International Journal of Multicultural and Multireligious Understanding

http://ijmmu.com
editor@ijmmu.com
ISSN 2364-5369
Volume 7, Issue 6
July, 2020
Pages: 590-612

The Position of the Attorney's Request for Information in Corruption Case Investigation as the Object of the Application for Abuse of Authority in the State Administrative Court (Study of Decision Number: 25 / G / 2015 / PTUN-MDN)

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http://dx.doi.org/10.18415/ijmmu.v7i6.1957

Abstract

The absolute authority of the State Administrative Court in examining, deciding and resolving State Administrative Disputes is based on objects in the form of decisions and / or actions regulated in the State Administrative Court Law (PERATUN Law) and the Government Administration Law (AP Law). In Decision Number: 25 / G / 2015 / PTUN-MDN, the Prosecutor's Request for Information is placed as the object of the request for abuse of authority. Based on these facts, normative legal research is carried out which aims to examine and analyze cases (*case approach*) with the statute approach and other regulations related to legal issues regarding how the limits of abuse of power are the absolute competence of the State Administrative Court and what is the position. Request for a statement from the Attorney General's Office in investigating corruption cases in the Procedural Law of the State Administrative Court. The conclusion of the research results is that the limit of abuse of power which is the absolute competence of the State Administrative Court is a decision and / or action as normalized in the Administrative Law and the Government Administration Law. The absence of procedural norms on abuse of authority in the Administrative Court Law makes Judges and Lawyers inaccurate in determining the legal basis for placing the Prosecutor's Request for Information as an object in the application for abuse of power when case Number: 25 / G / 2015 / PTUN-MDN is rolling in the Medan State Administrative Court. The norm vacancy is filled by Supreme Court Regulation Number 4 of 2015 which limits the absolute competence of the State Administrative Court in applications for abuse of power after the results of the Supervision of Government Internal Supervisory Apparatus and prior to criminal proceedings. The Prosecutor's Request for Information issued based on the provisions of the Criminal Procedure Code (KUHAP) cannot be placed as an object based on the norms of Article 2 letter d of Law Number 9 of 2004, so the author advises the President and / or the House of Representatives to design amendments to the Administrative Law so that it is harmonious with the new norms presented by the Government Administration Law and it is hoped that Judges and Lawyers as law enforcers and justice carry out the norms of the Law ethically so that they do not get lost in determining the object of the application for abuse of power.

Keywords: *State Administration Decision; Absolute Competence; Abuse of Authority*

Introduction

The application of law in public and state life is manifested by the formation of laws and regulations that function as regulating and controlling citizens from injustice and harmful actions, as expressed by Bambang Setyo Wahyudi that, "With the innumerable role of the law, then the law has the function of disciplining and regulating interactions in society and solving problems that arise". [1]

One of the statutory regulations available in the mechanism of the State Administrative Court System is the State Administrative Court Law (PERATUN Law) which is held to resolve disputes between the Government and Citizens that arise as a result of the issuance of State Administrative Decisions (*beschikking*). On December 29, 1986, Law Number 5 of 1986 concerning State Administrative Courts was promulgated, which was later amended by Law Number 9 of 2004 and lastly amended by Law Number 51 of 2009.

The State Administrative Court is expected to function as a judicial body capable of balancing the interests of the government and the interests of the community through the enforcement of the State Administrative Law. In this case Sjachran Basah said: [2] "The objective 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 that there is a balance between the interests of society and those of individuals. For state administration, order, peace and security will be maintained in carrying out its duties for the realization of a strong, clean and authoritative government in relation to a rule of law based on Pancasila. This means that the objective of the Administrative Court is preventive to prevent actions of state administration that are against the law and detrimental, while repressively for these actions are necessary and must be subject to sanctions."

Based on Article 47 of Law Number 5 Year 1986 which states that: "The court has the duty and authority to examine, decide and resolve State Administrative Disputes". The State Administrative Court is authorized by law to examine, decide and settle disputes in the field of State Administration. The authority (*competence*) of the State Administrative Court in resolving State Administrative Disputes based on the Law of Judicial Procedure is differentiated into relative competence and absolute competence. Relative competence is related to the authority of the State Administrative Court to resolve State Administrative Disputes in accordance with their jurisdiction, while absolute competence is the authority of the State Administrative Court to resolve State Administrative Disputes based on the object, material and subject matter of the dispute.

In connection with the absolute competence of the State Administrative Court to resolve State Administrative Disputes based on the object of the dispute, Article 1 point 10 of Law Number 51 Year 2009 states that:

> "State Administrative Disputes are disputes that arise in the field of State Administration between individuals or civil legal entities and State Administrative Bodies or Officials, both at the central and regional levels, as a result of the issuance of State Administrative Decrees, including personnel disputes based on statutory regulations valid invitation. "

Based on these provisions, the State Administrative Decree is an object of absolute competence in the State Administrative Court. The criteria for a State Administrative Decree to become an object in the State Administrative Court are based on the standard provisions in Article 1 number 9 Law Number 51 of 2009 which states that:

[1] Bambang Setyo Wahyudi, *Indonesia Prevention*, Bhuana Popular Sciences, Jakarta, 2017, p. 27.
[2] H. Supandi, *State Administrative Court Law*, PT. Alumni, Bandung, 2016, p. 68

> "A State Administrative Decree is a written stipulation issued by a State Administration Agency or Official which contains a State Administration legal action based on the prevailing laws and regulations, which are concrete, individual and final in nature, which give rise to legal consequences for a person or civil legal entities. "

Article 3 of Law Number 5 Year 1986 also provides regulations regarding State Administrative Decrees which become objects in the State Administrative Court, namely:

> 1) If the State Administration Agency or Official does not issue a decision, while it is their obligation, then it is the same as a State Administrative Decree.
>
> 2) If a State Administrative Agency or Official does not issue the requested decision, while the timeframe as stipulated in the statutory regulations has passed, the State Administrative Agency or Official is deemed to have refused to issue the said decision.
>
> 3) In the event that the relevant statutory regulations do not specify the time period as referred to in paragraph (2), then after the four month period has passed since the application is received, the State Administrative Agency or Official concerned is deemed to have issued a rejection decision.

Observing the formulation of Article 1 Number 9 of Law Number 51 of 2009 and the formulation of Article 3 of Law Number 5 of 1986, there are fundamental differences. In Article 1 Number 9 of Law Number 51 of 2009 it is formulated that the State Administration Decree is in the form of a written stipulation issued by the State Administration Agency and / or Officials, while in Article 3 of Law Number 5 of 1986 it is formulated that the actions of the Agency and / or State Administrative Officials who do not issue Decisions even though they have obligations. The actions of these State Administrative Bodies and / or Officials are the same as the State Administrative Decrees.

The limitation of the scope of the authority of the State Administrative Court makes it easy for the justice-seeking community to distinguish which is the object of a State Administrative Dispute and which is not. Regulating the limits on the scope of the State Administrative Decree for Government Agencies and / or Officials, Judges and Lawyers is a clear reference and legal basis in proceeding at the State Administrative Court.

In the course of the Indonesian legal system, Law Number 30 of 2014 concerning Government Administration (AP Law) was born as the material law of the State Administrative Court System. The AP Law also provides regulations on State Administrative Decisions which are the absolute competences of the State Administrative Court formulated in Article 1 point 7:

> "Government Administration Decrees which are also called State Administration Decrees or State Administration Decisions, hereinafter referred to as Decisions, are written decrees issued by Government Agencies and / or Officials in the administration of government."

The Government Administration Law also provides regulations on State Administrative Decisions which are normally similar to Article 3 of Law Number 5 of 1986. The regulation is formulated in Article 53 paragraph 3 of the Government Administration Law as follows :

> "If within the time limit as referred to in paragraph (2), Government Agencies and / or Officials do not determine and / or carry out Decisions and / or Actions, then the application is considered legally granted."

