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THE CONTROVERSY ON TRANSFER OF ABSOLUTE COMPETENCY OF THE STATE ADMINISTRATIVE COURTS IN GOVERNMENT ADMINISTRATIVE LAW

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ABSTRACT

The absolute competence of the State Administrative Court is to adjudicate objects of state administrative disputes in the form of State Administrative Decisions. This study aims to analyze the transitional provisions in government administration regulations and analyze the absolute competence of state administrative courts. This study is a normative legal study. The results of this study state that the transitional provisions in the Government Administration regulations in particular have changed the meaning of State Administrative Decisions in a veiled manner, which is contrary to the principle of forming laws and regulations. The absolute competence of the State Administrative Court has been expanded to include testing for abuse of authority, state administrative actions, and the concept of positive fictitious decisions, namely considering a request to be granted if the authorized official does not issue a decision within a certain time limit. In order to fulfill the principle of legal certainty and regulatory hierarchy, changes to State Administrative Decisions should be made through changes to the State Administrative Court Law, not through transitional provisions in the State Administrative Law.

1. Introduction

Indonesia as a legal state,[1] have an independent judicial body in exercising judicial power to uphold law and justice.[2] Based on the provisions of Article 24

1 Ias Muhlashin Magister et al., Negara Hukum, Demokrasi Dan Penegakan Hukum Di Indonesia, *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam*, Vol.8 No.1, June 29, 2021, page.87–100

2 Yvonne Tew., Strategic Judicial Empowerment Get access Arrow, *The American Journal of Comparative Law*, Vol.72 Issue.1, 2024, page.170–234

paragraph (1) of the 1945 Constitution of the Republic of Indonesia,[3] "Judicial power is independent power to administer justice to uphold law and justice". The independent exercise of power is one of the characteristics of a legal state in Indonesia based on Pancasila.[4] Judges must be neutral, and act wisely, fairly and firmly without being interfered with by anyone, either from the judicial body itself (from within), or from extra-judicial bodies.

Indonesia has an independent judiciary in carrying out judicial power to uphold law and justice.[5] The judiciary, as a branch of the judiciary, should present an inclusive institution, namely a centralized and diverse political institution. Centralized means centralized and strong, while diverse means the existence of a controlled distribution of power to prevent authoritarianism. Inclusive political institutions will produce inclusive economic institutions, which will realize development that is fair and sustainable.[6]

In the era of law enforcement and increased rule of law after the current reform,[7] Various methods have been attempted to increase public confidence in the judiciary.[8] For this reason, many fundamental changes have been made, starting from changes to the regulations regarding court institutions in the 1945 Constitution, to the replacement of the main law on judicial power, changes to the Supreme Court law,[9] laws regarding the judiciary and the existence of laws concerning the supervision of judges by the Judicial Commission.

The State Administrative Court is an executor of judicial power within the State Administrative Court whose duty and authority is to decide and resolve State Administrative Disputes.[10] For the State Administrative Court environment [11] as a sub-system of the judicial system in Indonesia based on Republic of Indonesia Law No. 5 of 1986 concerning State Administrative Courts as last amended by

3 Demas Brian Wicaksono., Article 24C Paragraph 1 of the 1945 Constitution of the Republic of Indonesia: History and Critical Analysis of Disputes on the Authority of State Institutions, *Britain International of Humanities and Social Sciences (BIoHS) Journal*, Vol.3 No.2, 2021, pages.403-412

4 Ogiandhafiz Juanda and Juanda., *Journal of Law, Politic and Humanities*, Vol.3 No.2, 2023, pages.251-262.

5 Yodi Martono Wahyunadi., *Kompetensi Pengadilan Tata Usaha Negara Setelah Pemberlakuan Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan*, Bandar Lampung: Aura, 2018, page.1.

6 Acemoglu, D. dan Robinson, J., *Mengapa Negara Gagal: Awal Mula Kekuasaan, Kemakmuran dan Kemiskinan*, Jakarta: Gramedia, 2017, page.85-86

7 Udiyo Basuki et al., 25 Tahun Reformasi: Mengawal Upaya Mewujudkan Supremasi Hukum Dan Meningkatkan Kualitas Demokrasi Di Indonesia, *Staatsrecht: Jurnal Hukum Kenegaraan Dan Politik Islam*, Vol.3 No.1, 2023;

8 Jay N. Krehbiel., Public Awareness and the Behavior of Unpopular Courts, *British Journal of Political Science*. Vol.51 No.4, 2021, pages.1601-1619.

9 Rangga Wijaya., Fungsi Mahkamah Konstitusi Dalam Pengujian Undang-Undang Terhadap Undang-Undang Dasar 1945, *IJOLARES : Indonesian Journal of Law Research,* Vol.1 No.1, March 30, 2023, page. 23–27

10 Gunawan, Hendri Darma Putra., Authority of The State Administrative Court in Handling And Resolving Land Cases, *Yurisdiksi: Jurnal Wacana Hukum dan Sains*, Vol.19 No.1 June 2023, page.136-146

11 Elfran Bima Muttaqin and Pasolang Pasapan., Eksistensi Pengadilan Pajak Dalam Lingkungan Peradilan Tata Usaha Negara, *Paulus Law Journal*, Vol.3 No.2, March 22, 2022, page.119–29

Republic of Indonesia Law No. 51 of 2009 concerning Second Amendment to Republic of Indonesia Law No. 5 of 1986 concerning State Administrative Courts in Article 47 regulates the competence of the State Administrative Court in the judicial system in Indonesia, namely the task and authority to examine, decide and resolve state administrative disputes. The authority of the Court to accept, examine, decide on cases submitted to it is known as competence or authority to judge.

