



The Legal Responsibility of Government Officials for Decisions that Cause State Financial Losses

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Abstract

The execution of state government results in monetary rights and liabilities for the state. The regional financial management system must manage these state rights and duties, and abuse of authority that produces state financial losses. Aceh Singkil Inspectorate issued an order No. 700/SPT/071/2022 dated 09 May 2022 to conduct a special audit in response to the Regent of Aceh Singkil's letter 800/514 dated 21 April 2022 regarding the follow-up to the Regent's Decree on 3 (three) State Civil Service (ASN) who were Dismissed Disrespectfully (PTDH). This audit was conducted due to the possibility of state financial losses and the Regent of Aceh Singkil's decision. It is the personal obligation of Aceh Singkil district government officials to issue a decision. This is consistent with the concept in the field of state administrative law (HAN). Government organs' activities must be founded on authority (status), which eventually leads to personal responsibility. Compensation for regional losses caused by government initiatives. In the administrative area, it is known that the joint responsibility of the officials who issued the decree can be claimed for compensation due to their policy by filing a decree returning their State Civil Service (ASN) status to the Administrative Court (PTUN). The PTUN judgment established the foundation for the Singkil district administration to include officials who issued appointment policies in the payment of regional financial compensation, because of the inadequate foundation for restoring the position of an ASN who had been fired.

Keywords: *Legal Responsibility; Government Officials; Financial Losses*

Introduction

A rule of law is one that is founded on the rule of law by a state and provides justice to its residents. This means that all authorities and activities of state equipment are governed by law. This will represent justice in its residents' social lives (Abdul Aziz Hakim, 2011). The meaning of the rule of law itself is essentially rooted in the concept and theory of legal sovereignty, which states in principle that the highest authority in a state is the law, and thus all state equipment, whatever their name, including citizens, must submit to, obey, and uphold the law without exception (B. Hestu Cipto Handoyo, 2009). As a result, any actions or decisions made by State Administrative Officials must be legally accountable.

Administrative Law Number 30 of 2014 on Government Administration fosters the conceptual development of a government administration system that serves the public efficiently, transparently, and accountably. Therefore, public officials in the forefront of government administration have the paradigm of being an elite group that is served rather than serving the community, thus a government official's decision is sometimes perceived to be counter to the community's sense of justice. Government officials are frequently inattentive or conflict with their sense of justice while making judgments, leaving the public apprehensive about the decisions made, which frequently leads to legal issues. It will not only offend the public, but any judgments made will have the potential to affect state finances if they are not managed appropriately.

According to the Constitution, the President of the Republic of Indonesia has governmental functions. This is confirmed in Article 4 paragraph (1) of the Republic of Indonesia's 1945 Constitution (UUD 45) as a guideline for achieving the state's purpose of promoting people's welfare. As Head of Government, the President has the authority to regulate state finances as part of government power, which encompasses general and special jurisdiction. The President is the Chief Executive Officer (CEO) in this case.

The execution of state government results in monetary rights and liabilities for the state. These state rights and obligations must be managed in a professional, open, and accountable state financial management system in order to realize people's prosperity through the State Revenue and Expenditure Budget (APBN) and Regional Revenue and Expenditure Budget (APBD). According to Article 6 paragraph (2) of Law Number 17 of 2003 Concerning State Finances, the President's jurisdiction over the management of state finances is then delegated to the Minister of Finance as the fiscal manager and Government Representative in the separate ownership of public assets. It is also authorized by the Minister/Leader of the Institution as the Budget User/Property User of the state ministry/institution he governs.

The President's powers are additionally delegated to the Governor/Regent/Mayor as head of regional government, who is responsible for managing regional budgets and representing regional governments in the ownership of independent regional assets. As a result, according to the General Explanation of Law Number 17 of 2003, the Minister of Finance, as the President's assistant in the financial sector, is essentially the Chief Financial Officer (CFO) of the Government of the Republic of Indonesia, whereas each minister/institution head is essentially the Chief Operational Officer (COO) for a specific area of government. This principle clarifies the division of authority and responsibility, stimulates the development of checks and balances mechanisms, and promotes attempts to increase professionalism in the performance of government functions.

According to Article 6 paragraph (1) of Law Number 30 of 2014 Governing Government Administration, Government Officials have the authority to make decisions and/or take actions. Government Officials, on the other hand, are required by Article 7 paragraph (1) to carry out government administration in line with the provisions of laws and regulations, government policies, and the AUPB. Government Administrative Officials are banned from misusing their authority in formulating and/or carrying out Decisions and/or Actions when exercising governmental authority. Article 8 paragraph (3) affirms this.

