AL RISALAH: Jurnal Ilmu Syariah dan Hukum

VOLUME 22 NO 2, NOVEMBER 2022
P-ISSN: 2252-8334 / E-ISSN: 2550-0309

https://doi.org/10.24252/al-risalah.vi.34008

Decision Concepts State Administration Post Entry into Law Number 30 of 2014 Concerning Government Administration

Muslim Haq. M [1], Syamsul Bachri [2], Anshori Ilyas [3]
[1,2,3]Faculty of Law, Hasanuddin University, Indonesia. *E-mail: muslimhaq@gmail.com*

Abstract
After the enactment of Law no. 30 of 2014 Concerning Government Administration, the Concept of State Administrative Decisions has experienced a shift in meaning as intended in Article 1 Paragraph (3) Law no. 5 of 1986 concerning the State Administrative Court was later amended in Law no. 9 of 2004 concerning Amendments to Law no. 5 of 1965 concerning the State Administrative Court and amended for the second time in Law no. 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning the State Administrative Court. The research method used is normative research or library research. From the results of this study, in general there are two concepts of state administrative decisions, namely: (1). State Administrative Decision in writing, and (2). Unwritten State Administrative Decisions, among others: (1). Government Administration Actions or Factual Actions and (2). State Administrative Decisions in the form of speech.

Keywords: Concept; State Administrative Decision; State Administrative Court

INTRODUCTION

Law Number 30 of 2014 concerning Government Administration (hereinafter referred to as the Government Administration Law) was promulgated with the intention of becoming a guideline in administering government. Government officials in administering government and public services must be based on the Law on Government Administration. This is an embodiment of a rule of law state. In a constitutional state,

government officials in carrying out actions and making decisions must be guided by the principles regulated in the Law on Government Administration[1].

The spirit of forming the Government Administration Law has always been material law for the State Administrative Court. Material law[2] is a set of rules governing things that must be done, should be done, and are not allowed (prohibited). It can also be interpreted, the law material is a rule that contains rights and obligations [3].

Law Number 30 of 2014 concerning Government Administration (UUAP) is a regulation that contains rights and obligations in administering government. It can also be said that the Government Administration Law is a regulation that regulates things that must be done, may be done, and may not be done (prohibited) by government officials. Thus it can be concluded that the Government Administration Law is a material law.[4]

While Law no. 5 of 1986 in conjunction with Law no. 9 of 2004 in conjunction with Law no. 51 of 2009 (hereinafter referred to as the PTUN Law) is a formal law. The PTUN Law existed earlier than the Government Administration Law, but the contents of the PTUN Law and the Government Administration Law regulate things that are not the same, including those concerning the absolute competence of PTUN. The Law on Government Administration gives absolute authority to a wider (larger) State Administrative Court. With greater absolute authority, PTUN authority to supervise government officials is also getting bigger [5].

In addition, the current Administrative Court Law is a law that applies specifically within the scope of the State Administrative Court and also acts as formal law. However, what has become a discourse is that since the enactment of the Government Administration Law, in principle it has changed many paradigms in proceedings in the State Administrative Court. it was even found that there were provisions on norms that were not in line with the Administrative Court Law. Because the Administrative Court Law is considered as a specific regulation within the PTUN scope, it should be based on the principle of Lex specialist de rogat legi generalis. the law that applies specifically overrides the general law.

One of the most prominent implications of the presence of the Government Administration Law is the change in the meaning of State Administrative Decrees. The

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[1]Francisca Romana Harjiyatni dan Suswoto, Implikasi Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan terhadap Fungsi Peradilan Tata Usaha Negara, Jurnal Hukum Ius Quia Iustum NO. 4 VOL. 24 Oktober 2017, hal. 602

[2]Sudikno Mertokusumo, Mengenal Hukum Suatu Pengantar, Cetakan Keempat, Liberty, Yogyakata, 2008, hal. 41.

[3] *Ibid.*

[4] *Op.Cit* Francisca Romana Harjiyatni dan Suswoto, hal. 602

[5] *Ibid,*

Law on Government Administration stipulates that State Administrative Decisions are no longer only interpreted in writing but also contain factual actions (Feitelijk Handelingen) as actions of the Government or bodies.

