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"Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe"

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SUE FOR THE STATE ADMINISTRATION OF JUSTICE IN INDONESIA

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Abstract

In the welfare state, the duty of the Government is not limited to the implementation of law, but also it is burdened by the obligation to hold public interest. The Government, in executing the duty, has an active role to interfere in people's lives because it sometimes arises a clash among them. Realizing the government's active role in intervening in public life, the government is preparing for the steps to cope with the emergence of misunderstanding / disputes in the state administration between the government and its citizens by forming the State Administration of Justice (PTUN)). With this justice, it is expected that the officials can carry out their duties properly so as to realize good governance, and able to protect the public interest. However, the State Administration of Justice can be said not to successfully perform their functions, as there are still many obstacles faced by justice seekers in the field of state administration. Some of the obstacles to be faced among others are : in terms of setting it in the legislation, related to the deadline for filing a lawsuit, the disputed object, the subject matter is placed as a defendant. In the case of State Administration of Justice locations, which are still minimal in number, the execution of it is still difficult to be implemented because there is no special executorial institution or institutions in implementing the State Administration of Justice ruling sanctions, lack of awareness of the state administrative officials to obey the State Administration of Justice's decision, and the absence of more detailed provisions about the sanctions if the decision is not implemented.

Keywords : Disputes, State Administration of Justice, Indonesia, obstacles.

A. Introduction

In a welfare state the government's task is not confined to implement the law, but also burdened with the obligation to hold public interest. Government in carrying out its obligations given the authority to intervene in people's lives, with the limits permitted by law.¹

One function of the law is to resolve conflicts in an orderly manner. Therefore, the most obvious form, then the justice system selected as the model. The task of the Justice is to take a decision which would prevent the occurrence of a conflict.² While one of the characteristics and principles of rule of law and democracy is the judiciary that is free from other powers impartially.³ As a democratic country, Indonesia has the constitutional system by having the executive, legislative and judicative. Of the three institutions having their share of executive authority role and the greatest when compared to other institutions.⁴

Recognizing the active role of the government to intervene in the life of society, the government should prepare measures to deal with the emergence of a clash or dispute in the field of state administration between the government and citizens of the dispute the country. To face the dispute, it is formed the State Administration of Justice (PTUN).⁵ Establishment of State Administration of Justice as part of the development of law is the national development and integral character and implemented the gradual and continuous development of the State Administration of Justice also conducted gradually and continuously.⁶

Article 24 paragraph (2) of the Act of 1945 sets, the judicial power is done by the Supreme Justice and judicial bodies underneath in general, religious, military Justices, State Administration of Justices and the state by a Constitutional Justice.⁷

The establishment of the State Administration of Justice is to resolve the dispute between the government and citizens and the establishment of this institution aims to control the

¹ Riwan HR. *the State Administration Law* , Raja Grafindo Persada, Jakarta, 2006, page.138. (in Indonesian)

²Samsul Wahidin, *the State Power Distribution Indonesia*, Pustaka Pelajar, Yogyakarta, 2014, page. 165. (in Indonesian)

³ Soehartono, *Building Construction Law by Judge invention In Remedy Dispute State Administration*, Disertasi, Universitas sebelas Maret, Surakarta, 2012. (in Indonesian)

⁴ Titik Tri Wulan Tutik, *Introduction to the Law of State Administration In Indonesia* , Prestasi Pustaka Publisher, Jakarta, 2010, page. 303. (in Indonesia)

⁵ Wicipto Setiadi, *the State Administration of Justice Procedure Code Country A Comparison*, ctk.ketiga, PT. Raja Grafindo Persad , Jakarta, 2001, page.8-9. (in indonesian)

⁶ C.S.T Kansil dan Christine S.T Kansil, *the State Administrative Procedure Law* , ctk.kelima, Pradnya Paramita, Jakarta, 2008, page. 3. (in Indonesian)

⁷ S.F. Marbun, *the State Judicial Administration and Administrative Efforts In Indonesia*, ctk. ketiga, UII Press, Yogyakarta, 2011, page.61. (in Indonesian)

judicial action that violates the government administrative provisions or actions contrary to the law.⁸ The existence of the State Administration of Justice is set in the legislation specifically namely, Act No.5 of 1986 on the State Administration of Justice, then amended by Act No.9 of 2004 on the Amendment of the Act No. 5 of 1986 concerning State Administration of Justice (PTUN) and changed again by Law No. 51 of 2009 on the second amendment of Law No. 5 of 1986 concerning the State Administration of Justice.

