



Actions of Infringement by Government Officers / Onrechtmatige Overheidsdaad in Government Administration Actions

Aan Puji Kistanto; Iwan Permadi; Dewi Cahyandari

Master of Law Study Program, Postgraduate Faculty of Law Universitas Brawijaya, Indonesia

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Abstract

The government action taken by the Mojokerto City Satpol PP at that time was to take action to stop the renovation of the house building located on Jl. Kranggan Gg.I Mojokerto City, by putting up a yellow ribbon around the house building and the words "Forbidden to open other than officers" written by Satpol PP. This action is considered by the owner of the house to be arbitrary and violates the provisions of the applicable laws and regulations. Therefore, by the owner of the house, the action taken by the Satpol PP is considered an arbitrary act which is included in the unlawful acts committed by the authorities, as stipulated in the provisions of the Supreme Court of the Republic of Indonesia Number 2 of 2019 concerning: Guidelines for Settlement of Disputes on Government Actions and Authorities Judging Unlawful Acts by Government Agencies and/or Officials (Onrechtmatige Overheidsdaad). By the owner of the house the action of the Mojokerto City Satpol PP was filed a lawsuit and has been tested and examined by the Panel of Judges as in Case Examination Number: 127/G/2019/PTUN.SBY at the Surabaya State Administrative Court.

Keywords: *State Administrative Court; Government; Panel of Judges*

Introduction

Government is an organ of state, which has a broad or narrow meaning. Government in a broad sense is all the affairs carried out by the state in carrying out the welfare of its people and the interests of the state itself. So it is not interpreted as a government that only carries out executive duties, but also includes other tasks including legislative and judicial.¹ According to **C. Van Vollenhoven**, Government in this broad sense, Government is often called *regering*, while in a narrow sense, government (which is called *bestuur*) only includes the organization of functions that carry out government (executive) tasks that can be carried out by the Cabinet and other officials. apparatus from the central to the regional levels.²

¹Moh Kusnardi dan Harmaily Ibrahim, *Pengantar Hukum Tata Negara Indonesia*, Pusat Studi HTN FH UI dan CV "Sinar Bakti", Jakarta, 1983, hlm. 171

²Amrah Muslimin, *Beberapa Asas Dan Pengertian Pokok Tentang Administrasi Dan Hukum Administrasi*, Penerbit Alumnii, Bandung, 1985, hlm.83. Lihat pula: Moh.

In carrying out its duties and functions, of course, every organization of government apparatus is required to obey and obey the law and obey every applicable statutory rule. The purpose of law as stated by O. Notohamijoyo is to protect human rights and obligations in society, to protect social institutions in society, (in a broad sense which includes social institutions in the political, social, economic and cultural fields) on the basis of justice, to achieve balance and general peace and prosperity.

Meanwhile, according to Mahadi, the goal of law that should be achieved is "to maintain safety and order in a society". Based on several understandings and concepts of the legal objectives mentioned above, the Regional Regulation is a product of regional government legislation aimed at regulating living together, protecting human rights and obligations in society, maintaining safety and public order in the region. One of the objectives issued by the Regional Regulation (Perda) is to guarantee legal certainty, create and maintain public peace and order. Enforcement of regional regulations is the initial form of creating public security and order. So that we need a reliable ability of the apparatus to deal with various violations involving order. In this case, the authority is carried out by the Civil Service Police Unit (Satpol PP). Satpol PP has the task of assisting the Regional Head to create a regional condition that is peaceful, orderly, and orderly so that the administration of the wheels of government can run smoothly and the community can carry out their activities safely. Therefore, in addition to enforcing regional regulations, Satpol PP is also required to enforce other regional government policies, namely regional head regulations.

It is felt by various groups that a regional regulation that has been effectively enforced has never been socialized by the regional government together with the police or related agencies, so that the public's understanding of the importance of this regional regulation is very shallow. But on the other hand, enforcement of regulations does not give a sense and impression of justice for the community. The apparatus sometimes takes action after the violation has accumulated, so that its enforcement requires quite a lot of energy, money, and thought. There are many violations faced by Satpol PP and there are also many risks faced in enforcing regional regulations. In fact, there are also those violations that have a great potential for the emergence of more serious problems that could endanger the interests of the wider community/public interest. Not infrequently law enforcement on regional regulations carried out by Satpol PP is very repressive and sometimes seems arrogant. In enforcing regional regulations, Satpol PP needs to be supported by optimal quality resources, operational budgets, and adequate Satpol PP infrastructure. Human resources, operational budgets, and apparatus infrastructure have a weak side, especially with regard to skill and managerial abilities, especially understanding the deepening of knowledge of indicators of legal aspects in carrying out tasks in the field.