Government Action[6] can be divided into two forms namely Factual Actions *(Feitelijk Handelingen)* and Legal Actions *(Rechtshandelingen)*. Here is the division:

Feitelijk Handelingen (commonly called Material Actions)[7] or Factual Actions / Concrete Actions –vide Article 1 point 8 Jo. Article 87 of the Government Administration Law). Factual action (Feitelijk Handelingen) will always be one-sided (eenzijdige) because it is one-sided; and Rechtshandelingen (Legal Action). This Legal Action (Rechtshandelingen) theoretically has administrative legal implications. Some of these legal actions (Rechtsandelingen) are one-sided (eenzijdige) because they are unilateral in nature, and some are two-sided (tweezijdige or meerzijdige).

Factual Action (the term that will be used hereafter) is a real or physical action carried out by the Government. This action is not only limited to active action but also passive action. What is meant by passive action in this case is silence about something[8].

Observing the explanation above, factual actions can be classified as government or agency actions. Because of that, it is valid to be declared as the object of lawsuit in the State Administrative Court.

So far we have been immersed in the concept that the decision is a written decision. Jurists with a legal wing of legism emphasize that state administrative decisions must be written to provide more legal certainty, although this has always been an interesting topic of discussion in the academic world.

In the development of State Administrative Law, many legal experts have provided views related to the concept of State Administrative Decisions. State Administrative Decisions (KTUN) are often interpreted as a decree.

According to R. Soegijatno Tjakranegara.[9] Decisions are unilateral legal actions in the field of government carried out by state apparatus based on special authority. Then Van Vollen Hoven and Van Der Pot[10] also said that a decision is a legal action that is one-

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[6] Muhammad Adiguna Bimasakti, merupakan seorang calon hakim PTUN Banjarmasin yang sedang melakukan pemaganga di PTUN Makassar. accessed via Link https://ptun-makassar.go.id/batasan-tindakan-dalam-hukum-administrasi-pemerintahan-dan-perbuatan-dalam-hukum-perdata-oleh-pemerintah pada hari Jumat 25 Februari 2022, pukul 15.08 Wita

[7] *Ibid.* and check too Safri Nugraha, Hukum Administrasi Negara,Badan Penerbit Fakultas Hukum Universitas Indonesia, Depok 2007, hal. 85.

[8] *Ibid*

[9] R. Soegijatno Tjakranegara dalam link https://bantuanhukum-sbm.com/artikel-definisi-keputusan-dan-ketetapan-tata-usaha-negara diakses pada hari Sabtu, 26 Februari 2022, pukul 00.08 Wita

[10] *Ibid.* pendapat hukum oleh Van Vollen Hoven dan Van Der Pot tentang Definisi KTUN

sided in the field of government carried out by a government agency based on special powers.

The concept of state administrative decisions put forward by the experts above does not provide a firm statement that the decree must be written. However, we can find a decision that provides such confirmation in the Administrative Court Law. Likewise, the Government Administration Law also approves written decisions and factual actions.

However, reviewing the meaning of these factual actions, it is very difficult for us to put clear boundaries that invite long debates and experience legal ambiguity in the practical world.

In response to this discourse, the Supreme Court of the Republic of Indonesia has issued Perma number 2 of 2019 concerning Guidelines for the Settlement of Disputes on Government Actions and the Authority to Adjudicate Unlawful Acts by Bodies and/or Officials Government (Onrechmatige overheidsdaa).

In Article 1 Number 1 Regulation of the Supreme Court of the Republic of Indonesia (Perma) number. 2 of 2019 stipulates that what is meant by government action is:

Actions of Government Officials or other State Administrators to take and/or not take concrete actions in the framework of administering government[11].