The provisions of laws and regulations regulate the authority of Government Officials in carrying out the function of managing state finances, including their rights and obligations, as well as the prohibition of abuse of authority in executing these functions; however, if abuse of authority that causes state financial losses continues, it is necessary to know to what extent the Government Officials must take responsibility. The Regent, as a government official in the Aceh Singkil district administration, has the

authority to make decisions and/or take actions. It has the authority to nominate or dismiss State Civil Apparatus (ASN).

Aceh Singkil Inspectoral issued an order no. 700/SPT/071/2022 dated 09 May 2022 to conduct a special audit in response to the Regent of Aceh Singkil's letter 800/514 dated 21 April 2022 regarding the follow-up to the Regent's Decree on 3 (three) ASN who were Dismissed Disrespectfully (PTDH). This audit was conducted due to the possibility of state financial losses as a result of the Regent of Aceh Singkil's decision. According to the findings of the Aceh Singkil Inspectorate's audit, the decision made by the Regent of Aceh Singkil as a government official was not based on substantial considerations (weak basis). This decision resulted in state/regional expenditures that could not be justified as lawful, or that were detrimental to state finances.

Research Methods

This study employs a 3-empirical normative research approach, specifically. Normative legal research is based on secondary/basic data, which is data gathered directly from reading legal books, periodicals, scientific works, expert doctrine, and jurisprudence (Abdulkadir Muhammad, 2004: 134). Empirical research is conducted by examining the state of law implementation in the field to provide a foundation for analysis, as well as interview methods with experts to support research, which was chosen by purposive sampling with the doctoral education cluster in the field of state law.

This research solely employs a legal and conceptual method (Peter Mahmud Marzuki, 2011: 93), with a greater emphasis on research targeted at gaining legal information in a normative way that yields data and facts, in this case, a legislative and regulatory science approach is used. First analyzing all rules connected to the research topic, which is then matched with a conceptual approach that looks at the normative application of legal concepts and the notion of asymmetric decentralization.

Research Results and Discussion

a. Legal Responsibility of Government Officials in Issuing a Decision

In theory, every state official has the authority to make policy, whether the policy is mandated by statutory rules or the absence of a controlling legislation. State authorities in the executive, legislative, and judicial branches develop public policies to attain certain goals, which often go through multiple stages. State administration, which is run by the government bureaucracy, will implement public policy. In a modern state, the main focus of public policy is public services, which is all the state can do to maintain or improve the quality of life of many people (James E. Anderson, 1984: 12).

A policy that is formed at a time when legality is necessary is one of the policies that can be determined by government officials. These policies are often implemented at the discretion of government authorities. The National Legal Development Agency's Legal Dictionary defines discretion as "the power to act by government officials in certain situations based on their beliefs that lead to goodness, justice, and appropriateness" (Anonymous, 1999: 68).

According to Article 1 point 9 of Law Number 30 of 2014 concerning Government Administration, discretion is a decision and/or action determined and/or carried out by a Government Official to overcome concrete problems encountered in government administration in terms of laws and regulations that provide choices, do not regulate, are incomplete or unclear, and/or government stagnation. As a result of the substantial policymaking undertaken by government officials, it is necessary

to strike a balance between the availability of legal protection for policymakers and the obligation to answer for the policies adopted.

State officials are employees who work in state institutions, which are state organs and their derivatives in the form of supporting state institutions. (Firmansyah Arifin et al., 2005:43) Job specifications show who conducts the job and the human factors that are mentioned. The job criteria specify the fundamental qualities and talents required to perform the job. In general, job specifications include a clear job summary followed by the definite qualifications necessary for the individual who holds the post. Job specifications are the basic requirements that a person in a position must meet in order to do the responsibilities allocated to him or her well and responsibly. (Julista Mustamu, 2011: 1)

The ethics of state authorities in delivering clean government is critical. As a moral guideline in executing orderly governance, state officials' ethics become a reference in behavior, making attempts to create a clean government easier to attain. Violations of these ethics, on the other hand, will result in negative behavior and may even result in criminal charges. 2016: 1758 (M. Nasir Djamil and TB Massa Djafar). This is further supported by Constitutional Court Decision No. 25/PUU-XIV/2016, which concerns the review of Laws No. 31 of 1999 and No. 20 of 2001 respecting the exercise of discretion by regional heads. As long as there is no legislative framework that regulates it, the regional head can exercise discretion in carrying out any government program, particularly in the utilization of the money.