The state administrative court law has the competence to resolve state administrative disputes at the first level.[12] Meanwhile, the State Administrative High Court is at the appeal level. However, there are state administration disputes which fall under the authority of the State Administrative High Court as the court of first instance. Cases regarding decisions through administrative efforts, disputes regarding the determination of political parties and the determination of candidates for permanent members of the DPR and DPRD, disputes over election state administration are disputes that arise in the field of election state administration between Governor Candidates, Regent Candidates and Mayor Candidates with the Provincial KPU and/or Regency/City KPU as a result of the issuance of a Decree from the Provincial KPU and/or City Regency KPU.

Absolute competence relates to the authority of the State Administrative Court to adjudicate a case according to the object, material or subject matter of the dispute.[13] In the administrative Law, the object of a State Administration dispute is a State Administrative Decision which is a written decision issued by a State Administration Agency or Official which contains state administration legal actions based on applicable statutory regulations which are concrete, individual, final, which give rise to legal consequences for both a Person or Civil Legal Entity, and Article 3 of the the administrative Law. The objects of the state administrative court law disputes include fictitious negative the Administrative Law decisions as intended in Article 3 of the Administrative Law, namely:

If the State Administrative Agency or Official does not issue a decision,[14] while this is an obligation, it is equated with a State Administrative Decree. If a State Administrative Agency or Official does not issue the requested decision, while the time period specified in the statutory regulations in question has passed, then the state administrative agency or official is deemed to have refused to issue the intended decision. In the event that the relevant statutory regulations do not specify a time period, after a period of 4 months has passed since

12 Azis Akbar Ramadhan., Sengketa Kompetensi Absolut Pengadilan Negeri Dan Pengadilan Tata Usaha Negara Terkait Dengan Perkara Sengketa Pertanahan, *Journal of Mandalika Literature*, Vol.6 No.1, 2025, page.264–78

13 Syssy Nurhidayati and Arif Wibowo., Konsekuensi Kompetensi Absolut Terhadap The State Administrative Court Law Pasca Berlakunya Undang-Undang Administrasi Pemerintahan, *Maqasidi: Jurnal Syariah Dan Hukum*, Vol.3 No.2, December 1, 2023, page.118–28

14 Nizar Naufal Khoiriyyah., Studi Analisis Tentang Penyelesaian Sengketa Tata Usaha Negara, *Jurnal Syntax Admiration*, Vol.3 No.6, June 23, 2022, page.776–85,

receipt of the application, the relevant state administrative body or official is deemed to have issued a decision.[15]

So if the time period has passed as specified in the statutory regulations or after four months have passed since the receipt of the application, the State Administration Agency or Official does not issue the decision requested,[16] then the State Administration Agency or Official is deemed to have issued a rejection decision. The passive attitude of state administrative bodies/officials who do not issue a decision can be equated with a written decision which contains a rejection even though it is not written.[17] Such a decision is called a fictitious-negative decision. Fictitious means not issuing a written decision, but can be considered to have issued a written decision. Meanwhile, negative means that the content of the decision is a rejection of an application. Negative fictitious decisions are an extension of written state administration decisions which are the object of state administration disputes. The implementation of these provisions is intended to ensure that the administrative law bodies or positions always act responsively and orderly in providing services to the community. The issuance of Republic of Indonesia Law No. 30 of 2014 concerning Government Administration is material law in the state administrative justice system. However, the articles regulate the competence of the state administrative court law.[18]

This has the consequence of expanding the the state administrative court law's absolute competence, testing government actions.[19] However, this will give rise to problems and obstacles in carrying out the state administrative court law's duties and functions as an institution that has the authority to control government actions, including: the state administrative court law is given the authority to determine whether there is abuse of authority by an administrative body or official based on a request from an administrative body or person. What if there are differences with the decision resulting from the administrative law trial? In the UUAP there are procedural laws that are different from the the administrative Law. There is a legal concept in the Administrative Law that is different from previous laws and regulations. The absolute competence of the state administrative court law after the Administrative Law concerns administrative efforts. Article 76 paragraph (3) UUAP, "In the event that community members do not accept the resolution of an appeal by a superior official, community members can submit a lawsuit to the the state

15 Rahmat Ramadhani., Legal Protection for Land Rights Holders Who Are Victims of the Land Mafia, *International Journal Reglement & Society*, Vol.2 No.2, 2021, pages.87-95

16 Muhammad Fadly et al., Kompetensi Peradilan Tata Usaha Negara, *Jurnal Cendikia ISNU SU*, Vol.1 No.2, September 30, 2024, page.164–68;

17 Muslim Haq. M., and Anshori Ilyas, Decision Concepts State Administration Post Entry into Law Number 30 Of 2014 Concerning Government Administration, *Al-Risalah Jurnal Ilmu Syariah Dan Hukum*, Vol.22 No.2, 2022, pages.164-183

18 Maridjo Maridjo., Kompetensi absolut pengadilan tata usaha negara pasca terbitnya undang-undang nomor 30 tahun 2014, *Jurnal Juristic*, Vol.3 No.01, April 30, 2022, page.43–58

19 M. Aunul Hakim and Sheila Kusuma Wardani Amnesti., Problematika Penanganan Gugatan Perbuatan Melanggar Hukum Oleh Pemerintah (Onrechtmatige Overheidsdaad) Pada Peradilan Tata Usaha Negara, *De Jure: Jurnal Hukum Dan Syar'iah*, Vol.14 No.1, 2022;

administrative court law. Thus, after going through administrative efforts, it becomes the competence of the state administrative court law to try it. This is different from the provisions in Article 48 of the Regulations Law, the state administrative high court has the authority to adjudicate the Administrative Law decisions that have previously been resolved through administrative efforts. The General Principles of Good Government (AUPB) which are detailed in Article 10 UUAP are no longer principles and have become legal norms.