The difference between Article 3 of Law Number 5 of 1986 and Article 53 of the AP Law lies in the assumption that the petition is granted or not. In Article 3 of Law Number 5 Year 1986, the silent action of Government Agencies and / or Officials who do not issue a State Administrative Decree by law is deemed to have issued a State Administration Decree in the form of rejection known as a negative

fictitious State Administrative Decree. Meanwhile Article 53 of the AP Law considers the silence of Government Agencies and / or Officials who do not issue a State Administrative Decree as an act of granting a petition known as a positive fictitious State Administrative Decree.

The formulation of State Administrative Decrees is also stated in Article 87 of the AP Law which regulates that:

With the enactment of this Law, the State Administrative Decree as referred to in Law Number 5 of 1986 concerning State Administrative Courts as amended by Law Number 9 of 2004 and Law Number 51 of 2009 must be interpreted as:

a.Written decisions which also include factual actions;

b.Decisions of State Administrative Bodies and / or Officials within the executive, legislative, judiciary and other state administrators;

c.Based on statutory provisions and AUPB;

d.Is final in a broader sense;

e.Decisions with potential legal consequences; and / or

f.Decisions that apply to Citizens."

Based on the norms of Article 87 of the AP Law, the absolute competence of State Administrative Courts is not only State Administrative Decisions but also includes factual actions of Government Agencies and / or Officials. So that the criteria for a State Administrative Decree can be used as an object in the State Administrative Court not only based on the Administrative Law but also guided by the AP Law because both laws are positive laws that are still valid and become a reference and legal basis in proceedings. in the State Administrative Court.

The application of these two laws was found in the study of Decision Number : 25 / G / 2015 / PTUN-MDN dated July 7, 2015. In this decision, Ahmad Fuad Lubis, who served as Head of the Regional Finance Bureau of North Sumatra Province submitted a request for testing whether or not there was abuse. authority to the Medan State Administrative Court and the object of the petition case is the Request for Information Number : B-473 / N.2.5 / Fd.1 / 03/2015 dated March 31, 2015 issued by the Head of the North Sumatra High Prosecutor's Office as referred to mentioned in the Decision : [3]

> "Whereas the object of the request for a test of authority in this petition is the summons for inquiries related to the alleged criminal act of corruption related to the Social Assistance Fund (Bansos) for Subordinate Regional Assistance (BDB) School Operational Assistance (BOS) in arrears for Revenue Sharing Funds (DBH) and inclusion. Capital in a number of BUMDs in the North Sumatra Provincial Government based on the Investigation Order of the Head of the North Sumatra High Prosecutor's Office Number : Print-31 / N.2 / Fd.1 / 03/2015 dated March 16, 2015 against the applicant. Hereinafter referred to as "Authority Testing Object".

The Panel of Judges at the Medan State Administrative Court accepted the application for testing whether or not there was an abuse of power submitted by Ahmad Fuad Lubis with the object of the request for examination in the Request for Information Letter Number : B-473 / N.2.5 / Fd.1 / 03/2015 dated March 31, 2015 issued by the Head of the North Sumatra High Prosecutor's Office by giving considerations which basically state:

[3] Medan State Administrative Court Decision Number : 25 / G / 2015 / PTUN-MDN dated 7 July 2015, p. 15

> "Based on the provisions of Article 4 paragraph (1) letter b of Law Number 30 of 2014 concerning Government Administration, it determines that the scope of Government Administration regulation in this Law covers all activities of Government Agencies and / or Officials carrying out Government Functions within the scope of the judiciary. so that in the opinion of the Panel of Judges, the Respondent in issuing the object of the Application was carrying out Government functions. Whereas the object of the petition in this dispute is the Decision of the Respondent in the form of Summons for inquiries Number: B - 473 / N.2.5 / Fd.1 / 03/2015 dated March 31, 2015 against the Petitioner as the former Chairman of the Regional General Treasurer (BUD) of the North Sumatra Provincial Government to be tested. or there is no element of Abuse of Authority in the issuance of the decision as referred to in Article 21 of Law Number 30 of 2014 concerning Government Administration, not a lawsuit as stipulated in Article 87 of Law Number 30 of 2014 concerning Government Administration."

Based on these considerations, the exception of the attorney for the Head of the North Sumatra High Prosecutor's Office as the defendant was rejected by the Panel of Judges at the Medan State Administrative Court in its decision. The Panel of Judges granted Ahmad Fuad Lubis' request and stated that the North Sumatra High Court had abused its authority.

The factors that caused Ahmad Fuad Lubis to submit a petition for testing whether or not there was abuse of authority because he felt aggrieved by the Request for Information Number: B-473 / N.2.5 / Fd.1 / 03/2015 dated March 31, 2015 which was addressed to him as the former Chief Treasurer Regional General (BUD) North Sumatra Provincial Government. Ahmad Fuad Lubis was asked to come to the North Sumatra High Prosecutor's Office to be asked for information regarding the alleged corruption crime related to Social Assistance Funds (BANSOS), Subordinate Regional Assistance (BDB), School Operational Assistance (BOS) in arrears for Revenue Sharing Funds (DBH) and Equity Participation in the number of BUMDs in the North Sumatra Provincial Government based on the Investigation Order of the Head of the North Sumatra High Prosecutor's Office Number: Print-31 / N.2 / Fd.1 / 03/2015 dated March 16, 2015. Request for Information from the North Sumatra High Prosecutor's Office was issued based on provisions of KUHAP which are included in the exempt category as stipulated in Article 2 letter d of Law Number 9 of 2004.

There are several theories that the author uses in writing this article, namely : Authority Theory and Certainty Theory. According to Philipus M. Hadjon, "in administrative law, government obtains authority by means of attribution, delegation and sometimes also mandate".[4]

It is further explained that attribution is the authority to make decisions (besluit) which originate directly from the law in a material sense. Meanwhile, delegation is defined as the transfer of authority (to make a besluit) by a government official to another party and this authority is the responsibility of the recipient.

The authority obtained by the government comes from laws and regulations by way of attribution, delegation and mandate. Attribution authority is obtained through the 1945 Constitution and / or laws which are new powers that previously did not exist and the responsibility for authority rests with the relevant Government Officials and cannot be delegated unless regulated in the 1945 Constitution and / or Laws.

The authority of the delegation is obtained based on the provisions of statutory regulations and / or stipulated in Government Regulations, Presidential Regulations, and / or Regional Regulations and is given by Government Agencies / Officials to other Government Agencies and / or Officials which constitute delegated authority or previously existed. The authority of the delegation cannot be further delegated unless it is stipulated in statutory regulations that it can be sub-delegated and stated in the form

[4] Philipus M. Hadjon,et.al,*Introduction to Indonesian Administrative Law*,Gadjah Mada University Press,Yogyakarta,2015, p.133

of a regulation before the authority is exercised. The sub-delegation is carried out within the government itself to agencies / officials one level below it. The responsibility for the authority of the delegation rests with the recipient of the delegation and the authority of the delegation can be withdrawn by the authorized person.

The mandate authority is obtained from government officials whose positions are above the recipient of the mandate which is the implementation of routine tasks if the definitive official is temporarily or permanently absent. The mandate recipient is assigned on behalf of the mandate, cannot take strategic decisions and the responsibility remains with the mandate.

Based on the view of authority as part of authority, authority has a broad meaning so that it can be used as a basis or theory for analyzing the authority or authority of government organs in exercising their authority.