As a government official, the Regent of Aceh Singkil has the authority to make decisions and/or take actions. This authority is, of course, delegated in accordance with applicable legislation. One of its authorities is the selection and dismissal of State Civil Apparatus (ASN) by the government. Aceh Singkil Inspectoral issued order No. 700/SPT/071/2022 on May 9, 2022, to conduct a special audit of single government governance. This audit was conducted due to the possibility of state financial losses as a result of the prior judgment given by Aceh Regent Singkil. The audit results revealed that the State could suffer a loss.

The state loss case began in 2017 with a government tender program for the acquisition of passenger ship products valued Rp. 1,200,000,000 (one billion two hundred million rupiah), but the ship specifications presented did not fit the 2018 Affirmation criteria. Edy Hartono, the Budget User, and the person who made the commitment partnered with Terayuddin, the director of CV. Goddess Shinta is the company involved in the purchasing of passenger ship components. With the existence of this program, Edy Hartono, as a budget user and commitment maker at the Aceh Singkil Transportation Service, and his staff of 7 people assisted CV Dewi Shinta by providing specifications for the passenger ships being held; however, he did not check CV Dewi Shinta's administrative files, which should be checked in the procurement process within the government. In actuality, the items tendered by the winning CV Dewi Shinta as the winner of the tender for procurement of goods for passenger ships at the Aceh Singkil Transportation Service could not be verified in 2018, resulting state losses. The illegal act cost the state Rp. 1,200,000,000 (one billion and two hundred million rupiah).

In this case, the regent issued a letter of dismissal against ASN involved in corruption after being decided by the Banda Aceh Corruption Court judge, although the criminal law was set at more than 7 years in prison in the first instance decision. Three of the seven individuals whose sentences have been established were sentenced to two years and eight months in jail. The Corruption Court in Banda Aceh's two-year verdict satisfied the standards for dismissing a person from his position as a civil servant/ASN, but the convict pursued legal action at a higher level.

In the course of legal procedure in 2018, letters were issued to three offenders who were sentenced to two years and eight months as ASN within the Singkil administration and signed by Aceh's Regent, Singkil Dulmusrid. Dulmusrid's regent term ended, and he was replaced by Acting Aceh Regent Singkil Marthunis. During this time, the Acting Regent of Aceh Singkil Marthunis conducted an audit

with the Aceh Singkil Inspectorate and discovered maladministration that resulted in state losses due to the discovery of ASN status return letters for three convicts who had been at PTDH to serve as ASN again.

According to the findings of the Aceh Singkil Inspectorate's audit, the decision made by the previous Regent of Aceh Singkil Dulmusrid as a government official was not based on robust considerations (the foundation for consideration was weak). This decision resulted in state/regional expenditures that could not be justified as lawful, or that were detrimental to state finances. Based on this, the Acting Regent of Aceh Singkil Marthunis sent a letter dated April 21 2022 from the Regent of Aceh Singkil 800/514 addressing the follow-up to the Regent's Decree on 3 (three) ASN who were Dismissed Disrespectfully (PTDH). Following on from the previous case, which began with a policy announced by the former regent of Aceh Singkil Dulmusrid that resulted in state financial losses, the regional finances of the Aceh Singkil Regency Government were maladministration in this case.

As a result, it is clear that this particular case is the result of a mistake in personnel administration within the Aceh Singkil district government, resulting in state losses. ASN is governed by Law Number 5 of 2014 concerning State Civil Servants, and regulations governing the dismissal of Civil Servants (PNS) are governed by Government Regulation Number 11 of 2017 concerning Management of State Civil Servants. Personnel matters are governed by Law No. 5 of 2014 on State Civil Apparatus (UU ASN). Dismissal with Disrespect (PTDH) is governed by Article 87 paragraph (4) letter b of Law Number 5 of 2014 about State Civil Apparatus. ASN who have been found guilty and sentenced to prison based on a permanent legal decision for committing a crime of office or a crime related to the post and/or a general offense, in this case, corruption, are dishonorably dismissed.

Article 87 paragraph (4) letter b clearly illustrates that ASN who are involved in criminal acts of corruption related to their position or position in that post, if they have been sentenced by the court, then this article applies firmly. Based on the foregoing corruption case, Article 87 paragraph (4) letter d enhances the basis for the dishonorable dismissal of the ASN because they committed criminal office offenses with a plan. Article 87 paragraph (4) letters b and d of Law number 5 of 2014 concerning State Civil Apparatus requires strict powers for dishonorable dismissal of ASN who commit criminal acts or acts against the law while using positions or positions related to the position, and those who are planning to commit a criminal act or act against the law. Article 3 of Law of the Republic of Indonesia No. 20 of 2001 Concerning Amendments to Law No. 31 of 1999 Concerning the Eradication of Corruption Crimes strengthens Article 87 paragraph (4) letters b and d of the ASN Law and strengthens administrative errors made by former Aceh regent Singkil Dulmusrid in the appointment of three convicted corruption suspects.