Sjachran Basah states that the rule of law and the State Judicial Administration is quite large. This is because the core or essence of administrative law is twofold, firstly, allowing State Administration of Justice to perform its functions, secondly, to protect citizens against acts of the administration's own attitude.⁹ State Administration of Justice (PTUN) is basically enforcing public law, namely the law of the state administration. Judicial state administration not only protects the rights of individuals, but also the rights of people.¹⁰

Based on the above explanations in this paper, it will be discussed about the constraints which are faced by those seeking justice in the State Administration Justice in Indonesia.

B. Discussion

The obstacles faced by the Seekers of Justice in State Administration of justice in Indonesia.

Legal protection for the people can be divided into two kinds, namely the preventive and repressive legal protection. Preventive legal protection is the protection of the law where the public are given an opportunity to file objections (*inspraak*) or their opinion before a decision of the government gets under a preventive form to prevent disputes, whereas the protection of repressive laws aimed at resolving the dispute. Preventive legal protection of great significance for government action based on the freedom of action, due to the absence of legal protection based on the discretion.¹¹

State Administration dispute is a dispute arising in the field of State Administration in person or body of civil law with the Agency or Official State Administration, both at central and local levels as a result of the issuance of an administrative decision, including the dispute

⁸ [https:// saepudinonline.wordpress.com/2010/03/15/sejarah-peradilan-tata-usaha-negara/](https://saepudinonline.wordpress.com/2010/03/15/sejarah-peradilan-tata-usaha-negara/) (accessed on August 2, 2016 at 19.05. pm)

⁹ Soehartono, *Building Construction Law by Judge invention In Remedy Dispute State Administration*, , *Op. Cit.* page 6. (in Indonesian)

¹⁰ Kusnu Goesniadhie, *the State Power Distribution Indonesia*, Nasa Media, Malang, 2010. page. 121. (in Indonesia)

¹¹ Philipus M hadjon dkk, *the Legal Protection for the People In Indonesia*, ctk. pertama, PT. Bina Ilmu, Surabaya, 2006, page. 2. (in Indonesian)

over staffing is based on legislation that is available (Article 1 paragraph 1 of Act No. 5 of 1985).

An administrative decision is a determination in writing issued by the Agency or Official State Administrative containing legal action the State Administration that is based on legislation in force, which is concrete, individual and final, arising from the law for a person or legal entity civil.¹² The parties who feel aggrieved as a result of the decision of the State Administrative officials can seek justice, by the way of the carrying the issue / dispute to the State Administration of Justice. However, sometimes the justice seeker is lazy to bring the dispute because there are several obstacles that they face. This is because there are several weaknesses contained in the State Administration of Justice dispute resolution processes in Indonesia.

The weaknesses can be viewed from three (3) things:

1. In terms of setting it in the legislation :

a. Grace Period of Lawsuit

Article 55 of Law No. 5 of 1986 concerning with the State Administration of Justice (PTUN) where: "a lawsuit can be filed within ninety days as of the receipt or publication of the decision of the Board or the Administrative Officer. Such provision has the very short time availability, and when administrative effort associated with the remainder of the deadline for filing a lawsuit in the Justice (TUN) becoming fewer.