There are differences in the state administrative court law competence after the Government Administration Law,[20] differences in legal concepts and the existence of the state administrative court law dispute objects which are regulated in UUAP where procedural law has not been accommodated in the Administrative Law,[21] giving rise to differences in the handling of cases by the the state administrative court law after the Government Administration Law. Apart from that, Article 10 UUAP contains in detail the General Principles of Good Governance as a guide for Officials to issue decisions or Administrative actions. For judges, the AUPB is a testing tool for the validity of administrative decisions or actions. However, it can cause problems because it is contained in detail in the UUAP, even though the principles are not in written form.

Research conducted by Abdhy Siagian with the title Optimizing the Competence of State Administrative Courts in Resolving Cases of Government Unlawful Acts shows that in handling cases regarding unlawful acts committed by Agencies and/by Government Officials they have been tried in civil courts in general. However, there has been a paradigm shift in the absolute competence of the the state administrative court law since the presence of Law No. 30 of 2014 concerning Government Administration which is stated in Dictum E of the State Administrative Chamber section point 1 letter b of the Republic of Indonesia Supreme Court Circular Letter No. 4 of 2016 states that the state administrative court law has the authority to judge unlawful acts by the government, namely unlawful acts committed by government power holders or *Onrechtmatige Overheidsdaad*. Furthermore, through Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2019, the authority of the state administrative court law in handling the *Onrechtmatige Overheidsdaad* case has been reaffirmed. However, in practice there are still several *Onrechtmatige Overheidsdaad* cases that are tried in the general court, which proves that the general court still considers that adjudicating *Onrechtmatige Overheidsdaad* cases is still within its authority.[22]

20 W Ernawati Huroiroh, Rimbawani Sushanty, V., & Roychan., Disharmonisasi Kompetensi Absolut Pengadilan Tata Usaha Negara Setelah Berlakunya Undang Undang Administrasi Pemerintahan, *Osio Yustisia: Jurnal Hukum Dan Perubahan Sosial*, Vol.2 No.2, 2022, page.50–76

21 Erna Dwi Safitri and Nabitatus Sa'adah., Penerapan Upaya Administratif Dalam Sengketa Tata Usaha Negara, *Jurnal Pembangunan Hukum Indonesia*, Vol.3 No.1, January 30, 2021;

22 Beni Kurnia Illahi et al., Optimalisasi Kompetensi Pengadilan Tata Usaha Negara Dalam Penyelesaian Perkara Perbuatan Melawan Hukum Pemerintah (Onrechtmatige Overheidsdaad), *Jurnal Hukum Peratun*, Vol.6 No.1, February 28, 2023, page.35–56,

Research conducted by Agus Nardi Nasution with the title Development of the state administrative court law Absolute Competencies and Their Problems, shows that in Indonesia, with the enactment of the UUAP, there have been fundamental changes in the previous regulations, which were contained in the contents of the UUUPTU. The problem of the state administrative court law's absolute competence after the UUAP was implemented in handling the state administrative court law disputes no longer recognizes individual elements in administrative decisions by judges. That the provisions contained in Article 87 of Law No. 30 of 2014 concerning Government Administration have contained hidden changes to the provisions of Article 1 number 9 of Law No. 51 of 2009 concerning the Second Amendment to Law No. 5 of 1986 concerning State Administrative Courts.[23]

This research aims to analyze the transitional provisions in Law No. 30 of 2014 concerning government administration and analyze the absolute competence of state administrative courts.

2. Research Methods

This research is normative juridical research based on primary legal materials,[24] secondary materials and tertiary legal materials resulting from statutory regulations, literature studies, court decisions, legal magazines, dictionaries, legal articles both hard copy and soft copy published on the website.[25] Secondary data includes primary legal materials, secondary legal materials and tertiary legal materials. The research is based on legal materials through statutory studies and literature studies, aiming to obtain a juridical and theoretical basis for state administrative justice, especially the State Administrative Court. The sources of research data are as follows: Primary legal materials, which are used mainly legislation, court decisions.[26] Secondary legal materials used are: statutory documents or treatises, research results in the field of state administrative law, opinions of legal experts. Tertiary legal materials, in the form of: legal dictionaries, scientific journals in the field of law, articles from magazines, newspapers and websites.

3. Results and Discussion

3.1. Transitional Provisions for Government Administration Regulations

23 Agus Nardi Nasution., Perkembangan Kompetensi Absolut The State Administrative Court Law Beserta Problematikanya: Analisis Menurut UU The State Administrative Court Law Dan Uu No. 30 Tahun 2014 Tentang Administrasi Pemerintahan, *Judex Laguens*, Vol.1 No.1, March 19, 2023, page.81–106

24 Sri Mamuji Soerjono Soekamto., *Penelitian Hukum Normatif*, Jakarta: Raja Granfindo Persada, 2004.

25 Soerjono Soekanto & Sri Mamudji., *Penelitian Hukum Normatif : Suatu Tinjauan Singkat*, Jakarta: Raja Grafindo Persada, 2003, page.54.

26 Maichle Delpiero et al., Analisis Yuridis Kebijakan Privasi Dan Pertanggungjawaban Online Marketplace Dalam Perlindungan Data Pribadi Pengguna Pada Kasus Kebocoran Data, *Padjadjaran Law Review*, Vol.9 No.1, August 12, 2021;

Transitional Provisions in a Legislative Regulation is a legal provision that functions to ensure that parties do not suffer losses due to changes to provisions in a Legislative Regulation.[27] The provisions in the Transitional Provisions are intended so that all legal relations or legal actions[28] that have been carried out or are being carried out and have not yet completed the process based on the provisions of the amended (old) Legislative Regulations are not harmed as a result of the enactment of the new regulations, but must be regulated as fairly as possible so that they do not violate human rights as guaranteed in the 1945 Constitution of the Republic of Indonesia, including the guarantee of obtaining legal certainty as regulated in Article 28D paragraph (1). In the event that there is a change to a provision in the Legislative Regulations[29] So the makers of Legislative Regulations must be careful in formulating provisions in new Legislative Regulations so as not to forget or set aside legal relations or legal actions that were previously regulated in old Legislative Regulations, their continuity or completion needs to be regulated in the new Legislative Regulations.