Seeing this, the responsibility for state financial losses, in this case the finances of the Aceh Singkil Regency Government, is in making legitimate payments, namely employee salaries, but the basis for these payments is weak, and the basis for returning ASN status to the Aceh Singkil Regency Government who are involved in corruption are firmly discontinued from their position as ASN, then he was reappointed as ASN until he was returned to PTDH by PJ Marthunis. Of course, this caused regional financial losses and had to be held accountable, according to the staff of the Aceh Singkil district government's human resources development section, who explained that they were having difficulty determining whether there should be a return or action and who was responsible for the return. The Aceh Singkil district government's HR development employees are only guided by existing regulations, such as a decree on dismissal from ASN and then a decree on reappointment as ASN, and they assume that of course it already has a strong legal umbrella, making it difficult for them to be prepared to be responsible for the state losses caused by this maladministration. (Interview 2023:7).

Mr. M. Gaussyah, FH USK Constitutional Law expert, clarified who is liable for state losses resulting from the position. Two concepts serve as the foundation for officials' discretionary obligations. To begin, the rule of law notion states that every action taken by a government entity must be founded on authority. Second, there are positions and officials. Two kinds of norms are associated with these two concepts: government norms (*bestuurnorm*) and apparatus behavior norms (*gedragsnorm*). These two notions in Aceh Singkil government affairs are one unit in Government Administration concerning Position, which eventually gives rise to responsibility, which encompasses both personal and positional responsibility. The reappointment of previously fired ASNs is, of course, at the discretion of state officials, in this case, the previously elected regent who issued a decree appointing previously dismissed ASNs to become ASNs again. Any losses sustained as a result of the inspection report are, of course, your personal responsibility.

Mrs. Khadijah, state administrative law expert, FH USK, emphasized that as long as government officials (*ambtshandeling*) perform their duties in a formal environment with the authority to carry out the authority of the position, then all consequences that arise will be the responsibility of the position. Personal responsibility and liability in the use of discretion can occur when government officials' discretion is influenced by various interest factors, whether personal, family, corporate, or other interests so that the use of discretion deviates from or is contrary to written or unwritten legal norms.

Personal responsibility in situations where the government's actions (decisions or actions) do not contain legal defects (juridical deficiencies in aspects of authority, procedure, and substance), but there are legal defects that contain elements of maladministration in the form of a *detournement de puovoir* when viewed through the lens of official behavior norms. Maladministration in the Aceh Singkil context is only the result of official authority being abused. Of course, this is a personal obligation given that there is a directive in place to reinstate ASN status, which was initially suspended and subsequently returned to PTDH by PJ Regent Marthunis. The return on state finances is, of course, personal to the position.

b. How to Claim Compensation for State Financial Losses Due to Decisions Issued by Government Officials

Article 1 Number 3 of Government Regulation Number 38 of 2016 concerning Procedures for Claiming Compensation for State/Regional Losses Against Non-treasurer Civil Servants or Other Officials (hereinafter referred to as Government Regulation Number 38 of 2016) defines non-treasurer civil servants as State Civil Service Employees (ASN), members of the Indonesian National Army (TNI), and members of the Indonesian National Police (POLRI) who work/ are assigned duties other than treasure duties. According to this provision, non-treasurer civil servants are ASN employees, TNI members, and POLRI members who work/are tasked with duties other than treasurer duties.

Other officials are defined in the State Treasury Law, specifically in the Elucidation of Article 59 paragraph (2) and Government Regulation Number 38 of 2016 in Article 1 Number 4, as officials who do not include treasurers and civil servants who are not treasurers, which include:

1. State officials and
2. Government officials who do not have the status of state officials,

Article 1 Number 22 of Law Number 1 of 2004 concerning the State Treasury and Article 1 Number 15 of Law Number 15 of 2006 concerning the Financial Audit Agency both define Regional Losses as a shortage of money, securities, and goods that is real and definite in amount as a result of unlawful acts, whether intentional or negligent. State/regional losses caused by situations beyond human

control (force majeure) are not recoverable. Meanwhile, regional losses caused by illegal conduct can be prosecuted. (Tuanakota, Theodorus M., 2009:80)

The explanation of the State Treasury Law addressing all of Article 1 (including Number 22) just states: "quite clear." However, practitioners consider "real and certain" as anything that genuinely occurs or happens. This interpretation is valid within the framework of the State Treasury Law, for example, in circumstances of money, securities, and goods shortages. It is not difficult for the auditee and the examiner (auditee-auditor) to achieve an agreement on "real and definite deficiencies" since the measurement is objective or there is almost no element of subjective interpretation. Things that can affect state finances can be regarded from a variety of perspectives, including the perpetrator, cause, time, and method of settlement. (Abdul Latif, 2016: 384-385).