The theory of legal certainty comes from juridical-dogmatic teachings which are based on a positivistic school of thought in the world of law, which tends to see law as something autonomous. Law is nothing but a collection of rules and legal objectives only to guarantee the realization of legal certainty. Legal certainty is manifested by law with its nature that only makes general legal rules. The general nature of legal rules proves that law does not aim to bring about justice or benefit, but solely for certainty.[5]

The three main values in upholding the law, namely justice, certainty and benefit, are goals that must be achieved by every legal norm. The value of legal certainty is a characteristic that cannot be separated from law, especially for written legal norms. Law without certainty values will lose its meaning because it can no longer be used as a code of conduct for everyone. *Ubi jus incertum, ibi jus nullum* (where there is no legal certainty, there is no law).[6]

Authority theory and legal certainty theory work in synergy with each other because authority must be based on existing legal provisions so that the authority becomes valid. Likewise, the use of authority must always be within the limits stipulated by positive law. The use of authority must have a legality basis in positive law to prevent arbitrary actions that cause legal uncertainty. For this reason, the author analyzes the "Position of the Attorney's Request for Information in Corruption Case Investigation as the Object of the Request for Abuse of Authority in the State Administrative Court (Decision Study Number: 25 / G / 2015 / PTUN-MDN)".

Based on information and literature searches, research with the title "The Position of the Attorney's Request for Information in Corruption Case Investigation as the Object of the Application for Abuse of Authority in the State Administrative Court (Study of Decision Number : 25 / G / 2015 / PTUN-MDN)", no scientific papers were found, have overall similarity with the title to be studied. However, it is possible that the same research has been carried out, both at state and private universities. However, there are differences, especially the problems that have been formulated, the discussion and the theoretical framework used.

As for the formulation of the problem in this paper, namely : (1) What is the limit of abuse of authority which is the absolute competence of the State Administrative Court; and (2) What is the position of the Prosecutor's Request for Information in investigating corruption cases in the Procedural Law of the State Administrative Court.

[5] Achmad Ali, *Uncovering the Legal Veil (A Philosophical and Sociological Study)*, Toko Gunung Agung, Jakarta, 2002,p.82-83.
[6] Shidarta, *Morality of the Legal Profession an Offer of a Framework for Thinking*, Refika Aditama, Bandung, 2006, p. 82

Research Methods

Research is a principal means of developing science and technology because research aims to reveal the truth systematically, methodologically and consistently through a process of analysis and construction of data that has been collected and processed.7 The type of legal research used is normative legal research which is carried out by examining library materials or secondary data. Normative legal research is legal research that places law as a system of norms. The system of norms in question is the principles, norms, rules of legislation, court decisions, agreements and doctrines (teachings).8 In research, it is common for the types of data to be differentiated into types of primary data and secondary data. Primary data is data obtained directly from the first source while secondary data includes official documents, books, research results in the form of reports, and so on.9 The research approach used is the statutory approach which is used to study and analyze regulations related to the legal issue being handled and the case approach, namely by conducting a study of cases related to the issues being faced become a court decision that has permanent legal force. In the case approach, several cases are examined for reference to a legal issue.

Results and Discussion

1. Limitations of Authority Abuse to the Competence of State Administrative Judicial Absolutes

Any government action that is manifested by the issuance of a State Administration Decree or a silent attitude, if it is considered by the public to have violated the provisions of laws and regulations and general principles of good governance, the government is referred to by law as an Administrative Body and / or Official. State Enterprises can be sued at the State Administrative Court. With the presence of the AP Law, State Administrative Bodies and / or Officials can submit applications for fictitious positive cases and requests for testing whether or not there is abuse of authority in decisions and / or actions to the State Administrative Court.

The State Administrative Court by attribution has the authority to hear petition cases to assess whether or not there is an abuse of power in decisions and / or actions issued by Government Agencies and / or Officials based on the provisions contained in Article 21 of the AP Law. The AP Law is a material law of the State Administrative Judiciary System so that in petition proceedings whether or not there is an abuse of authority in the State Administrative Court still refers to the Administrative Law. So that in general the limits of the authority of the State Administrative Court in the case are regulated by the Administrative Law and the AP Law.

The absolute competence of the State Administrative Court in the application whether or not there is an element of abuse of authority by attribution is given by Article 21 paragraph (1) of the AP Law. In Article 21 paragraph (2) of the AP Law and Article 35 of Government Regulation Number 48 of 2016, it is stated that what is considered whether or not there is an element of abuse of authority is the decision and / or action of the State Administration Agency and / or Official. Furthermore, based on Article 20 paragraph (6) of the AP Law, Article 2 paragraph (2) of the Regulation of the Supreme Court Number 4 of 2015 and Circular of the Supreme Court Number 4 of 2016 determine that the object of the application for abuse of power is the Decree of the Government Internal Supervisory Apparatus Institution (APIP).

[7] Soerjono Soekanto and Sri Mamudji, *Normative Legal Research A Brief Overview*, Raja Grafindo Persada, Jakarta, 2001, p. 1
[8] Mukti Fajar ND and Yulianto Achmad, *Dualism of Normative Law and Empirical Law Research*, Student Library, Yogyakarta, 2010, p. 34
[9] Amiruddin and Zainal Asikin, *Introduction to Legal Research Methods*, Rajawali Pers, Jakarta, 2012, p. 25

The State Administrative Decree is used as the object of a lawsuit or petition at the State Administrative Court based on Article 1 number 10 of Law Number 51 of 2009 which states that disputes arise as a result of the issuance of a State Administrative Decree:

> "State Administrative Disputes are disputes that arise in the field of state administration between individuals or civil legal entities and state administrative bodies or officials, both at the central and regional levels, as a result of the issuance of state administrative decisions, including personnel disputes based on statutory regulations. valid invitation. "

A State Administrative Decree becomes an object in the State Administrative Court formulated in the Administrative Law and the AP Law as material for the State Administrative Court System. Both laws are positive laws that are still valid and serve as guidelines and legal basis for proceedings at the State Administrative Court.

Since the promulgation of the Administrative Law No. 5 of 1986 and amended twice in the course of its history, the criteria for a State Administrative Decree are made objects of a clear and limitative formulation in that law.

State Administrative Decree which is the object of State Administration dispute is defined in a limitative manner in the Administrative Law as outlined in Article 1 point 9 of Law No. 51 of 2009:

> "A State Administrative Decree is a written stipulation issued by a State Administration Agency or Official which contains a State Administration legal action based on the prevailing laws and regulations, which are concrete, individual and final in nature, which give rise to legal consequences for a person or civil legal entities. "

The elements of the limitative formulation of the State Administrative Decree can be parsed and require further explanation so that it is better understood as an object of State Administration dispute which is an absolute competence in the State Administrative Court. According to Yuslim, these elements 10 "It requires a normative explanation so that it is truly measurable as an object of State Administration dispute".

The elements of the meaning of the State Administrative Decree in the Administrative Court Law are :

1) Written Determination.

2) Issued by State Administrative Bodies or Officials.

3) Contains State Administration Legal Actions.

4) Based on the Applicable Laws and Regulations.

5) Be concrete, individual and final.

6) Resulting in legal consequences for a person or civil legal entity.

The formulation of Article 2 of Law Number 9 of 2004 provides limits on State Administrative Decrees that are not included in the absolute competence of the State Administrative Court. As stated in the elucidation of Article 2 that this limitation is imposed because there are several types of decisions which due to their nature or purpose cannot be classified in the meaning of State Administrative Decrees according to this Law.

[10] Yuslim, 2016, *State Administrative Court Procedure*, Sinar Grafika, Jakarta, p. 47

State Administrative Decrees referred to by this Law are:

1) State Administrative Decisions which are Civil Law Actions.

2) State Administrative Decrees which are General Regulations.

3) State Administrative Decrees Still Requiring Approval.

4) State Administrative Decrees Issued Under the Criminal Code and Criminal Procedure Code or Other Legislations which are Criminal Law.

5) State Administrative Decree Issued on the basis of the results of an examination of a judicial body based on the provisions of the prevailing laws and regulations.

6) State Administration Decree Regarding Administration of the Indonesian National Army.