In Point 127 of the Attachment to Law No. 12 of 2011, it is stated that the Transitional Provisions contain adjustments to existing legal action arrangements or legal relations based on old Legislative Regulations to new Legislative Regulations, which aims to:[30] avoid legal vacuum; guarantee legal certainty; provide legal protection for parties affected by changes to the provisions of the Legislative Regulations; and regulate matters of a transitional or temporary nature.

The 1945 NRI Constitution before and after the Amendment did not determine *expressis verbis* what constitutes the scope of absolute competence of each judicial institution.[31] The Constitution only determines the existence of judicial power and the implementation of judicial power, including. The provisions regarding the absolute competence of each judicial institution by the NRI Constitution are submitted to and become the attribution authority for law makers, this can be read in Article 24A paragraph (5) of the 1945 NRI Constitution, Fourth Amendment; The composition, position, membership and

27 Restu Gusti Monitasari, Eki Furqon, and Enis Khaerunnisa.,Implikasi Penerapan Metode Omnibus Law Dalam Sistem Pembentukan Perundang-Undangan Indonesia Ditinjau Dari Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan, *Jurnal Dialektika Hukum : Jurnal Ilmu Hukum*, Vol.3 No.1, June 1, 2021, page.21–44;

28 Rahmat Ramadhani and Ummi Salamah Lubis., The Function of the Delimitation Contradictory Principle in the Settlement of Land Plot Boundary Disputes, *International Journal Reglement & Society*, Vol.2 No.3, 2021, page.136-148

29 Agustina Agustina and Sagita Purnomo., Kajian Yuridis Peraturan Perundang-Undangan Yang Baik Dan Berkeadilan Bagi Masyarakat, *Al-Manhaj: Jurnal Hukum Dan Pranata Sosial Islam*, Vol.5 No.2, July 25, 2023, page. 1196–1206

30 Alwiyah Sakti et al., Hakikat Ketentuan Transisional Dalam Pembentukan Peraturan Perundang-Undangan, *Amsir Law Journal*, Vol.3 No.1, October 12, 2021, page.30–38

31 Xavier Nugraha, Angelica Milano Aryani Wibisono, Indonesia Alissa Angelia, Bryan Owen S., Putri Riska Answendy., Strengthening Customary Forest Rights for Indigenous People in Indonesia Green Constitution Framework, *Jurnal Kajian Pembaruan Hukum*, 2023, Vol.3 No.2, 2023, page.217-250

procedural laws of the Supreme Court and subordinate judicial bodies are regulated by law.

The provisions of Article 24A paragraph (5) of the 1945 Fourth Amendment Constitution of the Republic of Indonesia do not clearly and unequivocally state the absolute competence of each judicial body, the norm is in the form of an order to further regulate the composition, membership and procedural law of the Supreme Court and judicial bodies to be regulated "by law", in statutory law this is known as delegation of authority.[32]

Determining the absolute competence of judicial bodies as stated in Article 24 paragraph (1) to paragraph (5) of Law No. 48 of 2009 concerning Judicial Power is still abstract,[33] for example, what elements must be fulfilled so that it can be categorized as a state administrative dispute and who are the subjects of the dispute in the state administrative court. Regarding the absolute competence of the State Administrative Court, specifically and specifically, it has been regulated by Law No. 5 of 1986 concerning the State Administrative Court which was amended several times, namely, by Law No. 9 of 2004 concerning Amendments to Law No. 5 of 1986 concerning the State Administrative Court and Law No. 51 of 2009 concerning the Second Amendment to Law No. 5 of 1996 concerning the State Administrative Court as implementation of the orders and mandate of Article 24A paragraph (5) of the 1945 NRI Constitution.

In a systematic interpretation, the absolute competence of the State Administrative Court[34] can be elaborated based on the provisions of Article 47 in conjunction with Article 1 number 10 and Article 1 number 9 of Law No. 51 of 2009 concerning the Second Amendment to Law No. 5 of 1986. State Administrative Disputes arise as a result of the issuance of State Administrative Decisions, thus State Administrative Decisions are one of the main elements in State Administrative Disputes. Regulations regarding the absolute competence of judicial bodies are the domain of procedural law which must be further regulated "by law". The regulation of the state administrative court law's absolute competence as regulated in the UUAP is contrary to the order of legal norms, according to Stufentheorie from Hans Kelsen, that the formation of lower legal norms is determined by other higher legal norms.

State Administrative Disputes are the absolute competence of the State Administrative Court.[35] The object of dispute is that the State Administrative

32 Alsyam Alsyam., Kedudukan Pembukaan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Dalam Pengujian Undang-Undang Terhadap Undang-Undang Dasar, *UNES Law Review*, Vol.5 No.4, June 3, 2023, page.1546–56

33 Rheina Aini Safa'at, Graciella Azzura Putri Ananda, and Rasji., Kedudukan Dan Kewenangan Mahkamah Agung Dalam Menyelenggarakan Kekuasaan Kehakiman Di Indonesia, *Jurnal Kewarganegaraan*, Vol.8 No.1, May 3, 2024, page.303–9

34 Huhta K. The Scope of State Sovereignty Under Article 194(2) Tfeu and The Evolution of Eu Competences In The Energy Sector. *International and Comparative Law Quarterly*. Vol.70 No.4, 2021, pages.991-1010.