The situation of the three ASNs who were still pending an appeal in court against cases they covered, combined with the position of the Aceh Singkil district government ASNs who were reappointed as ASNs after being dismissed, led to legal consequences where the basis for the reappointment of the ASNs had weaknesses or legal defects that were not fundamental. In case they were originally accused of engaging in corrupt activities, the offenders were rendered inactive during the legal proceedings until the ultimate verdict was reached; nonetheless, the three ASNs were really reassigned as ASNs. One method of settling regional losses addressed by ASN is through a compensation claim (hereinafter referred to as TGR). To restore regional funds, TGR is a prosecution process used against civil personnel. Government Regulation Number 38 of 2016 on Procedures for Claiming Reimbursement for State/Regional Losses Against Non-Treasurer Civil Servants or Other Officials governs the basis for reimbursement for losses incurred by ASN. Whether intentional or unintentional, an illegal act constitutes one component of regional loss.

In relation to the issue of Regional Losses, one of the obligations of every civil servant who is not a treasurer or other official is to violate the law or neglect his obligations to carry out security measures, either directly or indirectly, which results in detrimental regional finances, and he is obligated to compensate for these losses. A certificate of absolute responsibility (SKTJM) is the mechanism for compensating for losses sustained as a result of this policy. Article 16 of Government Regulation Number 38 of 2016 governs this letter. a letter from a civil worker declaring that they have the power and/or acknowledge that regional financial losses are their responsibility and that they are willing to compensate for the losses in question.

Regional compensation can be paid out in cash or in installments. This payment takes a different amount of time depending on the cause of the loss. Given that the losses experienced by the three ASNs are due to appointment, the method of loss that can occur is carelessness. The Injuring Party is required to reimburse the regional losses within 24 (twenty-four) months of signing the SKTJM. In reality, the Singkil district administration granted SKTJM to three ASNs at PTDH, who elected to pay for losses in installments. This was confirmed by the staff of the human resources development section of the Aceh Singkil district government. They chose to pay regional losses that arise by paying regional financial losses in installments.

Following the PTDH and the signing of the SKTJM letter by the three ASNs at PTDH, legal actions and liabilities arose for the three ASNs. However, two of the three ASNs at PTDH are having trouble paying the Singkil district government installments because the former ASN's financial resources originate from the monthly compensation they previously earned. Two of the previous ASNs are currently having problems paying their installments. HR personnel from the Singkil district government confirmed this. The Singkil district government is attempting to find a method to compensate for these losses.

Administratively, the solution to the case of non-payment by the former ASN to the Singkil district government can be done in several ways, namely, looking at the basis for the payment of the former ASN when they were reappointed as ASN after initially being fired, of course in the administrative field there is joint responsibility. In the sense that the official who reappointed the status of 3 ASNs is also responsible for the financial losses of the Singkil district government area due to administrative errors. This was not done by the Singkil Dalam district government because it only looked at legal subjects who had their status reinstated as ASN. Because of their discretion in making policies, the Singkil district government is unaware that the officials who issued it can also be held liable. By submitting a decree to PTUN, they may reinstate their ASN status. Because of the inadequate basis for regaining the status of ASN who had been fired, the results of the PTUN decision constituted the ground for the Singkil district government to involve officials who issued enhanced policies to participate in making restitution for regional financial losses.

Conclusion

1. The Aceh Singkil district government officials' responsibility in issuing a decision is personal responsibility for the position of ASN, which is in accordance with the concept in the field of HAN, that the actions of government organs must be based on authority (position), which ultimately gives rise to responsibility, namely personal responsibility. Reappointment of ASN who were previously fired, as well as losses caused by the decree, would be personal responsibility.
2. Compensation for regional losses caused by government policy. It is well known that there is joint responsibility when it comes to the payment basis for former ASNs in the administrative field. The perception is that the official who reappointed the status of the three ASNs is also accountable for the Singkil district government area's financial losses as a result of their position's discretionary policies. The subject of the appointment decree is the only focus of state financial remuneration. Because of the discretion of the policies provided, the Singkil district government is unaware that the officials who issued it can also be held liable. This can be accomplished by presenting a decree to the PTUN restoring their ASN status. Because of the inadequate basis for regaining the status of ASN who had been fired, the results of the PTUN decision constituted the ground for the Singkil district government to involve officials who issued enhanced policies to participate in making restitution for regional financial losses.

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