7) Decision of the General Election Commission both at the Central and Regional levels regarding the results of the General Election.

Article 49 of Law Number 5 Year 1986 states that the Court is not authorized to examine, decide and settle certain State Administrative disputes in the event that the disputed decision is issued:

1) During a war, a state of danger, a state of natural disaster, or an extraordinary situation that is dangerous, is based on the prevailing laws and regulations.

2) In an urgent situation for the public interest based on the prevailing laws and regulations.

In the elucidation of Article 49 it is explained that the public interest is the interest of the nation and state and / or the interests of the common community and / or the interests of development, in accordance with the prevailing laws and regulations.

With the enactment of Law Number 30 of 2014 concerning Government Administration on October 17, 2014, the meaning of State Administrative Decrees has undergone significant changes, expansion and / or changes in the meaning of the State Administrative Decree formulated in 3 Articles, namely:

a) Article 1 point 7 of the Government Administration Law with the formulation "Government Administration Decisions which are also called State Administration Decisions or State Administration Decisions, hereinafter referred to as Decisions, are written decrees issued by Government Agencies and / or Officials in the administration of government".

b) Article 87 of the Government Administration Law, namely: With the enactment of this Law, the State Administration Decree as referred to in Law Number 5 of 1986 concerning State Administrative Courts as amended by Law Number 9 of 2004 and Law Number 51 of 2009 should be interpreted as:

i. Written decisions which also include factual actions;

ii. Decisions of State Administrative Bodies and / or Officials within the executive, legislative, judiciary and other state administrators;

iii. Based on statutory provisions and AUPB;

iv. Are final in a broader sense;

v. Decisions with potential legal consequences; and / or

vi. Decisions that apply to Citizens. "

c) Article 53 of the Government Administration Law in which there is no longer any negative fictitious decision regulation as in the Administrative Court Law. The negative fictitious decision in the Administrative Court Law stipulates that if the State Administration Agency or Official does not answer the application which is an obligation while the time period has passed, the State Administrative Agency or Official is deemed to have issued a State Administrative Decree containing a rejection of the application. The Government Administration Law regulates the provisions of positive fictitious decisions which are the opposite of negative fictional decisions. Silent acts or requests that are not answered by government agencies or officials are deemed to have issued a State Administration Decree containing the application.

Since the issuance of the Government Administration Law which raises pros and cons, the provisions regarding negative fictitiousness in Article 3 of the Administrative Law are declared invalid by the Supreme Court Circular Letter Number 1 of 2017 as follows:

"Based on the provisions of Article 53 of the Government Administration Law which regulates positive fictitious applications, the provisions of Article 3 of Law Number 5 of 1986 regarding fictitious-negative claims cannot be enforced anymore, because it will create legal uncertainty regarding the procedures for resolving legal problems that must be applied. by the administrator. "

In the study of Decision Number: 25 / G / 2015 / PTUN-MDN on behalf of Ahmad Fuad Lubis, former Chairman of the Regional General Treasurer of North Sumatra Province for the 2014 period, who at the time of the rolling case served as Head of the Regional Finance Bureau of North Sumatra Province, Ahmad Fuad Lubis through a proxy filed a request for a review of whether or not there was abuse of power to the Medan State Administrative Court on May 5, 2015.

Ahmad Fuad Lubis through his attorney placed a Letter of Request for Information Number : B-473 / N.2.5 // Fd.1 / 03/2015 dated March 31, 2015 issued by the Head of the North Sumatra High Prosecutor's Office domiciled in Medan as the object in the petition whether or not there is an element of abuse of authority, so that in that case the Head of the Prosecutor's Office High North Sumatra became the respondent.

The party representing the prosecutor's office filed an exception on Ahmad Fuad Lubis' request and the Panel of Judges gave consideration in Decision Number: 25 / G / 2015 / PTUN-MDN that:

1. Whereas what is being tested in the AQUO dispute process is the decision / action of the Respondent in issuing a decision on the object of the dispute, whether or not there is an element of abuse of authority as stipulated in Article 21 of Law Number 30 of 2014. Based on the provisions of Article 21 paragraph (1) of Law Number 30 In 2014, it was stated that the Court had the authority to accept, examine and decide whether or not there was an element of abuse of authority by Government Officials.

2. Whereas based on the provisions of Article 1 point 2 (two) of Law Number 30 of 2014 Government Administration, it is stated that the Government Function is the function of implementing Government Administration which includes the functions of regulation, service, development, empowerment and protection. Furthermore, in the provisions of Article 4 paragraph (1) letter b of Law Number 30 of 2014 concerning Government Administration it determines that the scope of Government Administration arrangements in this Law covers all activities of Government Agencies and / or Officials carrying out Government Functions within the scope of the

Judicial institution. Based on these provisions, in the opinion of the Panel of Judges, the Respondent in issuing the object of the Petition was carrying out Government functions.

3. Whereas based on Article 1 point 18 of the Government Administration Law, it is stated that the Court is a State Administrative Court. Whereas the object of the petition in this dispute is the Decision of the Respondent in the form of Summons for inquiries Number: B - 473 / N.2.5 / Fd.1 / 03/2015 dated March 31, 2015 against the Petitioner as the Former Chairman of the Regional General Treasurer (BUD) of the North Sumatra Provincial Government to be tested. or there is no element of Abuse of Authority in the issuance of the decision as referred to in Article 21 of Law Number 30 of 2014 concerning Government Administration, not a lawsuit as stipulated in Article 87 of Law Number 30 of 2014 concerning Government Administration.

Based on these three considerations, the Panel of Judges stated the Respondent's exception, which stated that the State Administrative Court was not authorized to examine, decide and resolve disputes, because it was related to the material legal arrangements for the State Administrative Court in Article 2 letter d of Law Number 9 of 2004 related to competence. absolute must be declared rejected.

Analyzing the judge's first consideration, that it is true that Article 21 paragraph (1) of the Government Administration Law confirms that the Court has the authority to accept, examine and decide whether or not there is an element of abuse of authority committed by Government Officials. However, in proceeding with the petition whether or not there is an element of abuse of authority, other requirements must also be met to be able to place a decision and / or action as an object in the State Administrative Court.

The requirement to place a decision and / or action as an object is or does not have an element of abuse of authority as described above is regulated in Article 1 number 9 of Law Number 51 of 2009, Article 2 of Law Number 9 of 2004, Article 3 of Law Number 5 of 1986 , Article 1 point 7 of the Government Administration Law, Article 53 of the Government Administration Law, Article 87 of the Government Administration Law and Article 49 of the Government Administration Law. The provisions of Article 2 of Law Number 9 Year 2004 are still in effect and have not been revoked by the Government Administration Law so that the provisions of the Article cannot be distorted. Meanwhile, the provisions of Article 3 of Law Number 5 of 1986 are declared invalid by the Circular of the Supreme Court of the Republic of Indonesia Number 1 of 2017.

Analyzing the second judge's considerations, the Attorney General's Office as a government institution in the executive environment, its function is related to judicial power. The functions related to this judicial power are activities of investigation, investigation, implementation of decisions, provision of legal services and settlement of disputes outside the court. The legal basis for the implementation of functions related to judicial power is regulated in the Criminal Code, the Criminal Procedure Code and other statutory regulations as long as it regulates criminal provisions. So in this case the Request for Information from the Prosecutor's Office cannot be placed as an object in the State Administrative Court.

The consideration of the third judge who stated that the Prosecutor's Request for Information is requested to be tested whether or not there is an element of abuse of authority in the issuance of the decision as referred to in Article 21 of the Government Administration Law, not a lawsuit as stipulated in Article 87 of the Government Administration Law. As stipulated in Article 21 paragraph (2) of the Government Administration Law, the State Administrative Court assesses whether or not there is an element of abuse of authority in decisions and / or actions taken by government agencies and / or officials.