35 Irfan Ardyan Nusanto., Analisis Terhadap Dualitas Peraturan Menteri Dalam Sistem Peraturan Perundang-Undangan Di Indonesia, *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, Vol.4 No.1, June 23, 2021, page.53–68

Decree has received special and specific regulation in Law 51 of 2009 concerning the Second Amendment to Law No. 5 of 1986.

Based on Law No. 30 of 2014 concerning Government Administration,[36] Article 87 determines, With the enactment of this Law, State Administrative Decisions as referred to in Law No. 5 of 1986 concerning State Administrative Courts as amended by Law No. 9 of 2004 and Law No. 51 of 2009 must be interpreted as: Written determinations which also include factual actions. Decisions of State Administrative Bodies and/or Officials in the executive, legislative, judicial and other State administration environments; Based on statutory provisions and AUPB; Final in a broader sense; Decisions that have the potential to give rise to legal consequences; and/or Decisions that apply to Community Citizens.

The provisions of Article 87 are one of the transitional provisions contained in Law No. 30 of 2014 concerning Government Administration. When compared with the elements of the meaning of State Administrative Decrees listed in Article 87 of Law No. 30 of 2014 concerning Government Administration with the elements of State Administrative Decrees.

The formulation of norms contained in Article 87 UUAP, which is a transitional provision,[37] contains hidden changes to the norm provisions in Article 1 point 9 of Law No. 51 of 2009 concerning the Second Amendment to Law No. 5 of 1986 concerning State Administrative Courts. Hidden changes are not permitted according to Attachment II to Law No. 12 of 2011 concerning the Formation of Legislative Regulations in number 135 which states: The formulation of the Transitional provisions does not contain hidden changes to the provisions of other Legislative Regulations. This change should be carried out by creating new definition limits in the General Provisions of Legislative Regulations or by making amended Legislative Regulations.

State Administrative Decisions relate to the absolute competence of the State Administrative Court[38] which is the domain of procedural law which must be included in special content material, cannot be inserted in laws including material laws.[39] The absolute competence of the state administrative court law should be regulated by law. There are changes to Law No. 51 of 2009, especially Article 1 number 9 so that it is in accordance with the mandate or order of Article 24A paragraph (5) of the 1945 Constitution of the Republic of Indonesia, further regulations "by law" (bij de wet), not by inserting "in law" (in de wet) in the transitional provisions of Law No. 30 of 2014 concerning

36 R. Ramlan, L. Khairani, E.N.A.M. Sihombing., Establishment of Village-Owned Enterprises Legality Process in North Sumatera, *Utopía y praxis latinoamericana,* Vol.26, 2021, pages.33-45

37 Muklis Al'anam, Lanny Ramli and Natyama Hemsanit., The Expansion of the Absolute Competence of Administrative Courts: A Comparative Legal Study with the French Conseil d'État, *Nagara Law Journal,* Vol.1 No.2, 2024, pages.29-63

38 Cary Coglianese., Administrative Law in the Automated State. *Daedalus*, Vol.150 No.3, 2021, pages.104-120.

39 Kastania Lintang and Bahrun Azmi Hasnati., Kedudukan Majelis Kehormatan Disiplin Kedokteran Indonesia Dalam Penyelesaian Sengketa Medis, *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, Vol.4 No.2, November 24, 2021, page.167–79

Government Administration which is not related to the procedural law of the State Administrative Court.

The substance of the transitional provisions[40] of Article 87 UUAP is the necessity to interpret the State Administrative Decisions as specified in Article 1 point 9 of Law No. 51 of 2009 concerning the Second Amendment to Law No. 5 of 1986 concerning State Administrative Courts to be as stated in Article 87 UUAP. A review of the legal aspects of the legislation in Attachment II to Law No. 12 of 2011 concerning the Formation of Legislative Regulations in number 135 determines: The formulation of the Transitional provisions does not contain hidden changes to the provisions of other Legislative Regulations. Changes should be made by creating new definition limits in the General Provisions of Legislative Regulations or made by making amended Legislative Regulations.

In Chapter I General Provisions regarding State Administrative Decisions a new formulation has been given,[41] namely in Article 1 number 7 UUAP. Government Administrative 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. With the formulation of State Administrative Decisions in Article 1 number 7 UUAP, the provisions of Article 87 UUAP are no longer needed as intended in Attachment II to Law No. 12 of 2011 concerning the Formation of Legislative Regulations in number 135.

The meaning of Article 1 number 9 of Law No. 51 of 2009 concerning the Second Amendment to Law No. 5 of 1986 concerning State Administrative Courts into what is contained in Article 87 UUAP has changed the essence of the elements of Article 1 number 9 of Law No. 51 of 2009 concerning Second Amendments to Law No. 5 of 1986 concerning State Administrative Courts, this is a hidden change that is not justified by Attachment II to Law No. 12 of 2011 concerning the Formation of Legislative Regulations at number 135. In the UUAP, especially in the general provisions, different definitions have been given between written determinations as stated in Article 1 number 7 and factual actions as stated in Article 1 number 8. From a logical aspect, the provision of different definitions shows that there are unique characteristics that differentiate one from the other. Uniting different things into the same concept violates the principle of division in logic.