The provisions of the norms above are one of the provisions used by judges at the Jakarta State Administrative Court to receive, examine and decide on cases said by the Attorney General of the Republic of Indonesia, ST. Burhanuddin, at a plenary meeting at Commission III of the DPR RI last time. In this case, the Jakarta Administrative Court Panel of Judges gave a guilty verdict on the actions of the Indonesian Attorney General. This is as stated in the decision of the State Administrative Court with decision number: 99/G/2020/PTUN-JKT, Stating Government Actions [12] in the form of Submission of the Defendant (RI Attorney General) in a Working Meeting between Commission III of the House of Representative of Indonesia Republic (hereinafter referred to as DPR RI) and the Attorney General of the Republic of Indonesia on January 16, 2020 who said: "... The Semanggi I and Semanggi II incidents, where the results of the DPR RI plenary meeting stated that these events were not gross human rights violations, he National Human Rights Commission of the Republic of Indonesia (hereinafter referred to as Komnas HAM RI) should not have followed up because there was no reason for the establishment of an adjudication court hoc based on the recommendations of the DPR RI to the President to issue a Presidential Decree establishing an ad hoc Human Rights Court in accordance

[11]Pasal 1 Angka 1 Perma nomor 2 Tahun 2019 tentang Pedoman Penyelesaian Sengketa Tindakan Pemerintahan dan Kewenangan Mengadili Perbuatan Melawan Hukum oleh Badan dan/atau Pejabat Pemerintahan *(Onrechmatige overheidsdaa)*.

[12] Putusan PTUN Jakarta dengan nomor: 99/G/2020/PTUN-JKT, hal. 116

with Article 43 paragraph (2) of Law No. 26 of 2000 concerning Human Rights Courts" is an unlawful act by a government agency and/or official.

The interesting thing in the Jakarta Administrative Court Decision above, is that the High State Administrative Court (hereinafter referred to as PT. TUN) Jakarta through appeals with Decision number: 12/B/TF/2021/PT.TUN.JKT and the Supreme Court of the Republic of Indonesia (hereinafter referred to as MA RI) through cassation with decision number: 329 K/TUN/TF/2021 has another view. The two decisions essentially rejected the Jakarta Administrative Court decision number: 99/G/2020/PTUN-JKT.

From this phenomenon, of course we are confronted with how far the Supreme Court of the Republic of Indonesia can adjudicate legal disputes factual action as intended in the Law on Government Administration. In the theory of authority, it is understood that authority is formal power, power granted by law or from executive administrative power.[13]

Lubis describes the meaning of authority by distinguishing it from the task (function), namely the unit of government affairs which is assigned to certain organs to be carried out and authority is the implementation of the technical affairs in question.[14]

While in the Big Indonesian Dictionary (KBBI) where the word authority is equated with authority which means the right and power to act, the power to make decisions, govern and delegate responsibility to other people/agencies.[15]

According to Ateng Syafrudin[16] there is a difference between the meaning of authority and authority. authority (authority gezag) is what is called formal power, power that comes from powers granted by law, while authority (competence bevoegheid) only concerns a certain "onderdeel" (part) of authority. Within authority there are powers (rechtsbe voegdheden).

In addition to the problems described above, of course there are other legal phenomena from the aspect of the position of the Government Administration Law in relation to the Administrative Court Law as a formal rule in proceedings at PTUN. This is reinforced by a legal fact which is the result of Khairul Fadli's research, in his thesis that Law no. 30 of 2014 concerning Government Administration is a new basis and becomes the main material law for state administrative justice. In connection with the

[13]Check the links http://repository.untag-sby.ac.id/278/4/BAB%202.pdf, diakses pada hari Sabtu, 26 Februari 2022, Pukul 01.04 Wita

[14] M. Solly Lubis, Hukum Tata Negara, CV. Mandar Maju, Bandung, 2008, Hal. 56

[15] Andi Pangerang Moenta dan Syafa'at Anugrah Pradana, Pokok-Pokok Hukum Pemerintahan Daerah, Rajawali Pers, Depok, 2018, Hal. 53. and Departemen Pendidikan Nasional, Kamus Besar Bahasa Indonesia, Balai Pustaka Jakarta, 2011.

