to these basic ideas, the rule of law was also born with the aim of providing legal protection for the people. In this regard, David Boeis stated that the *rule of law* provides 2 (two) forms of legal protection from arbitrary and discriminatory government actions, namely (1) (*... that the rule applied to a particular case must be reasonably predictable)*; and (2) (*... that the rule must be predictable without regard to the identity of the parties).*[5]

To uphold the two basic ideas of the birth of the rule of law, a free / independent judicial institution is needed in exercising its authority to enforce law and justice. In the Venice Commission Report, *access to justice before independent and impartial courts, including judicial power of administrative acts)*.[6] Literally, the Black's Law Dictionary defines *independent as not dependent; not subject to control, restriction, modification, or limitation from a given outside source "*.[7] In line with the description above, John Ferejohn also stated *"independence ... is that person is independence if he is able to take actions without fear of interference by another ... judicial independence is the idea that a judge ought to be free to decide the case before her without fear or anticipation of (illegitimate) punishment.*[8]

In the context of Indonesian constitution the formation of an independent judiciary has obtained a constitutional guarantee in Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Furthermore, in the provision of Article 24 paragraph (2) of the 1945 Constitution of the Republic of Indonesia in *juncto* with Article 18 of Law No.48 of 2009 determined one of the judicial environment under the Supreme Court is the Administrative Court.

Philosophically, the history of the formation of Administrative Courts in various countries is motivated by the existence of the principle of *rechtmatigheid van het bestuur* which developed to prevent the absolutism of king / government power. To ensure that government actions are in accordance with the law, the Administrative Courts are formed as supervisors (control institutions). The supervision is carried out by giving authority to the Administrative Court to test the validity of government actions. Through Administrative Justice, the people can submit of government actions that are detrimental to them, so that the Administrative Court has the role of conducting a judicial review of government actions. If drawn more broadly, the formation of Administrative Courts is aimed at balancing the position of the government and the people in unilateral public legal actions *(publiekrecht handelingen).*

To strengthen the existence of Administrative Courts in Indonesia, on December 29, 1986 Law No. 5 of 1986.[9] UU No. 5 of 1986 has experienced changes as much as 2 (two) times, namely by Law No. 9 of 2004 and Law No.51 of 2009. In both laws the amendment is at least always based on 2 (two) philosophical foundations namely (1) Indonesia as a state of law that upholds the law in the administration of government and (2) judicial power is a legitimate power to enforce law and justice so that a clean and authoritative judicial institution is needed. Thus, the *legis ratio* formed in the form of Administrative Courts is an embodiment of the rule of law principle, especially the principle of legal protection for the people. Administrative justice is an instrument that serves as a frontline to prevent government actions that are not in accordance with the law and provide legal protection for people who

[5] David Boies, *Judicial Independence and the Rule of Law*, (Jurnal of Law and Policy, Volume 22:57, 2006), 57.

[6] *Rule of Law* is (1) *legally, including a transparent, accountable and democratic process for enacting law*, (2) *legal certainty*, (3) *prohibition of arbitrariness*, (4) *acces to justice before independent and impartial courts, including judicial review of administrative acts*, (5) *respect for human rights*, (6) *non-discrimination and equality before the law*. European Commission for Democracy Through Law (Venice Commission), *Report on the Rule of* Law, (Adopted by Venice Commission at 86th Plenary Session, 25-26 March 2011), 10.

[7] Henry Campbell Black, *Black's Law Dictionary*, 4ed (St. Paul, Minn: West Publishing Co, 1968), 91.

[8] John Ferejohn, *Independent Judges, Dependent Judiciary: Explaining Judicial Independence,* (Southern California Law Review, Volume 72:353, 1999), 355.

[9] Historically, the submission of the Draft Bill on State Administrative Court was submitted by the Government on April 16, 1986 through the President's Mandate No. R.04 / PU / IV / 1986. After going through the process of discussion, the bill was approved jointly on December 20, 1986 with the Decree of the Republic of Indonesia Parliament 3 / DPR-RI / II / 1986-1987.

are harmed by government actions. Administrative Justice is balancing the relationship between the government and the people so that it is harmonious, harmonious, and balanced. In other words, the Administrative Court is a control institution for the government in carrying out various actions that can harm the people.

Administrative Justice Authority

Based on Article 4 of Law No. 9 of 2004, Administrative Court is one of the actors of judicial power for the people seeking justice for government disputes. With such a position, then in accordance with the provisions of Article 47 of Law No. 5 of 1986, Administrative Courts have absolute competence to resolve government disputes. Article 47 of Law No.5 of 1986 determines the Administrative Court has the authority to examine, decide upon, and resolve government disputes. In line with this, Article 25 paragraph (5) of Law No. 48 of 2009 determines that the Administrative Court has the authority to examine, hear, decide, and resolve government disputes.

Based on these provisions, the absolute competence of the Administrative Court is to resolve government disputes. Provisions in Article 1 number 10 of Law No. 51 of 2009 determine government disputes are disputes arising in the administration of government between civil persons or legal entities and government agencies or officials, both at the central and regional levels, as a result of the issuance of government decisions, including civil service disputes. Based on the above provisions, the elements of government disputes can be explained as follows:

a. Disputes that occur in the field of government

b. Government disputes occur between civil persons or legal entities and government agencies/officials

c. Government disputes are the result of the issuance or enactment of government decisions

d. These disputes include employment disputes according to statutory regulations

From the description of the concept of government disputes above, the object of government *(objectum litis)* dispute is the government's decision. In positive law, the concept of government decree is regulated in Article 1 number 9 of Law No.51 of 2009. In this article, a government decision is a written determination issued by a government agency or official which contains government actions based on applicable laws, which are concrete, individual, and final, which cause legal consequences for a person or civil legal entity.

Since the enactment of Law No.30 of 2014, the absolute competence of Administrative Courts is not limited to testing government decisions. However, there are additional competencies in the form of (1) adjudicating whether or not there is an element of abuse of authority as stipulated in Article 21 of Law No. 30 of 2014, (2) adjudicate requests for positive Fictitious decisions and / actions as determined in Article 53 of Law No. 30 of 2014, and (3) adjudicate disputes of unlawful acts committed by the Government as regulated in Article 85 of Law No. 30 of 2014.

Conclusion

Administrative Court is a court under the Supreme Court. Philosophically, the Administrative Court was formed to uphold the principles of the rule of law, especially the protection of the law for the people. For this reason, the Administrative Court has the authority to adjudicate, examine and decide government disputes. Government disputes are disputes that occur between the people and the

government, as a result of the stipulation of government decisions. However, the authority of the Administrative Court has increased since Law No. 30 of 2014 applies. The additional authority includes (1) the authority to adjudicate the application of whether or not there is an element of abuse of authority, (2) the authority to adjudicate a request for a positive fictitious decision / action, and (3) the authority to adjudicate law suits against unlawful acts by the government.

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