These decisions and / or actions are regulated based on Article 1 number 9 Law Number 51 of 2009, Article 1 number 7 of the Government Administration Law, Article 53 of the Government Administration Law and Article 87 of the Government Administration Law. The object in a lawsuit or

petition is a decision and / or action, however, the Request for Information includes the criteria for a State Administrative Decree being annulled as an object in the State Administrative Court. So that based on the entire analysis, the Panel of Judges is not correct in providing considerations regarding the Request for Information that is placed as the object of the petition whether or not there is an element of abuse of authority.

According to Prayudi, authority (authority, gezag) and authority (competence, bevoegheid) have different meanings 11:

"Authority is :

a. What is called formal power is power derived from legislative power (given by law) or from administrative executive power.

b. Authority usually consists of several powers.

c. Authority is power over a certain group of people or power over one area of government. For example, the authority in the field of justice or the power to judge which is called competence / jurisdiction".

Meanwhile, what is meant by authority is the power to carry out an act of public law. An example of the authority to sign / issue permits from an official on behalf of the Minister, while the authority remains in the hands of the Minister (commonly known as delegation of authority).

Ateng Syafrudin distinguishes the definition of authority and authority as follows: [12]

"There is a difference between the meaning of authority and authority. We must distinguish between authority (*authority, gezag*) and authority (*competence, bevoegheid*). Authority is what is called formal power, power that comes from the power given by law, while authority only concerns a certain "onderdeel" (*part*) of the authority. Within the authority there are powers (*rechtbevoegheden*). Authority is the scope of public legal action, the scope of governmental authority, not only includes the authority to make government decisions (*bestuur*), but includes authority in the context of carrying out duties, and granting authority and distribution of authority primarily stipulated in statutory regulations ".

Based on the source of authority of H.D. Van Wijk / Willem Konijnenbelt divides the three ways government organs obtain authority, namely attribution, delegation and mandate which are defined as follows: [13]

a. Attribution is the granting of governmental authority by lawmakers to government organs.

b. Delegation is the delegation of governmental authority from one governmental organ to another.

c. A mandate occurs when an organ of government allows its authority to be exercised by another organ on its behalf.

In connection with the authority of the Administrative Court in the petition whether or not there is an element of abuse of authority in decisions and / or actions, this authority is granted attributed to Article 21 paragraph (1) of the Government Administration Law which is a material law of the State Administrative Court System. Testing whether or not there is an element of abuse of authority is a

[11] Jum Anggraini, *State Administrative Law*, Graha Ilmu, Yogyakarta, 2012, p. 87
[12] Salim HS and Erlies Septiana Nurbani, 2017, *Application of Legal Theory in Thesis and Dissertation Research*, Rajawali Pers, Jakarta, p. 184
[13] Ridwan H.R., 2011, *State Administrative Law*, Raja Grafindo Persada, Jakarta, p. 102

petition case raised by the Government Administration Law. As stated by Enrico Simanjuntak, petition cases are a new type of case in the State Administrative Court.14

According to Tri Cahya Indra Permana, the provision of testing whether or not there is an element of abuse of authority in the Government Administration Law is the result of the absence of a defense forum for government agencies or officials who are suspected of having committed abuse of authority other than under criminal law and they feel that they are victims of criminalization against official policies Public.15 So that with the presence of a case for testing the presence or absence of abuse of authority in the Government Administration Law it provides an opportunity and a breath of fresh air for State Administrative Bodies and / or Officials who feel their interests have been harmed to submit a request for examination to the State Administrative Court.

An application for a test of authority is a request that is submitted in writing to the State Administrative Court to assess whether or not there is an element of abuse of authority carried out by State Administrative Bodies and / or Officials in decisions and / or actions.16 In the case of submitting a request for review, there is or does not have abuse of authority to the State Administrative Court. The Administrative Law and the Government Administration Law provide limits on authority to become the absolute competence of the State Administrative Court.

The limitation for proceeding with the petition whether or not there is an element of abuse of power which is the absolute competence of the State Administrative Court is regulated in Article 1 number 9 Law Number 51 of 2009, Article 1 number 7 of the Government Administration Law, Article 53 of the Government Administration Law and Article 87 of the Government Administration Law as referred to which has been explained in the description of the object of the petition whether or not there is an element of abuse of authority. Another limitation that becomes the absolute competence of Administrative Courts in applications for abuse of power is regulated in the Supreme Court Regulation Number 4 of 2015. The formulation which regulates these limits is regulated in Article 2 paragraph (1) and (2) of the Supreme Court Regulation Number 4 of 2015 which states that the Administrative Court has the authority to:

1. Prior to criminal proceedings.

   Regulations regarding the authority of the State Administrative Court in the event that the appraisal application exists or does not have the abuse of authority is limited in terms of "prior to a criminal process" is regulated in Article 2 paragraph (1) of the Supreme Court Regulation Number 4 of 2015 which reads as follows:

   "The court has the authority to accept, examine, and decide on the application for assessment whether or not there is an abuse of authority in decisions and / or actions of Government Officials before the existence of a criminal process"

   The purpose of Article 2 paragraph (1) of the Supreme Court Regulation Number of 2015 with "prior to the existence of a criminal process" is that in the case of abuse of authority that causes losses to state finances, if the criminal process has been carried out, the authority rests with the General Court.

2. After the results of supervision by the Government Internal Supervisory Apparatus (APIP).

[14] Enrico Simanjuntak, 2018, *Procedure for the State Administrative Court for Transformation and Reflection*, Sinar Grafika, Jakarta, p. 136

[15] Tri Cahya Indra Permana, *State Administrative Court Post Government Administration Law in terms of Access to justice*, Journal of Law and Justice, Volume 4, Number 3 November 2015, p. 432-433

[16] Supreme Court Regulation Number 4 of 2015 concerning Guidelines for Procedures in the Assessment of Elements of Abuse of Authority, p. 3

In connection with the limits of the authority of the State Administrative Court in the case of abuse of power that focuses on abuse of authority in the provisions of Article 20 paragraph (1) of the Government Administration Law, it is stated that supervision of abuse of power is carried out by the Government Internal Supervisory Apparatus (APIP).

The results of the APIP supervision as stated in Article 20 paragraph (2) of the Government Administration Law and Article 33 of Government Regulation Number 48 of 2016 Procedures for Imposing Administrative Sanctions to Government Officials can be in the form of no errors, administrative errors and administrative errors that cause losses. According to Tri Cahya Indra Permana, state finances and the form of the results of APIP supervision are the products of the Supervision Results Report (LHP)[17]. However, in article 1 number 15 Government Regulation Number 48 of 2016 concerning Procedures for Imposing Administrative Sanctions to Government Officials it is explained that the form of supervision results from the government internal control apparatus is in the form of Minutes of Request for Information (BAPK).

The Government Internal Supervisory Apparatus (APIP) submits Minutes of Request for Information (BAPK) with data attachments to Government Officials authorized to impose sanctions as a consideration for the imposition of types of Administrative Sanctions to be imposed on Government Officials who commit administrative errors and / or administrative errors that cause financial losses country.[18]

Government officials who object to the sanctions imposed can apply for testing whether or not there is abuse of authority in their decisions and / or actions as outlined in Article 35 of Government Regulation Number 48 of 2016 as follows:

"In the event that Government Agencies and / or Officials object to the decision of the authorized official to impose Administrative Sanctions, Government Agencies and / or Officials can submit an application to the State Administrative Court to assess whether or not there is an element of abuse of authority in decisions and / or actions."

Thus the Minutes of Request for Information (BAPK) with data attachments are evidence of whether or not there is an abuse of authority that causes state financial losses by the State Administration Agency and / or Officials. Meanwhile, the object of the petition, in this case, is a decision and / or action of a government official that contains abuse of authority that causes losses to state finances.