[16] Ateng Syafrudin, "Menuju Penyelenggaraan Pemerintahan Negara yang Bersih dan Bertanggungjawab", Jurnal Pro Justisia Edisi IV, Universitas Parahyangan, Bandung, 2000, hal.22.

close relationship between material law and procedural law which contains formal procedures for the implementation of these material law principles, it is necessary to conformity between the substances in the law on state administrative justice and Law no. 30 of 2014 it.

Seeing the problems above, then of course it is appropriate to investigate the law enforcement processes that exist within the PTUN scope and the achievement of the legal objectives themselves. We know that law enforcement with the aim of law is a connected subsystem in one unit.

The presence of the Government Administration Law certainly has its own legal implications in the legal regime of State administration. The clause on changing the meaning of State Administrative Decrees from the Administrative Court Law is even more interesting when it is confronted with the concept of law enforcement and the purpose of the law itself.

In Law Enforcement Theory, in essence, it requires a process of enforcement or a function of the provisions of legal norms in real terms to guide behavior in legal or traffic relations in the life of society, nation and state.

Jimly Asshiddiqie,[17] in his opinion states that law enforcement is the process of making efforts to uphold or function legal norms in a real way as a guideline for behavior in traffic or legal relations in the life of society and the state. Viewed from the point of view of the subject, law enforcement can be carried out by a broad subject and can also be interpreted as an effort to enforce the law by the subject in a limited or narrow sense. In a broad sense, the law enforcement process involves all legal subjects in every legal relationship. Anyone who carries out normative rules or does something or does not do something based on the norms of the applicable law, means he is carrying out or enforcing the rule of law. In a narrow sense, in terms of the subject, law enforcement is only interpreted as an effort by certain law enforcement officials to guarantee and ensure that a rule of law operates as it should. In ensuring the upholding of the law, if necessary, law enforcement officials are permitted to use force.

The definition of law enforcement can also be viewed from the point of view of the object, namely from the legal point of view. In this case, the meaning It also includes broad and narrow meanings. In a broad sense, law enforcement also includes the values of justice contained in the sound of formal rules and the values of justice that live in society. However, in a narrow sense, law enforcement only concerns the enforcement of formal and written regulations. Therefore, the translation of the word "law enforcement"

[17] Jimly Asshiddiqie, dalam memberikan pendapat tentang Penegakan hukum *(law enforcement)*, yang diakses melalui link http://www.jimly.com/makalah/namafile/56/Penegakan_Hukum.pdf. pada hari Sabtu, 26 Februari 2022, Pukul 15. 24 Wita

into Indonesian uses the word "law enforcement" in a broad sense and the term "enforcement of regulations" can also be used in a narrow sense.[18].

While the purpose of law is something to be realized in the law enforcement process itself. According to Mr. J. Van Kan[19], The purpose of law is to safeguard the interests of every human being so that his various interests cannot be disturbed. More specifically, the purpose of the law is to guarantee legal certainty in a society, as well as to protect and prevent everyone in a society from becoming their own judge.

In this way the spirit described above is of course in line with the will of the principle of legal certainty.

Fajlurrahman Jurdi[20] said that the principle of legal certainty has two aspects, one is more material law in nature, the other is formal. Material legal aspects are closely related to the principle of trust. In many circumstances the principle of legal certainty precludes a government agency from retracting a decision or amending it to the detriment of those concerned.

Besides, Aristotle [21] reveals that the purpose of law is to achieve justice, meaning to give everyone what is due to them. The theory is now known as the ethical theory.

Meanwhile, according to Jeremy Bentham[22] The purpose of law is to achieve benefits. This means that the law will and can guarantee the happiness of many people, this theory is also known as the theory of utilities.

The three views described have their respective emphasis on being the main goal to be achieved in the law enforcement process.