The value of the welfare state concept states that the state has an obligation to expand its responsibility for social problems faced by society.[42] This concept is used as the basis for the position and function of government in modern

40 Rossa Ilma Silfiah, Suwardi Suwardi, Khoirul Huda and Indratirini Indratirini., Customary Law and Islamic Law Existence in the Reform of National Criminal Law, *Journal of Law, Politic and Humanities*, Vol.4 No.5, 2024, pages.1201-1212

41 Yasmirah Mandasari Saragih and Tengku Riza Zarzani., The Law Enforcement Of Corruption Crimes In Terms Of Authority Abuse, *IJLR: International Journal of Law Recontruction*, Vol.7 No.1, 2023, pages.54-62

42 Ahmad Siboy, Sholahuddin Al-Fatih, Devi Triasari, Hilaire Tegnan., Legal Social Justice in Appointment Non-Definitive Regional Heads toward Welfare State, Bestuur, Vol.11 No.1, August 2023, page.144-170

countries to realize a condition of welfare for the people, which is carried out through the implementation of government through services, assistance, protection, and prevention of social problems.[43] a basic need for society, such as access to education, health services, and decent employment opportunities, is the duty and responsibility of the state. Therefore, according to the constitution, the government has the authority and function to realize welfare.[44]

The meaning of State Administrative Decisions in the Regulations Law as contained in Article 87 UUAP which states, With the enactment of this Law,[45] State Administrative Decisions as referred to in Law No. 5 of 1986 concerning State Administrative Courts as amended by Law No. 9 of 2004 and Law No. 51 of 2009 must be interpreted as: written decisions which also include factual actions; Decisions of State Administrative Bodies and/or Officials in the executive, legislative, judicial and other state administration environments; based on statutory provisions and AUPB; is final in a broader sense; Decisions that have the potential to give rise to legal consequences; and/or Decisions that apply to Community Citizens.

3.2. Absolute Competence of State Administrative Courts

In the context of Law No. 30 of 2014 concerning Government Administration (UUAP). There are changes to the legal concept regulated in the Regulations Law, expanding the competence of the state administrative court law. The most fundamental changes concern state administrative decisions. Apart from the existence of new dispute objects in the form of factual actions, the state administrative court law's competence is assessing elements of abuse of authority (Article 21 UUAP) and examining requests for positive fictitious decisions (Article 53 UUAP), as well as the state administrative court law's competence regarding decisions of officials or government bodies resulting from administrative efforts as regulated in Article 76 paragraph (3) UUAP.

The objects of cases in the state administrative court law based on the Regulations Law include State Administrative Decisions and Negative Fictitious Decisions.[46] With the birth of UUAP there was a change in concept from State Administrative Decrees to Administrative Decrees. Apart from that, there is an expansion of the object of dispute in the form of administrative actions or real government actions.

43 Oriana Bandiera and Gilat Levy., Diversity and the Power of the Elites in Democratic Societies: Evidence from Indonesia, *Journal of Public Economics*, Vol.95 No.11–12, 2011, page.1322–1330

44 Eny Kusdarini and others., Roles of Justice Courts: Settlement of General Election Administrative Disputes in Indonesia', *Heliyon*, Vol.8 No.12, 2022;

45 I Gede Buonsu, A. A. Sagung Laksmi Dewi, and Luh Putu Suryani., Keputusan Fiktif Sebagai Dasar Pengajuan Gugatan Sengketa Tata Usaha Negara, *Jurnal Preferensi Hukum*, Vol.2 No.1, March 19, 2021, page. 68–72

46 Weda Kupita., Ordinary State Administrative Dispute and Positive-Fictitious decisions Dispute in Administrative Court (The State Administrative Court Law), In Relation to Administrative Appeal, *Jurnal Dinamika Hukum*, Vol.21 No.1, 2021, page.84-104

Even though the UUAP states that administrative decisions can also be called state administration decisions, the elements of each decision are different.[47] The elements of State Administrative Decisions contained in Article 1 number 9 of the Regulations Law and Article 1 number 7 of the UUAP are different. State Administrative Decisions have 6 (six) elements while Administrative Decisions have 3 (three) elements. These differences have consequences for the breadth of the state administrative court law's competence. In line with the opinion of J.J.H. Brugink, the more elements there are in an object of dispute, the smaller the scope of the court's competence. On the other hand, the fewer elements in the object of the dispute, the wider the court's competence. The author is of the opinion that although the UUAP states that government administrative decisions are also called state administrative decisions, the concept is different. Judges in handling administrative disputes after the birth of the UUAP on 17 October 2014, must carefully consider State administrative decisions based on the UUAP.

The absence of individual elements in administrative decisions causes general decisions to become the competence of The state administrative court law.[48] It's just that the nature of the decision is regeling, not the competence of the state administrative court law, including policy regulations. Regulatory decisions can be submitted to the Supreme Court through the Right to Judicial Review. The Supreme Court based on PERMA Number 1 of 2011 concerning the Right to Judicial Review has the competence to examine statutory regulations under the Law. The object of HUM is statutory regulations, namely written legal rules that are publicly binding under the law. Material review of laws through the Constitutional Court.

Government Administrative Actions[49] in Article 1 point 8 UUAP determines that Government Administrative Actions, hereinafter referred to as Actions, are actions of Government Officials or other state administrators to carry out and/or not carry out concrete actions in the context of administering government.[50] Initially, administrative actions or factual actions were tested by the courts in the general justice environment through Unlawful Actions by Officials (PMHP) using Article 1365 of the Civil Code.

47 Ari Wuisang., Tanggunggugat Publik Terhadap Tindakan Pemerintahan Dalam Kerangka Administrasi Pemerintahan, *PALAR (Pakuan Law Review)*, Vol.7 No.2, August 8, 2021, page. 132–46

48 Imron Rizki A, Rizki Mustika Suhartono and Safrin Salam., Implementation of State Administrative Court Decisions: Conception, and Barriers, *Musamus Law Review*, Vol.3 No.2, 2021, pages.49-57.

49 Cesar Renteria and David Arellano-Gault, How does a populist government interpret and face a health crisis? Evidence from the Mexican populist response to COVID-19, *Revista de Administracao Pública*, Vol.55 No.1, 2021;

50 Kompetensi Mengadili et al., Kompetensi Mengadili Peradilan Tata Usaha Negara Terhadap Gugatan Perbuatan Melanggar Hukum Oleh Badan Dan/Atau Pejabat Pemerintahan (Onrechtmatige Overheidsdaad), *UNES Law Review*, Vol.6 No.2, December 5, 2023, page.4357–71.