Article 48 paragraph (1) of Act 5 of 1986 sets "in the case of a body or officials of the State Administration is authorized by or under law to resolve disputes administration of certain countries, then the dispute is resolved through the efforts of emotion available administration". further in paragraph (2) it sets "a new Justice authority to examine, decide and resolve disputes state administration referred to in paragraph (1) if all the efforts the administration concerned has been used.

b. In the Case of Object of State Administrative Dispute

Article 53 paragraph (1) of Law No. 5 of 1956 as amended by Law No. 51 of 2009, sets the person or legal entity civil who has the interests, harmed by a State Justice can be filed in writing to the competent Justice demanded that the administrative decision that disputed can be declared void or invalid, with or without a claim for compensation and / or rehabilitation.

¹² C.S.T Kansil, *the draft State Administration of Justice*, ctk.kelima, PT. Pradnya Paramita, Jakarta, 2000, page. 14. (in Indonesian)

The object of dispute State Administration (TUN) is limited to write the Administrative Decisions. Measures Agency or Official State Administration in Indonesia without an administrative decision is not subject to dispute. The understanding the object of dispute of State Administration (TUN) deviates from the notion widely disputed state administration which theoretically covers all legal acts public. State administration disputes arise if a person or body of civil law feels aggrieved, as a result of the issuance of a decision.¹³

c. Subject is seated as Defendant

Article 1 No.12 Act 51 of 2009 concerning with the Second Amendment to Law No. 5 of 1986 on State Administration of Justice stated that the defendant is a state administrative official who issued the decision under the authority available to him or delegated to him being sued by a person or body of civil law. Under the provisions of that article, the bodies or state administrative official who attributive authorized by law to issue a decision of the State administration (TUN), or which by law he is an abundance of authority (delegates) to issue a decision of State Administration (TUN). The legal consequences of such article are :¹⁴

1. If the authority attributes are still held by Agency / officials concerned, the defendants are agencies / officials
2. If the attribute authority has been delegated to agencies / officials of the other, then the defendants are agencies / officials who received the delegation of authority.
3. In terms of mandate, defendants remain in a fiduciary is not the recipient's mandate.

2. In The Justice Location.

Article 6, paragraph (1) sets, the "State Administration domiciles in the town or the district capital, and jurisdiction covers the towns and regencies. But the fact the location of the State Administration of Justice generally only located in the provincial capital. This is what caused the parties to the dispute with the state administrative official who feel disadvantaged due to his decision which is concrete, individual and final judgment has been reluctant to bring an action against the State Administrative Officer, remote location requires a long time, to attend the hearing so that it can diturb work activities / duties which they are

¹³lawandebeaty.blogspot.com/2013/07/proses-t-sngketa-tata-usaha.html accessed on August 2, 2016 at 17.10. pm)

¹⁴lawandebeaty.blogspot.com/2013/07/proses-t-sngketa-tata-usaha.html accessed on August 2, 2016 at 17.10. pm)

responsible. And if you want to attend a hearing must request permission to superiors / authorities to give sometimes do not give permission because officials who held permits the parties to the dispute with him.

3. In the Case of Difficult Decision Implementation (Execution) of the State Administration.

Article 115 of Law State Administration of Justice sets "only a Justice decision which has permanent legal power that can be implemented" . In this case, it means that the Justice decisions that have not obtained permanent legal force do not have the power of execution, because it is possible their legal efforts for their legal dispute.

The Implementation of the decision according to Article 116 of the State Administration of Justice Act No. 51 of 2009. It sets as follows:

- (1) A copy of a Justice decision which has obtained permanent legal force, sent to the parties by registered mail by the clerk of the local Justice on the orders of the Justice chief judge him in the first level no later than 14 (fourteen) working days.
- (2) If after sixty (60) working days Justice decisions that have obtained permanent legal force referred to in paragraph (1) accepted the defendant did not carry out its obligations as referred to in Article 97 paragraph (9) a, the administrative decision in dispute does not have the power of law anymore.
- (3) In the case of a defendant set should carry out its obligations as referred to in Article 97 paragraph (9) letter b and c, and then after 90 (ninety) working days turns out these obligations are not followed, the suer files a petition to the chairman of the Justice referred in paragraph (1), in order that the Justice orders the defendant to implement the ruling.
- (4) If the defendant is not willing to carry out the verdict of Justice which has obtained the power of law remain, against officials who concern are done by forceful measures in the form of payment of a sum of money forced and / or administrative sanctions.
- (5) Officials who do not implement the Justice decision as referred to in paragraph (4) was announced in the local print media by him since the non-fulfillment of the provisions referred to in paragraph (3).
- (6) Besides it announced on the local print media as described in paragraph (5), the chairman of the Justice submits it to the President as the highest government authority to instruct the officials to implement the Justice's ruling, and the institutions of the people's representatives to carry out surveillance.