In order to optimize the performance of Satpol PP, it is necessary to build institutions that are able to support the realization of a peaceful, orderly and orderly regional condition. The Satpol PP institutional arrangement does not only consider the criteria for the population density of an area, but also the burden of duties and responsibilities carried out, such as culture, sociology, and the safety risks of Satpol PP. For this reason, it is necessary to increase human resources for Satpol PP employees.

Human resources are one of the most important factors in determining the success of an organization. Improving the quality of human resources will affect the performance of Satpol PP employees, as well as legal understanding and risk management skills for Satpol PP members. Referring to the **Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 54 of 2011 concerning Standard Operating Procedures for Civil Service Police Units, number 1** states:

- letter a: "Directing the public and legal entities that violate regional regulations";
- letter b: "Conducting guidance and/or socialization to the public and legal entities" ;
- letter c: "Prevention of non judicial" ;
- letter d: "Justice action"

Likewise with the Mojokerto City Satpol PP, in order to enforce the Mojokerto City Regulation, the Mojokerto City Satpol PP in carrying out actions should be guided by the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 54 of 2011 concerning Standard Operational Procedures for the Civil Service Police Unit. In carrying out the actions of the Mojokerto City Satpol PP, they are often monitored, looking for weaknesses and mistakes by a group of people, in which the Mojokerto City Satpol PP actions will be tested by filing a lawsuit to the State Administrative Court.

This has happened when the Mojokerto City Satpol PP took action to enforce Mojokerto City Regional Regulation Number: 5 of 2017 concerning Building Buildings, Mojokerto City Satpol PP was faced with actions to seal by closing new buildings that did not have a Building Permit (IMB). Which at that time coincided on Thursday, July 11, 2019 at around 10.00 Wib. The Mojokerto City Satpol PP carried out custody of buildings that did not have a Building Permit (IMB), which was located on Jalan Kranggan Gg. I Mojokerto City.

The government action taken by the Mojokerto City Satpol PP at that time was to take action to stop the renovation of the house building located on Jl. Kranggan Gg.I Mojokerto City, by putting up a yellow ribbon around the house building and the words "Forbidden to open other than officers" written by Satpol PP. This action is considered by the owner of the house to be arbitrary and violates the provisions of the applicable laws and regulations. Therefore, by the owner of the house, the action taken by the Satpol PP is considered an arbitrary act which is included in the unlawful acts committed by the authorities, as stipulated in the provisions of the Supreme Court of the Republic of Indonesia Number 2 of 2019 concerning: Guidelines for Settlement of Disputes on Government Actions and Authorities Judging Unlawful Acts by Government Agencies and/or Officials (Onrechtmatige Overheidsdaad). By the owner of the house, the Mojokerto City Satpol PP action was filed a lawsuit and has been tested and examined by the Panel of Judges as in Case Examination Number: 127/G/2019/PTUN.SBY at the Surabaya State Administrative Court.

Research Methods

The research approach in this scientific work is to conduct an investigation into the Mojokerto City Satpol PP Office and collect data by meeting face-to-face and interacting with people at the research site. The type of research used by the author is a Case Study of the Head of the Civil Service Police Unit of Mojokerto City in Case Number: 127/G/2019/PTUN.SBY.

Results and Discussion

Theory of The Rule of Law

This study chose the rule of law theory as the grand theory because of the consideration that Indonesia is a state of law (rechtsstaat) as stipulated in Article 1 paragraph (3) of the third amendment of the 1945 Constitution also because the theory of the rule of law prioritizes legal certainty (rechts zekerheids) and protection of human rights (human rights). rights). Basically, the concept of the rule of law is an inseparable part of the Rule of Law doctrine where from several doctrines it can be concluded that all government actions (including) must be based on law and guarantee human rights.