According to Philipus M. Hadjon[51] Since Law No. 5 1986 on Administrative Jurisdiction, the governmental liability system related to the legal responsibility of acts of government and the competence of the judiciary has been divided into two kinds of liability. First, is the liability for injurious consequences arising out of the application of administrative decision making, namely liability for unlawful administrative decisions, and the second is liability for governmental activities. In practice the latter is known as liability for 'unlawful activities of the government".

The object of the administrative action dispute is the new the State Administrative Court Law competence, previously the competence of the General Court. Administrative actions submitted to court cannot be separated from the concept of the authorities' unlawful actions. Judging from the historical perspective of the development of civil law jurisprudence through the Hoge Raad decision (arrest) in the Netherlands, Article 1365 of the Civil Code has experienced various jurisprudence. However, there are two things that are very important. First, Arrest Linde-Baum-Cohen on January 31 1919 regarding the expansion of the meaning of "acts against the law". This arrest expands the definition of "act against the law" which is not only defined as violating the law,[52] but also acts that violate the rights of other people, or are contrary to the legal obligations of the perpetrator of the act or are contrary to the decency and propriety that applies in society's traffic towards oneself or other people's property.

After the promulgation of the UUAP, reviewing decisions and/or government administrative actions became the competence of the the State Administrative Court Law. This is a legal policy to unify legal control over government administration in carrying out government functions. Even though the UUAP provides additional authority to the state administrative court law,[53] the law does not give the state administrative court law the authority to resolve disputes over the use of authority. Article 16 determines that the authority to resolve disputes regarding the use of authority rests with superior government officials, and the final level of resolution is decided by the President. Meanwhile, the resolution of authority disputes involving State institutions is resolved by the Constitutional Court.

It is different before the UUAP comes into force and after the UUAP,[54] the state administrative court law previously had no application cases, after the UUAP

51 Tatiek Sri Djatmiati Philipus M Hadjon., *Argumen Hukum*, Surabaya: Gadjah Mada University Press, 2016.

52 Rafi Hidayahtullah Pakaya and Tutiek Retnowati., Legal Protection for Victims of Traffic Accidents Due to Against The Law, *Yuridiksi Jurnal Wacana Hukum dan Sains*, Vol.18 No.1, 2022, page.96-113

53 Askari Razak., General Principles of Good Government on the Competence of Government Apparatus in Making State Administration Decisions, *Unes Law Review*, Vol.6 No.1, 2023, pages.3452-3459

54 Fauzi Syam, Sukamto Satoto, and Helmi Helmi., Politik Hukum Pemberian Kompetensi Absolut Peradilan Tata Usaha Negara Dalam Pengujian Penyalahgunaan Wewenang, *Undang: Jurnal Hukum*, Vol.6 No.1, May 12, 2023, page.189–233,

there were application cases. If you look at the existence of a petition and not a lawsuit, it is certainly a voluntary case. Characteristics of voluntary cases: The problem submitted is of one-sided interest only (for the benefit of one party only); The problem requested for adjustment to the district court is in principle without dispute with another party (without dispute or differences with another party); No other person or third party is drawn as an opponent, but it is absolutely one party (ex-parte).

Cases in the form of petitions can be divided into two types: Petitions regarding the assessment of elements of abuse of authority.[55] Who are the parties in the request for an assessment of the elements of abuse of authority and the request for a fictitious positive decision? Article 21 paragraph (2) UUAP states, "Government bodies and/or officials can submit a request to the court to assess whether or not there is an element of abuse of authority in decisions and/or actions." Thus, the concept of abuse of authority in Administrative law, every grant of authority to an agency or to a State Administration official is always accompanied by the "goals and purposes" of the granting of that authority, so that the application of that authority must be in accordance with the "goals and purposes" of the granting of that authority. In the event that the use of authority is not in accordance with the "purpose and purpose" of granting that authority, then there has been an abuse of authority. The benchmarks or parameters for the "goals and objectives" of granting authority for abuse of authority are known as the principle of specialization. This principle was developed by Mariette Kobussen in her book entitled De Vrijhed Van De Overheid. Substantially specialiteitsbeginsel means that each authority has a specific purpose. In the administrative law literature, the principle of zuiverheid van oogmerk has long been known. Deviating from this principle will give rise to abuse of authority.

Application for a positive fictitious decision. A positive fictitious decision occurs if the agency and/or official neglects their obligation to issue a decision and/or administrative action carried out by the applicant within the time period specified in the statutory regulations. Meanwhile, in the event that statutory regulations do not specify a time period, then the grace period is determined at 10 (ten) working days after the application is received in full by the Agency and/or Government Official. If within the time limit specified in the statutory regulations or a period of 10 (ten) working days if the statutory regulations do not stipulate a time period, then the Agency and/or Government Official who does not determine and/or carry out a Decision and/or Action, is deemed to have legally granted the request. This is known as a positive fictitious decision.

A fictitious decision means that a written decision does not exist. The official's silence is seen as making an affirmative or positive decision.[56] The concept of

55 Anastasya Millenia Tuela., Kewenangan Pengadilan Tata Usaha Negaradalam Menyelesaikan Sengketapenyalahgunaan Wewenang Yang Dilakukanpejabat Tata Usaha Negara, *Lex Privatum*, Vol.11 No.1, January 12, 2023

56 Kayyis Jurnal Supermasi and Sigit Suryanto., Sengketa Kewenangan Absolut Dalam Permohonan Fiktif Positif Terhadap Kepala Desa Leran Berdasarkan Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Permerintahan (Analisis Putusan Nomor

positive fictitious decisions in UUAP is very different from negative fictitious decisions regulated in the administrative Law. Contrary to the concept of negative fiction, it means that the official's silence is considered to be rejection. Rejection of negative fictitious decisions is carried out through lawsuits. The main claim of the lawsuit requires the Defendant (State Administrative Agency/Official) to issue a decision as requested by the Plaintiff (a person or Civil Legal Entity).