(7) The provisions concerning with the amount of money forced, the type of administrative sanctions, and procedures for the implementation of compulsory payments and / or administrative sanctions stipulated by legislation.

Under the provisions of Article 116 above, then according to Paulus Effendie Lotulung, there are really two kinds of execution that we know in the State Administration of Justice:¹⁵

1. The execution of a Justice decision which contains an obligation as referred to in Article 97 paragraph (9) letter a, i.e. liability for the revocation of the decision of State Administration of Justice (KTUN) concerned.
2. The execution of a Justice decision which contains an obligation as referred to in Article 97 (9) letter b and c, namely: letter b: retraction the decision of State Administration of Justice (KTUN) concerned and issue new the decision of State Administration of Justice (KTUN); or the letter of c: publishing the decision of State Administration of Justice (KTUN) in case a lawsuit is based on Article 3.

Furthermore Lotulung explained that basically the execution in the State Administration of Justice insists on the principle of self-respect and legal awareness of officials State Administration (TUN) against the decision of the judge to do so voluntarily without any means of coercion that can be felt and imposed by the Justice against the officials of the State Administration is concerned.¹⁶

In fact, despite a Justice ruling State Administration (TUN) has had permanent legal force, does not mean that the decision would be implemented so easily. Not all people who are subject to judgment would be willing to implement this decision, so sometimes it is required forceful measures, in this case the security forces. However, in the implementation of the decision of the State Administration of Justice, where the security forces are not possible. Which may be possible to intervention is the president as head of government in order to force, some obstacles are :¹⁷

1. Absence of a special exsecutorial institution or agency that serves to implement the sanctions decision.

General Justices have forced institutions, namely the real execution by the Clerk under the leadership of Chairman for civil matters (Article 195 up to Article 208 and

¹⁵ swandirpoti.blogs.com/2010/07/eksekusi-dalam-State Administration of Justice (PTUN).htm(Accessed on 1st of Agust 2016 at 10:10 am.)

¹⁶swandirpoti.blogs.com/2010/07/eksekusi-dalam-State Administration of Justice (PTUN).html (Accessed on 1st of Agust 2016 at 10:10 am.)

¹⁷[https://farahfitriani.wordpress.com/2011/10/30/hambatan-pelaksanaan-putusan-peradilan-tata-usaha-negara-yang-mengakibatkan--hilangnya-Wibawa-State Administration of Justice \(PTUN\)/](https://farahfitriani.wordpress.com/2011/10/30/hambatan-pelaksanaan-putusan-peradilan-tata-usaha-negara-yang-mengakibatkan--hilangnya-Wibawa-State Administration of Justice (PTUN)/)(Accessed on 1st of Agust 2016 at 10:10 am.)

Article 1033 Rv HIR), and there is a criminal prosecutor as executor decision (Article 270 Criminal Procedure Code). Military justice is in the Military Prosecuting Attorney is obliged to execute the decision of the Military Judge. Religious Justice, in accordance with articles 95, 98 and 103 of Law No. 7 of 1989 has also been able to carry out by force (Execution) on the determination and decision including carrying out all forms of seizure (beslag).¹⁸

Meanwhile with the Administrative Regulations, the agency forced what can be applied if all phases of execution, that the admonition by superiors hierachi up to the presidential level, State Administration (TUN) officials still do not implement them. This is the only justice in the justice system in Indonesia that has forced institutions. Therefore, it is not surprising if the decision is not implemented.