Meanwhile, the subject of the case for testing the application of whether or not the abuse of authority is the State Administration Agency and / or Officials who feel aggrieved by the results of APIP supervision and the sanctions given by the authorized official to impose sanctions. So it can be said that the limit of the authority of the State Administrative Court is after the existence of an APIP supervision product in the form of an Official Report on Request for Information (BAPK) as evidence of whether or not there is an abuse of authority that causes losses to state finances. This is stated directly in the Supreme Court Regulation Number 4 of 2015 concerning Guidelines for Procedures in the Assessment of Elements of Abuse of Authority in Article 2 paragraph (2) that:

"The new court has the authority to accept, examine and decide on the appraisal of the application as referred to in paragraph (1) after the results of supervision by the government internal control apparatus exist."

Based on Article 20 paragraph (6) of the Government Administration Law, it can be understood that the intended abuse of authority is related to state financial losses. This was also conveyed by Enrico

[17] Tri Cahya Indra Permana, *Op.Cit*, p.439
[18] Government Regulation Number 48 of 2016 concerning Procedures for Imposing Administrative Sanctions on Government Officials, Article 32, p. 20

Simanjuntak that the main focus of examining the abuse of power as referred to in Article 21 of the Government Administration Law is in the context of whether or not there is a state financial loss. That is, the elements of abuse of authority that are not related to the problem of state financial losses as referred to in Article 21 of the Government Administration Law are not objectum litis Article 21 of the Government Administration Law.[19] The purpose of Enrico Simanjuntak's explanation is that the limits of the authority of the State Administrative Court in terms of testing whether or not there is an abuse of power lies in the abuse of authority that causes losses to state finances.

In the case study on behalf of Ahmad Fuad Lubis, former Chairman of the Regional General Treasurer of the Province of North Sumatra for the period 2014 who placed the Request for Information from the Prosecutor's Office Number : B-473 / N.2.5 / Fd.1 / 03/2015 March 31, 2015 as an object, The Medan State Administrative Court accepts, examines and decides whether or not there is an abuse of power that Ahmad Fuad Lubis proposed as the petitioner. The case was decided on July 7, 2015 with the number Decision Number : 25 / G / 2015 / PTUN-MDN and this decision became the subject of a study on the limits of abuse of power which is the absolute competence of the State Administrative Court with reference to the legal basis of the Administrative Law and the Government Administration Law, as well as other related regulations such as Supreme Court Regulation Number 4 of 2015 which was born on 21 August 2015 after the case was decided.

As explained in Decision Number: 25 / G / 2015 / PTUN-MDN that the object of the petition in the case is the Request for Information Letter No. B-473 / N.2.5 // Fd.1 / 03/2015 dated March 31, 2015 which contains:

> "Requests for information related to the alleged corruption of Social Assistance Funds (BANSOS), Subordinate Regional Assistance (BDB), School Operational Assistance (BOS), arrears in Revenue Sharing Funds (DBH) and Capital Participation in a number of BUMDs in the North Sumatra Provincial Government based on a letter Investigation Order of the Head of North Sumatra High Prosecutor's Office Number: Print-31 / N.2 / Fd.1 / 03/2015 dated March 16, 2015." [20]

Related to this, it is related to the criteria contained in Article 2 letter d of Law Number 9 of 2004 which provides a limitation that the request for information is annulled as the competence of the State Administrative Court in terms of:

> "State administrative decisions issued based on the provisions of the Criminal Code and the Criminal Procedure Code or other laws and regulations that are criminal law;"

A letter of request for information falls within the realm of criminal law whose authority lies with the general court. Based on the limitations of the petition, whether or not there is an element of abuse of authority stipulated in Article 2 paragraph (1) and (2) of the Supreme Court Regulation Number 4 of 2015 that the requirements for the petition whether or not there are elements of abuse of power to become the competence of the State Administrative Court are:

1. Prior to criminal proceedings.

The regulation regarding the requirement "before there is a criminal process" existed after the issuance of the Supreme Court Regulation No. 4 of 2015 on August 21, 2015 while the case was rolling and decided on July 7, 2015. The regulation itself is not found in the Government Administration Law or the Administrative Court Law. when this case was running, there was a friction of authority with the authority of the criminal justice because Ahmad Fuad Lubis as the former Chairman of the Regional

[19] Enrico Simanjuntak, 2018, *Procedure for the State Administrative Court for Transformation and Reflection*, Sinar Grafika, Jakarta, p. 139
[20] Medan State Administrative Court Decision Number: 25 / G / 2015 / PTUN-MDN dated 7 July 2015, p. 5

General Treasurer (BUD) of the North Sumatra Provincial Government was being processed in the investigation stage by the North Sumatra High Prosecutor's Office as outlined in the following decision:

> "……..... The Head of the North Sumatra High Prosecutor's Office has issued an Investigation Order Number: Print-31 / N.2 / Fd.1 / 03/2015 dated March 16, 2015;

Whereas in connection with the investigation, it is necessary to provide information from several related parties, namely the Regional General Treasurer and his staff, one of which is the Petitioner as the former Chairman of the Regional General Treasurer (BUD) of the 2014 North Sumatra Provincial Government; "[21]

The case process is still at the investigation stage so that there is friction in the power of the Attorney in conducting an investigation with the authority of the Medan Administrative Court in processing the request whether or not there is an abuse of power. The basis for the authority of the Attorney to conduct investigations into suspected criminal acts of corruption is given attributable to Law Number 16 of 2004 concerning the Attorney General's Office, Article 30 paragraph (1) letter d, which reads: "to conduct investigations into certain crimes based on the law". Meanwhile, the basis for the authority of the Medan State Administrative Court in terms of attribution is given by the Government Administration Law Article 21 paragraph (1) which reads: "The court has the authority to accept, examine, and decide whether or not there is an element of abuse of authority committed by Government Officials".

To measure whose authority should be applied, in this case according to M. Sahlan, there is a conflict between the law that was made earlier and the law that was formed later (conflict of norm). This conflict can be resolved on the basis of legal preference.22 The principle that can be implemented is the legal principle "lex posteriori derogate legi priori". The applicability of this principle must be based on the fulfillment of the following principles:

a. The new legal rule must be equal to or higher than the old legal rule;

b. The aspects governed by the new law and the old law are the same.[23]

The Government Administration Law was promulgated on 17 October 2014 while the Law on the Prosecutor's Office was promulgated on July 26, 2004. Based on the legal principle of "lex posteriori derogate legi priori", the authority to hear cases for judicial review whether or not abuse of authority is the absolute competence of the State Administrative Court which is Attribution is given by the Law on Government Administration which was formed later (post) after the issuance of the Prior Law.

2. After the results of supervision by the Government Internal Supervisory Apparatus (APIP).

Based on Article 20 paragraph (1) of the AP Law, it is clearly stated that: "Supervision of the prohibition against abuse of authority as referred to in Article 17 and Article 18 is carried out by government internal control officials." Then in the Supreme Court Regulation Number 4 of 2015 concerning Guidelines for Procedures in Assessment of Elements of Abuse of Authority in Article 2 paragraph (2) that: "The new court has the authority to accept, examine and decide on the appraisal appraisal as referred to in paragraph (1) after the results of the supervision of the internal control apparatus government."

[21] *Ibid*
[22] Mohammad Sahlan, *Article on Elements of Abusing Authority in Corruption Crime as Absolute Competence of Administrative Courts*, http://media.neliti.com> media, Downloaded on May 21, 2020, p. 286.
[23] *Ibid*, p. 287

In the decision of the petition case whether or not there was abuse of authority submitted by Ahmad Fuad Lubis, the former Chairman of the Regional General Treasurer of North Sumatra Province for the 2014 period to the Medan State Administrative Court, no evidence was found of the result of the supervision of the government internal control apparatus which according to Government Regulation Number 48 Year 2016 in the form of Minutes of Request for Information (BAPK) or other forms (because the case was decided on July 7, 2015).