Even in positive fictitious decisions, the applicant does not automatically receive the results of his application, but must first submit an application to the State Administrative Court to obtain a decision to accept the application. The court is obliged to decide on the application no later than 21 (twenty one) working days after the application is submitted. The Court's decision is final and binding, there are no other legal remedies. Government agencies and/or officials are required to issue a decision to implement the decision of the State Administrative Court no later than 5 (five) working days after the court decision is made. A problem arises, is the applicant only the applicant for a positive fictitious decision or are there other parties? In the author's opinion, the applicant is not only a person, a civil legal entity, it is even possible a public legal entity. Applicants to government decisions and/or actions include all legal subjects, both individuals, civil legal entities and public legal entities. The negligent attitude of government bodies and/or officials causes all requests if the time has expired for the obligations of government bodies/officials then the request is deemed to have been granted.

The regulation of administrative law rules in the Netherlands states that governance is regulated by the General Administrative Law Act which regulates the process of administrative decision-making and legal protection for such decision-making.[57] The substance that is the authority of the judicial institution in legal literature and daily court practice is authority, which is also called by other names, namely authority, power, and jurisdiction.[58]

Jurisdictions regarding Administrative law is a challenging field to compare in at least three respects: first, administrative law is closely tied to national history and remains so despite attempts in academia to develop the idea of a global administrative law; second, it is difficult for academics to have detailed and up-to-date technical knowledge of a large number of administrative systems at once; third, definitions of the existence and scope of administrative law can be

19/P/FP/2021/The State Administrative Court Law.Sby), *Jurnal Supermacy Of Law (Ilmu Hukum)* Vol.1 No.1, October 14, 2024, page.67–84

57 Suparto (etc)., Administrative Discretion in Indonesia & Netherland Administrative Court: Authorities and Regulations, *Journal of Human Rights, Culture and Legal System*, Vol.4 No.1, March 2024, page.75-100

58 Fathur Rauz (etc)., The Parameters of Absolute Competence of General Courts and State Administrative Courts in Adjudicating Land Disputes, SHS Web of Conferences 182, 04008 2024, page.1-7

distinguished between two different approaches to the field, namely public administration and judicial review.[59]

The government agency and/or official that receives the application must implement a decision granting the applicant's request. Of course, ordering government agencies/officials as those who have the authority to issue decisions and/or government actions must comply with the decision. The author believes that officials who have the authority to issue government decisions or actions should be included in the petition as the Respondent. In relation to the implementation of the decision, government bodies and/or officials are required to issue a decision to implement the Court's decision granting the applicant's request no later than 5 (five) working days after the Court's decision is determined.

Based on Article 53 UUAP, the State Administrative Court Law has the competence to examine applications to obtain positive fictitious decisions.[60] Regarding the attitude of an agency or official who ignores or rejects the applicant's request in order to obtain a Decision and/or Action from the Agency or Government Official, if the time period specified in the statutory regulations or 10 (ten) working days in the statutory regulations does not specify a time period, then the silence of the agency or government official is deemed to have granted the applicant's request. The decision to grant the applicant's request (positive fictitious decision) did not materialize immediately. The applicant must request through the State Administrative Court to order the Government Agency or Official to issue or take action in accordance with the applicant's request.

The parties in the application for a positive fictitious decision are not only the applicant but involve government bodies or officials. The applicant is a party whose petition is deemed to have been legally granted as a result of a decision not being made and/or no action being taken by the government agency and/or official and who therefore submits a petition to the competent court to obtain a decision on the acceptance of the petition. The Respondent is a Government Agency and/or Official who has the obligation to determine Decisions and/or take Actions as intended in the Petitioner's Application.

4. Conclusion

The transitional provisions in Law No. 30 of 2014 concerning Government Administration, especially Article 87, have changed the meaning of State Administrative Decrees which were previously regulated in Law No. 51 of 2009 concerning State Administrative Courts, giving rise to inconsistencies with the

59 Mariolina Eliantonio and Yseult Marique., Comparative administrative law in Europe: State-of-the-art overview and research agenda, *Maastricht Journal of European and Comparative Law*, Vol.30 Issue.6, December 2023, pages.689-704.

60 Bagas Satya Indrana., Pertimbangan Hukum Hakim Mengenai Kompetensi Absolut Peradilan Tata Usaha Negara Dalam Menyelesaikan Permohonan Fiktif Positif Pada Putusan No. 3/P/FP/2020/The State Administrative Court Law.Mks," *UNES Law Review*, Vol.6 No.3, May 31, 2024, page. 9690–97

hierarchy of legal norms. This hidden change is contrary to the principles of forming statutory regulations as regulated in Law No. 12 of 2011, which requires that every change be made through general provisions or revisions to the relevant regulations. Therefore, in order to be in line with the principle of legal certainty and regulatory hierarchy, changes related to State Administrative Decisions should be carried out through revisions to the State Administrative Court Law, not through transitional provisions in the Government Administration Law. The absolute competence of the State Administrative Court has expanded with the enactment of Law No. 30 of 2014 concerning Government Administration, including testing for abuse of authority, government administration actions, as well as the concept of positive fictitious decisions. A positive fictitious decision means that if a government agency or official does not issue a decision within the specified time limit, then the application is considered legally granted, but the applicant still has to submit an application to the State Administrative Court Law to obtain a decision on accepting the application. By having an obligation for government bodies or officials to implement court decisions within a certain period of time, this mechanism aims to provide legal certainty and protection of people's rights in dealing with government administration.

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