2. Low level of awareness of the State Administration officials to obey the Justice decision State Administration (TUN).

Officials of the State Administration often do not obey the law, for their personal interests of officials, the existence of decision of the State Administrative issuance and weak level of legal awareness agencies or officials of the State Administration is a very big influence on observed or whether the decision of Judge State Administration of Justices, because normative execution of the Justice decision the judge is rested on the willingness of officials concerned to implement it (floating execution). With just rely on the willingness, of many officials who are not willing if need to fulfill the judgment, choose not to comply with the decision.¹⁹

3. The absence of firmer settings regarding the implementation of the decision of the State Administration of Justice.

The provisions concerning the execution of State Administration of Justice ruling has been published in article 116 of Law No. 5 th 1986 in conjunction with Law No. 9 of 2004 in conjunction with Law No. 51 of 2009, which states that the Justice may ask the higher rank official of State Administration (TUN) officials concerned or even the president to 'force' the defendant to implement the Justice ruling. It is of course not allowed to happen more often because if the president too often intervenes in the affairs of

¹⁸[https://farahfitriani.wordpress.com/2011/10/30/hambatan-pelaksanaan-putusan-peradilan-tata-usaha-negara-yang-mengakibatkan-hilangnya-Wibawa-State-Administration-of-Justice-\(PTUN\)/](https://farahfitriani.wordpress.com/2011/10/30/hambatan-pelaksanaan-putusan-peradilan-tata-usaha-negara-yang-mengakibatkan-hilangnya-Wibawa-State-Administration-of-Justice-(PTUN)/) (Accessed on 1st of Agust 2016 at 10:10 am.)

¹⁹[https://farahfitriani.wordpress.com/2011/10/30/hambatan-pelaksanaan-putusan-peradilan-tata-usaha-negara-yang-mengakibatkan-hilangnya-Wibawa-State-Administration-of-Justice-\(PTUN\)/](https://farahfitriani.wordpress.com/2011/10/30/hambatan-pelaksanaan-putusan-peradilan-tata-usaha-negara-yang-mengakibatkan-hilangnya-Wibawa-State-Administration-of-Justice-(PTUN)/) (Accessed on 1st of Agust 2016 at 10:10 am.)

the implementation of the State Administration of Justice ruling forcing it is concerned that the president will lose the authority as head of the Government. Therefore, we need a revision to the Act or implementing regulations which regulate in detail the implementation of the decision of the State Administration of Justice and the consequences if not adhered to so that at a later date State Administration of Justice ruling will be easily implemented.²⁰

C. Closing.

1. Conclusions.

Based on these discussion it can be concluded that there are some obstacles faced by those seeking justice in the State Administration of Justice, namely:

- a. In terms of setting it in the legislation, in which case the deadline for filing a lawsuit, the right to object at issue, a matter on which is placed as a defendant.
- b. In terms of place / location of State Administration is still minimal in number, were only formed in the capital of province.
- c. In terms of difficulty in the execution of this is due to the absence of special executorial institution or institutions in implementing the State Administration of Justice ruling sanctions, lack of awareness of State Administration (TUN) officials in obeying State Administration of Justice ruling, and the absence of more detailed provisions governing the sanctions if the decision is not implemented.

2. Suggestions

The government should: Immediately realizes the provisions of Article 6 paragraph (1) of Law No. 5 of 1986 which was amended by Law No. 51 of 2009, which formed the State Administration of Justice in every regencies / towns and formed a special executorial institution or institutions sanctions which serve to implement the decision of State Administration of Justice.

²⁰[https://farahfitriani.wordpress.com/2011/10/30/hambatan-pelaksanaan-putusan-peradilan-tata-usaha-negara-yang-mengakibatkan--hilangnya-Wibawa-State-Administration-of-Justice-\(PTUN\)/](https://farahfitriani.wordpress.com/2011/10/30/hambatan-pelaksanaan-putusan-peradilan-tata-usaha-negara-yang-mengakibatkan--hilangnya-Wibawa-State-Administration-of-Justice-(PTUN)/) (Accessed on 1st of August 2016 at 10:10 am.)

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