Achmad Ali divides the purpose of law into aspects of western theory with an emphasis on classical theory and modern theory, namely:[23]

a. Classic theory

1. Ethical theory, namely: the purpose of law is solely to bring about justice (justice)
2. The utilitarian theory, namely: the purpose of law is solely to realize utility.
3. Legalistic theory, namely: the purpose of law is solely to realize legal certainty (legal certainty)

b. modern theory

1. Standard priority theory, namely the purpose of law includes: (1) justice (2) benefits (3) legal certainty

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[18] *Ibid.*

[19] Mr. J. Van Kan dalam link https://bantuanhukum-sbm.com/artikel-tujuan-hukum-menurut-para-ahli, diakses pada hari Sabtu, 26 Februari 2022, Pukul 15. 48 Wita

[20] Fajlurrahman Jurdi, Hukum Tata Negara Indonesia, Prenadamedia Group, Jakarta, 2019, Hal. 65

[21] *Op.Cit.* Mr. J. Van Kan

[22] *Ibid*

[23] Achmad Ali, Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Jurisprudence) Termasuk Interpretasi Undang-Undang (Legisprudence), Prenadamedia Group, Jakarta, 2009, Hal. 212-213

2. The casuistic priority theory, namely: the purpose of law includes justice, benefit, legal certainty, in a proportional order of priority according to the case at hand and to be resolved.

Based on the view above, in this study, the authors put the variables of the theory of legal purposes in which there are three benchmarks used, namely justice, certainty and expediency. These three variables will be the touchstone in this research problem. the many problems that will be tested in this study, of course we expect new ideas to be found as solutions to existing problems. As Arpan Marwasih Ns, commented on in his thesis, that there was a significant expansion, previously in Law Number 5 of 1986 concerning the State Administrative Court only the authority was given to try the Beshicking case but in the expansion the State Administrative Court was given the authority to try cases of decisions that were not only in the form of written but also includes government factual actions.

What often becomes a problem in the practical world is that the factual actions referred to in the Law on Government Administration are so broadly interpreted that it is difficult for us to determine the boundaries of the meaning of these factual actions.

With that in mind, this certainly still requires more in-depth study, because earlier the author also cited the opinion that the PTUN Law is the formal law of the procedural law in the State Administrative Court while the Government Administration Law is material law. Therefore both should support each other and strengthen each other.

But factually, the two laws experience discourse or conflict with each other, especially in the aspect of the absolute authority of the judiciary. Of course, if we examine it further, it is possible that new things will be discovered, which of course makes this study even more interesting.

Therefore, based on the existing problems, the authors are always called upon to carry out further legal investigations to produce research results that are more constructive and measurable and can make a meaningful contribution to law enforcement in Indonesia. This research focuses on the discussion relating to the concept of State administrative decisions as stipulated in Article 87 of Law Number 30 of 2014 concerning Government Administration.

Literature Review

Theoretical Framework

A. Decision Theory

1) Definition of Decision

In Indonesia, the term beschikking was first introduced by WF. Prins [24]. For him that beschikking translates to Decreealso as stated by several other experts such as SF. Marbun [25], and Philip M. Hadjon.[26] While E. Utrecht [27], Sjachran Basah[28], and Bagir Manan translate it with the term "Determination".

According to Jenal Hoesen [29] and Muchsan the use of the term decision is more appropriate to avoid confusion of understanding with the term determination. According to him, in Indonesia the term Decree already has a technical juridical meaning, namely as a stipulation of the People's Consultative Assembly of the Republic of Indonesia (in Indonesia it is the same as the MPR RI institution) which applies externally and internally.

Furthermore, according to H.D. van Wijk/Willem Konijnenbelt, beschikking is a government decision for something concrete (not intended for general matters) and has long been used as the main government juridical instrument[30].

Some legal experts provide a definition of the decision (beschikking) itself. According to Basah Sjachran [31], *beschikking is a written decision from the State administration that has legal consequences.* E. Utrecht[32], *Beschikking is a one-sided public legal act (performed by government agencies based on a special power).* While W.F. Prins and R. Kosim Adisapoetra [33], *Beschikking is a unilateral legal action in the field of government carried out by a government agency based on extraordinary authority.*

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[24] WF. Prins dan R. Kosim Adisapoetra, Pengantar Ilmu Administrasi Negara, Perdnya Paramita, Jakarta, 1983, hal..42

[25] SF. Marbun, Peradilan Administrasi dan Upaya Administratif di Indonesia, Liberty, Yogyakarta, 1997, hal. 126