2. Position of Request for Prosecution in Corruption Cases in State Administrative Judicial Procedures

Attorney General's Office in the Indonesian Constitutional Law System, since the birth of Law no. 15 of 1961 concerning the Principles of the Public Prosecutor's Office of the Republic of Indonesia, Article 1 paragraph (1) states that the Attorney General's Office is an apparatus of the law enforcing state who has the duty of being a Public Prosecutor. Its position as an instrument of the state law enforcement has changed since the enactment of Law Number 5 of 1991 concerning the Republic of Indonesia Attorney General's Office. In Article 2 paragraph (1), the Prosecutor's Office is a government institution that exercises state power in the field of prosecution. As the executor of state power, the Attorney General's Office is the only government institution that has the duty and authority in the field of prosecution in upholding law and justice within the general court as stated in the Elucidation of Article 2 of the Law.

As a government agency, the head of the Attorney General's Office, namely the Attorney General, is appointed and dismissed as well as responsible to the President as stated in Article 19 of Law Number 5 of 1991 so that the Prosecutor's Office is in the executive branch. With the presence of Law Number 16 of 2004 concerning the Republic of Indonesia Attorney General's Office, even though it is still in the executive environment as referred to in Article 19 paragraph (2) of Law Number 16 of 2004, the Prosecutor's Office is released from government influence on the basis of the consideration in letter d that it is no longer appropriate. with the development of people's legal needs and state life according to the 1945 Constitution.

Regarding Decision Number : 25 / G / 2015 / PTUN-MDN dated July 7 2017 that Ahmad Fuad Lubis, former Chairman of the Regional General Treasurer (BUD) of the North Sumatra Provincial Government submitted a request for a test of abuse of power to the Medan State Administrative Court and made a Request for Information Number : B-473 / N.2.5 / Fd.1 / 03/2015 March 31, 2015 as the object of the application. The letter of request for information addressed to Ahmad Fuad Lubis, the former Chairman of the Regional General Treasurer (BUD) of the North Sumatra Provincial Government who at that time served as Head of the Regional Finance Bureau of the Province of North Sumatra was based on the Inquiry Letter for the Head of the North Sumatra High Prosecutor's Office Number : Print-31 / N.2 / Fd.1 / 03/2015 dated 16 March 2015.

The source of the investigation by the North Sumatra High Prosecutor's Office comes from public reports about:

1. Report Letter from the Leadership Council of the Indonesian City Community, Medan City (DPK MPI MDN) Number : 019 / B1.Perm / DPK-MPI / MDN / II / 2015 dated 10 February 2015;

2. Report Letter from the Leadership Council of the Indonesian Pancasila Community Regency of Labuhan Batu (DPK MPI LS) Number : 09 / B / DPK-MPI / LS / II / 2015 dated 14 February 2015;

3. Report Letter from the Leadership Council of the Indonesian Pancasila Community, Pak-Pak Regency (DPK MPI PB) Number : 15 / B.1 / DPK-MPI / PB / II / 2015 dated 18 February 2015;

4. Letter of Report from the Leadership Council of the Indonesian Pancasila Community, Dairi Regency (DPK MPI DA) Number : 037 / B.1.Perm / DPK-MPI / DA / II / 2015 dated February 25, 2015; [24]

Based on the public report, a staff review is then carried out which is a study in the form of an official note from subordinates to a superior containing a review of the alleged corruption crime, systematically the position of the case, facts from the source of the investigation, juridical analysis, conclusions, opinions / suggestions. The results of the staff's review were then exposed to the Head of the North Sumatra High Prosecutor's Office and from the results of the exposure it was stated that there were allegations of criminal acts of corruption in Social Assistance Funds (Bansos), Subordinate Regional Assistance (BDB), School Operational Assistance (BOS), arrears of Revenue Sharing Funds (BDH) and Capital Participation in a number of BUMDs in the North Sumatra Government so that it was followed up with an Inquiry Letter for the Head of the North Sumatra High Prosecutor's Office Number : Print-31 / N.2 / Fd.1 / 03/2015 dated March 16, 2015.

Based on the Investigation Order of the Head of the North Sumatra High Prosecutor's Office Number: Print-31 / N.2 / Fd.1 / 03/2015 On March 16, 2015 a Request for Information was issued Number: B-473 / N.2.5 / Fd.1 / 03 / 2015 March 31, 2015 addressed to Ahmad Fuad Lubis, former Chairman of the Regional General Treasurer (BUD) of the North Sumatra Provincial Government who at that time served as Head of the Regional Finance Bureau of North Sumatra Province who was directly related to the alleged corruption crime.

The letter of request for information is based on the Prosecutor's internal rules, namely PERJA-039 / A / JA / 10/2010 concerning Administration and Technical Management for Special Crime Case Handling. The use of a request for information with the letter code Pidsus-5A was carried out in the investigation stage and did not have any coercive efforts, so to seek information, no summons were made but with a letter of request for information. The public prosecutor has the authority to request information from a person in connection with a report of a criminal act based on an investigation warrant. The authority is based on Article 5 paragraph (1) sub a 2nd and 4th in conjunction with Article 284 paragraph (2) KUHAP in conjunction with Article 17 of Government Regulation Number 27 of 1983.

Based on the point of view of the Medan PTUN panel of judges who rejected the exception regarding the absolute competence of the attorney for the Head of the North Sumatra High Prosecutor's Office as the defendant in the petition case filed by Ahmad Fuad Lubis who stated in his exception that the Medan PTUN was not authorized to try the aquo case, where the panel of judges' consideration was as follows:

> "Considering, that the object of the petition in this dispute is the Respondent's Decision in the form of Summons for information Number: B - 473 / N.2.5 / Fd.1 / 03/2015 dated March 31, 2015 against the Petitioner as the Former Chairman of the Regional General Treasurer (BUD) of the North Sumatra Provincial Government (*Vide Evidence P-1 and T-6*) to be tested whether or not there is an element of abuse of authority in the issuance of the decision as referred to in Article 21 of Law Number 30 of 2014 concerning Government Administration, not a lawsuit as stipulated in Article 87 of Law Number 30 of 2014 concerning Government Administration;
>
> "Considering, whereas based on the above considerations, the Respondent's exception, which states that the State Administrative Court is not authorized to examine, decide, and resolve disputes, because it is related to the material legal arrangements for the State Administrative Court, namely Article 2 letter d of Law Number 9 of 2004 regarding absolute competence must be declared rejected; " [25]

[24] Judgment, *Op.Cit*, p. 54
[25] *Ibid*, p.70-71

The Government Administration Law provides clear provisions in its explanation in general provisions that the Government Administration Law is a material law of the State Administrative Court System so that proceedings at the State Administrative Court are based on the provisions of the Government Administration Law and the Administrative Law which are positive law and based on legality principles. adopted in the constitutional state of Indonesia, the provisions or norms of both laws are generally binding without exception and cannot be distorted as long as they have not been revoked by the competent institution.

The norm in Article 21 paragraph (1) of the Government Administration Law states that: "The court has the authority to accept, examine, and decide whether or not there is an element of abuse of authority committed by Government Officials." Furthermore, in the norms of Article 21 paragraph (2) of the Government Administration Law it is stated that: "Government Agencies and / or Officials can submit applications to the Court to assess whether or not there is an element of abuse of authority in decisions and / or actions."

From the two norms, it is clear that the State Administrative Court has the authority in the petition case whether or not there is an element of abuse of authority in decisions and / or actions of Government Agencies and / or Officials. Two points that can be captured from the two norms relating to the judges' considerations above are regarding the petition case and decisions and / or actions.