Legal Protection

According to **Fitzgerald**, Salmond's theory of legal protection aims to integrate and manifest as interests in society because of a cross-interest, protection of certain interests can only be done by

limiting the various interests of other parties. Legal interests are concerned with human rights and interests, so that they have the highest authority to determine human interests that need to be above and protected.³

The beginning of the emergence of the theory of legal protection comes from the theory of natural law on the flow of natural law. Basically, every human being is born as a creature created by God Almighty who naturally gets basic rights, namely needs, the right to life, both to be protected, and other rights. A more explicit thought about the law as a protector of the rights and freedoms of its citizens, was put forward by Immanuel Kant. For Kant, Humans are intelligent and free-willed creatures. The state is in charge of upholding the rights and freedoms of its citizens.

The prosperity and happiness of the people are the goals of the state and the law, therefore, these basic rights should not be hindered by the state.⁴ The basic rights inherent in human beings are natural, universal, and eternal as a gift from God Almighty, including the right to life, family right, right to self-development, right to justice, right to freedom, right to communicate, right to security, and right to welfare. therefore it should not be ignored or taken away by anyone.⁵

Act against the law

The term unlawful act is better known in the civil law environment as contained in Article 1365 of the Civil Code. What is meant by an unlawful act is an unlawful act committed by a person who because of his fault has caused harm to another person. Acts against the law committed by the authorities or known with "Onrechtmatige Overheidsdaad" in the era of Regional Autonomy can be interpreted broadly. As it is known, that Acts against the Law since 1919. includes one of the following actions:

- 1) Actions that are contrary to the rights of others;
- 2) Actions that are contrary to their own legal obligations;
- 3) Actions that are contrary to decency;
- 4) Actions that are contrary to prudence or necessity in good social relations. Actions that are contrary to

Changes to laws and regulations that with regard to the implementation of Regional Autonomy, in 2004 two important regulations were issued, namely Law Number 32 of 2004 concerning Regional Government and Law Number 33 of 2002 concerning Financial Balance between the Center and the Regions. These two laws are a substitute for Law No. 22/1999 on Regional Government and Law No. 25/1999 on Fiscal Balance between the Central and Regional Governments, which are considered no longer in line with the development of state administration and demands for regional autonomy.

Basically, the principle of Regional Autonomy uses the principle of autonomy as widely as possible in the sense that regions are given the authority to manage and regulate all government affairs outside those of the Government as stipulated by law. In its implementation, in accordance with the Regional Government Law, what is meant by Regional Government is the Governor, Regent or Mayor and regional apparatus as elements of the Regional Government administration, so that government affairs are carried out by the Government. In carrying out their duties of a private law nature, the authorities have participated in community interactions like other legal entities.⁶

³ Satijipto Raharho, 2000, *Ilmu Hukum*, Bandung: PT. Citra Aditya Bakti, hlm. 69

⁴ Bernard L. Tanya, dkk., 2010. *Teori Hukum-Strategi Tertib Manusia Lintas Ruang dan Generasi*, Yogyakarta: Genta Publishing, hlm. 72–73

⁵ *Ibid.*

⁶ M.A. Moegni Djojodirdjo, S.H. *Perbuatan Melawan Hukum*. Jakarta: Pradnya Paramita, 1979., hal. 184.

In social life, it turns out that the government occupies very special and privileged position. The position is regional and principal. Because of his special position, the issue of government accountability for the actions he takes in carrying out his government's duties is getting more complicated and complicated. This can be seen in the development of jurisprudence in cases of unlawful acts by the authorities (onrechtmatige overheidsdaad) as well as in everyday life. The government is basically very free (having discretion) to carry out tasks both in the field of making regulations, implementing justice and government, as well as regarding ways that can be taken in implementing government affairs policies.

Indonesia has declared itself as a country based on law (State of law), so in carrying out government affairs it also adheres to the principle of legality. However, there is a principle case, where the government in all its actions is always carried out for the sake of interest. The government must sometimes be allowed (or even forbidden) to do things that are prohibited by other people under the same circumstances. Even up to a certain level, the Government may make an assessment of the interests of others and on the basis of the results of the assessment take government actions that are deemed necessary.

Unlawful Acts of the Ruler, the victim becomes the party who will receive compensation (compensation) from the perpetrator (the Ruler), because it is related to civil compensation, the rights of the victim are things that can be inherited, in accordance with applicable regulations.

Conclusion

To clearly understand the legal considerations of the panel of judges in passing a decision on the dispute settlement of unlawful acts (Onrechtmatige Overheidsdaad) carried out by the Head of the Civil Service Police Unit of Mojokerto City in the dispute on Case Number: 127/G/2019/PTUN.SBY so that in the future it can be as a reference in handling similar problems in Mojokerto City.

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