[26]Philipus M. Hadjon, Pengantar Hukum Administrasi Indonesia, Gadjah Mada University Press, Yogyakarta, 1993, hal. 142

[27] E. Utrecht, Pengantar Hukum Administrasi Negara Indonesia, Pustaka Tinta Mas, Surabaya, 1988, hal. 97

[28] Sjachran Basah, Hukum Acara Peradilan dalam Lingkungan Peradilan Administrasi (HAPLA), Rajawali Pers, Jakarta, 1989, hal. 16

[29] Djenal Hoesen Koesoemahatmadja, Pokok-Pokok Hukum Tata Usaha Negara, Alumni, Bandung, 1979, hal. 47. Lihat Juga Ridwan HR., Hukum Administrasi Negara, Edisi Revisi, Raja Grafindo, Jakarta, 2011, hal. 142

[30] H.D. van Wijk/Willem Konjinenbelt, Dalam Ridwan HR., Hukum Administrasi Negara, Edisi Revisi, Raja Grafindo, Jakarta, 2011 hal. 141

[31] *Op.Cit,* Sjahran Basah, hal. 230

[32] *Op.Cit,* E. Utrecht, hal. 94

[33] *Op.Cit,* WF. Prins dan R. Kosim Adisapoetra, hal. 42

2) State Administrative Decisions

According to Soehardjo [34], The TUN decision is a unilateral decision from a government organ. This does not mean that the party to whom the decision was directed previously did not know about the decision at all, in other words that the initiative lies entirely with the government. In general, experts argue that the decision is a unilateral decision, because after all the decision depends on the government, which grants or rejects it.

Then juridically, the definition of State Administrative Decisions according to Article 1 Number 3 of Law Number 5 of 1986 namely:

"State Administrative Decisions are a written stipulation issued by a State Administrative Agency or Official containing legal actions for State Administration based on applicable laws and regulations, which are concrete, individual and final in nature, which give rise to legal consequences for a person or civil law entity".[35]

From the description of the norms above, it can be formulated that the characteristics of a State Administration decision (TUN) are:

a. Is written
b. Issued by an authorized agency or official
c. Based on Legislation
d. Are Concrete, Individual, Final, and
e. Causing legal consequences

B. Authority Theory

In State Administrative Law Authority is central to ensuring the running of government functions that have been granted based on the applicable laws and regulations.

Aminuddin Ilmar[36] differentiate between authority (authority, gezag) and authority. According to him, authority is formalized power, both over certain groups of people and a certain field of government in the branches of legislative and executive power. While authority is the ability to carry out a public legal action, or juridically authority is the ability to act given by law to carry out legal relations.

In the exercise of authority originating from laws and regulations, in general the classification of sources of authority can be classified namely Attribution, Delegation and Mandate.

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[34]Soehardjo, Pengantar Hukum Administrasi Negara, Pertumbuhan dan Perkembangannya, Fakultas Hukum Universitas Diponegoro, Semarang, 1994, hal. 41-42

[35] Pasal 1 Angka 3 Undang-Undang Nomor 5 Tahun 1986 tentang Peradilan Tata Usaha Negara

[36] Aminuddin Ilmar, Membangun Negara Hukum Indonesia, Phinatama Media:Makassar, 2014. hal. 204-205.

C. Law Enforcement Theory

Law enforcement, namely, efforts to carry out enforcement processes or functions of legal norms in a real way to guide behavior in legal or traffic relations in the life of society and the state.

Law enforcement, namely, an attempt to realize the ideas of justice, legal certainty and social benefits into reality. Law enforcement is essentially a process of embodiment of ideas. Satjipto Raharjo argues that law enforcement is not a definite action, namely applying a certain action, namely applying the law to an incident, which can be likened to drawing a straight line between two points.[37].

Soerjono Soekanto argues that law enforcement is an activity of harmonizing the relationship of values that are described in solid and manifest values/views and attitudes as a series of final stages of value translation to create, maintain and maintain social peace. Concrete law enforcement is the enactment of positive law in practice which must be obeyed. So, providing justice in a case means deciding the law in concreto in guaranteeing and maintaining the observance of material law by using the procedural method determined by formal law.[38].