Therefore, the Request for Information Letter Number : B- 473 / N.2.5 / Fd.1 / 03/2015 dated March 31, 2015 is the Decree of the Head of the North Sumatra High Prosecutor's Office. As one of the government agencies in the executive sector, the Attorney General's Office carries out government functions whose functions are related to judicial power and Request for Information Letter Number : B-473 / N.2.5 / Fd.1 / 03/2015 dated March 31, 2015 was issued based on the provisions of the Book of Law. Criminal Procedure Law (KUHAP) in the context of investigating alleged corruption in Social Assistance Funds (Bansos), Subordinate Regional Assistance (BDB), School Operational Assistance (BOS), arrears in Revenue Sharing Funds (BDH) and Capital Participation in a number of BUMDs in the Government North Sumatra, which was followed up based on the Investigation Order of the Head of the North Sumatra High Prosecutor's Office Number : Print-31 / N.2 / Fd.1 / 03/2015 March 16, 2015 and with the background of public reports, is the authority of the general court. So that the provisions of Article 2 letter d cannot be distorted as long as it has not been revoked or canceled by the new law.

In connection with the discussion of limits on the authority of the State Administrative Court in cases where the application is or is not abuse of authority, Request for Information Number : B- 473 / N.2.5 / Fd.1 / 03/2015 dated March 31, 2015 cannot be positioned as an object in the petition case in Administrative Court for the following reasons:

a. Issued based on the provisions of the Criminal Procedure Code (KUHAP).

b. Is a decision and / or action of an external official in the context of examining the investigation stage of suspected corruption.

c. It is not an abuse of authority that causes state financial losses.

d. Not the result of supervision by the government internal control apparatus (APIP) or the result of an external institution audit requested by the government internal supervision apparatus (APIP).

Judges in Decision Number : 25 / G / 2015 / PTUN-MDN dated July 7 2017 have deviated from the provisions of Article 2 letter d of Law Number 9 of 2004 so that the deviation is contrary to the objectives of positive law made by state institutions with the aim of creating order for society and provide clear legal certainty.

In order to demand legal certainty, the attorney for the Head of the North Sumatra High Prosecutor's Office filed an appeal to the Medan State Administrative High Court and the form of legal certainty was returned to his nature by the Decision of the Medan State Administrative High Court Number : 176 / B / 2015 / PT TUN-MDN dated December 21, 2015 with the following considerations:

1) The material of the provisions of Article 2 of the State Administrative Court Law is not regulated, let alone repealed by the Government Administration Law, so that the provisions in the Article are still valid and are guided by judges in adjudicating cases including the aquo case;

2) Letter of Request for Information Number : B-473 / N.2.5 / Fd.1 / 03/2015 dated March 31, 2015 issued on the provisions of the Criminal Procedure Code, the Panel of Appeal Judges is of the opinion that the case with the object of the dispute is included in the category a letter or decision which is exempt and whose legality cannot be tested at the State Administrative Court as stipulated in Article 2 letter d of the Law on State Administrative Court;

3) Implementing the provisions in Law Number 30 of 2014 concerning Government Administration, which was only passed and effective since 17 October 2014, violates the legal principle of prohibition of retroactivity or regulations that cannot be retroactive (alleged corruption occurred in 2012 and 2013).

The Government Administration Law brought new changes that paralyzed the Law on State Administrative Courts (lex posteriori derogat legi priori) and this was proven by the Medan State Administrative Court Decision Number : 25/2015 / PTUN-MDN dated 7 July 2015 so that it is necessary amendments to the Law on State Administrative Courts are mainly related to the limitations that become the competence of the State Administrative Court in proceeding cases of whether or not there is abuse of authority.

Conclusion

Based on the description that has been explained it can be concluded as follows:

1. Limitation of abuse of power which is the absolute competence of the State Administrative Court.

   a. Decisions and / or Actions whose criteria are regulated in the Administrative Law and the Government Administration Law.

      At the examination request there is or does not exist abuse of authority, Decisions and / or Actions that become objects are Decisions and / or Actions whose regulations are clearly normalized in the Administrative Law and Government Administration Law as outlined in Article 1 Number 9 Law Number 51 of 2009, Article 1 point 7 of the Government Administration Law, Article 53 of the Government Administration Law and Article 87 of the Government Administration Law. The Administrative Law also emphasizes that the State Administration Decree which is included in the provisions of Article 2 of Law Number 9 of 2004 and Article 49 of Law Number 5 of 1986 does not belong to the authority of the State Administrative Court.

      Sitting and receiving a letter of request for attorney's statement issued under the provisions of the Criminal Procedure Code as the object of the case is contrary to the provisions of Article 2 letter d of Law Number 9 Year 2004 which is still valid and has not been revoked by other laws so that it cannot be annulled or distorted.

   b. Prior to criminal proceedings (Article 2 paragraph (1) of the Supreme Court Regulation Number 4 of 2015).

The State Administrative Court has the authority in the petition whether or not there is an abuse of authority that causes losses to state finances, if the abuse of authority that results in state financial losses has not been processed by the Law Enforcement Officials in the sense that it has not been touched by the Law Enforcement Apparatus authorized in a criminal case. So that if the Prosecutor's investigation process has been running, the authority to handle criminal cases lies with the Prosecutor's Office.

The separation of the limits of the authority of the State Administrative Court from the authority of the Prosecutor's Office as regulated by Article 2 paragraph (1) of the Regulation of the Supreme Court of the Republic of Indonesia Number 4 of 2015 has not been normalized in the Administrative Law as formal and material law in the State Administrative Court System.

c. After the results of supervision by the Government Internal Supervisory Apparatus (Article 2 paragraph (2) of Perma No.4 of 2015).

After the results of supervision by the Government Internal Supervisory Apparatus in the form of Minutes of Request for Information (BAPK) which contain findings that the Decisions and / or actions of Government Agencies and / or Officials contain elements of abuse of authority that cause losses to state finances, the new State Administrative Court has the authority to accept and complete application cases filed by Government Agencies and / or Officials.

2. The position of the Attorney's Request for Information in investigating corruption cases in the Procedural Law of the State Administrative Court.

In the Decision Number: 25 / G / 2015 / PTUN-MDN, the Lawyer is not quite right in placing the Request for Statement of the Prosecutor as the object and the Judge is not right in considering the Request for Statement of the Prosecutor as the object of the authority of the State Administrative Court. Request for Information Number: B- 473 / N.2.5 / Fd.1 / 03/2015 dated March 31, 2015 was issued based on Article 5 paragraph (1) sub a 2nd and 4th in conjunction with Article 284 paragraph (2) KUHAP jo Article 17 PP No. 27 of 1983 and cannot be positioned as an object in a petition case in the Administrative Court because:

a. Issued based on the provisions of the Criminal Procedure Code (KUHAP).

b. Issued by external officials in the context of examining the investigation stage of alleged Corruption Crimes.

c. Does not cause state financial losses due to abuse of authority.

d. Not the result of supervision by the Government Internal Supervisory Apparatus (APIP) or the result of an external institution audit requested by the Government Internal Supervisory Apparatus (APIP).

Suggestion

Based on the research results that have been described in the previous chapter, it is suggested through this research:

1. The President and / or DPR as legislators are expected to re-design and form the Administrative Court Law so that it is in harmony with the Government Administration Law which brings new provisions and norms, especially provisions and norms regarding limits on abuse of power which are the absolute competence of the State Administrative Court.

2. With the existence of harmonious law provisions, it is hoped that lawyers and judges of the State Administrative Court as law enforcers and justice implement the provisions of the law ethically so that they do not get lost in determining the object of the petition for abuse of power.

Thank-You Note

The author would like to thank all those who supported the writing of this article and give the highest appreciation to the Education and Training Agency of the Republic of Indonesia Prosecutors for providing scholarships during postgraduate education at the Faculty of Law, Andalas University, Padang, Indonesia.

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