D. Legal Purpose Theory

In realizing the objectives of the law, Gustav Radbruch stated that it is necessary to use the priority principle of the three basic values which are the objectives of the law. This is because in reality, legal justice often collides with the benefit and certainty of law and vice versa. Among the three basic values of the law's purpose, in the event of a collision, someone must be sacrificed. For this reason, the priority principle used by Gustav Radbruch must be implemented in the following order: 1. Legal Justice; 2. Legal Benefits; and 3. Legal Certainty[39].

2. Formulation of the problem

This study formulates the main issues related to how the concept of state administrative decisions in law number 30 of 2014 concerning government administration is related to the law on state administrative justice.

METHOD

In this research, normative legal research (normative juridical) or library research was chosen. By searching legal documents or in the form of scientific papers or legal

[37] Satjipto Raharjo, Sosiologi Hukum : Perkembangan Metode Dan Pilihan Masalah, Sinar Grafika, Yogyakarta, 2002, hal. 190

[38] Dellyana Shant, Konsep Penegakan Hukum, Sinar Grafika, Yogyakarta, 1988, hal. 33

[39] Muhammad Erwin, Filsafat Hukum, Raja Grafindo, Jakarta, 2012, hal.123

articles as well as legal theories that are relevant to the issues discussed. Irwansyah[40] said that normative research is understood as research to test a norm or applicable provisions. It can also be said as research conducted by examining library materials or secondary data. The type of research chosen is using primary, secondary, and tertiary legal materials. Primary legal materials are data obtained from legal materials that have permanent and binding legal force and are directly related to the problem under study. The primary materials in this study consist of: the 1945 Constitution of the Republic of Indonesia; Law No. 5 of 1986 concerning the State Administrative Court; Law No. 30 of 2014 concerning Government Administration. Secondary legal materials complement the sources of primary legal materials and secondary sources of legal materials obtained by tracing legal literature discussing themes related to writing: Document studies, namely studying through books, literature, papers and other materials related to writing materials.[41].

RESULT AND DISCUSSION

1. State Administrative Decisions in Writing

Juridically, State Administrative Decisions are regulated in Article 1 Number 3 of Law Number 5 of 1986 concerning State Administrative Court, namely:

"A State Administrative Decision is a written determination issued by a State Administrative Agency or Official containing legal actions for a State Administration based on applicable laws and regulations, which are concrete, individual and final in nature, which give rise to legal consequences for a person or entity civil law".[42]

From the description of the norms above, it can be observed that the characteristics of a State Administration decision (TUN) are:

a. Is written
b. Issued by an authorized agency or official
c. Based on Legislation
d. Are Concrete, Individual, Final, and
e. Causing legal consequences

If we look at the description above, it is absolutely absolute that State Administrative decisions must be written to provide legal certainty. Apart from that, in terms of legal accountability, it also provides more "legal certainty" so that in this regard there are no problems related to the concept of the State administrative decision. The

[40] Irwansyah, Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel, Edisi Revisi, Mirra Buana Media, Yogyakarta, 2021, hal. 42

[41] Farid Ramdani, Keputusan Tata Usaha Negara Fiktif Berdasarkan Hukum Positif di Indonesia, Jurnal: Cakrawala Hukum, Volume 9 No. 2 Desember 2018, hal.145

[42] Pasal 1 Angka 3 Undang-Undang Nomor 5 Tahun 1986 tentang Peradilan Tata Usaha Negara

concept of state administrative decisions is important because it is closely related to the object of dispute in the state administrative court.

The problem we are currently facing is that after the enactment of Law no. 30 of 2014 concerning Government Administration the concept of state administrative decisions requires an expansion of the meaning as stipulated in Article 87 of Law no. 30 of 2014 concerning Government Administration. In the clause of Article 87 letter a that written decisions and factual actions must have the same meaning as stipulated in Article 1 Paragraph (3) Law no. 5 of 1986 concerning the State Administrative Court. According to the author, this is a confusion in thinking because factual action does not have a further definition in Law no. 30 of 2014, there are only government administration actions which are also factual actions. If government administration actions are interpreted the same as factual actions, then to avoid thinking and practical confusion, it is best if the nomenclature "factual actions" in Article 87 is changed to government administrative actions. In addition, the author also disagrees with the mandate of Article 87 requiring that a written decision be interpreted the same as a factual action because the two are something strictly different.

2. Unwritten State Administrative Decisions

a) Government Administration Actions or Factual Actions

Based on the provisions of Article 1 Number 8 Law no. 30 of 2014 concerning Government Administration stipulates that:

"Actions of Government Administration, hereinafter referred to as Actions, are actions of Government Officials or other state administrators to do and/or not to take concrete actions within the framework of administering government".

Article 1 Point 4 Supreme Court Regulation No. 6 of 2018 concerning Guidelines for the Settlement of Government Administrative Disputes After Undergoing Administrative Efforts. Set that:[43]

"Actions of Government Administration, hereinafter referred to as Actions, are actions of government officials or other state administrators to do and/or not to take concrete actions within the framework of administering government".

Furthermore, it is regulated in Article 1 Number 1 of Supreme Court Regulation No. 2 of 2019 concerning Guidelines for the Settlement of Disputes on Government Actions and the Authority to Adjudicate Unlawful Acts by Government Agencies and/or Officials (Onrechmatige overheidsdaa).

[43] Pasal 1 Angka 4 Peraturan Mahkamah Agung No. 6 Tahun 2018 Tentang Pedoman Penyelesaian Sengketa Administrasi Pemerintahan Setelah Menempuh Upaya Administratif, hal. 3

"Government Actions are Actions of Government Officials or other State Administrators to do and/or not to take concrete actions in the framework of administering government".

Hidayat Pratama Putra said that government administration actions are the same as factual actions, conceptually it is an important thing to know, because in practice, especially in adjudicating a case of factual action at the State Administrative Court, there is a lot of confusion that occurs in determining the actions carried out by the government as an action. factual or is a legal action. For example, there are cases where the execution of a court decision is not carried out, then it is used as the object of a factual action case[44].

Actually the right thought to interpret the definition of government administration actions is that government administration actions are factual government actions. In interpreting concrete actions, they are actions that are tangible or physical actions carried out by TUN Bodies/Officials that can be seen directly with the naked eye. In this regard, Indroharto uses the term material action which is closely related to this kind of action[45].

So if based on this meaning, then basically the concrete action is the same as the factual action. Even if using the definition that concrete is not abstract, then factual actions are actions that are not abstract or tangible, while legal actions are abstract in nature, because they relate to rights and obligations whose form is invisible. So it can be concluded that factual actions and government administration actions are the same. Therefore, the meaning of decisions and/actions is "decisions as the main instrument of legal action (rechtshandelingen)" and "actions of government administration as factual actions". Regarding the editorial factual action in article 87 is inconsistent[46].

According to Enrico Simanjuntak [47], although the term "concrete" is synonymous with the term "factual", if the term "concrete action" in article 1 number 8 is changed to "factual action", then it will be easy to find a connection between article 1 number 8 and article 87 letter a. Apart from that, in Article 87 it is interpreted that factual actions are included in decisions, even though the two are different things. Philipus M. Hadjon criticized this by comparing it with the term "what is meant by goats also includes cats"[48].

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[44] Hidayat Pratama Putra, Tantangan Dalam Penanganan Perkara Tindakan Administrasi Pemerintahan Di Peradilan Tata Usaha Negara, Jurnal Hukum Peratun Vol. 5 No.1 Februari 2022, Hal. 84

[45] Subur dkk., *Bunga Rampai Peradilan Administrasi Kontemporer* (Yogyakarta: Genta Press, 2014) Hal. 77.

[46] *Op.cit* Hidayat Pratama Putra, hal. 83

[47] Philipus M. Hadjon, "Kompetensi Absolut Peradilan Tata Usaha Negara", Makalah Narasumber HUT Peratun 2017, PTUN Jakarta, 2017, hal. 2. http://ptun-jakarta.go.id/wp-content/uploads/file/makalah_narasumber_hut_peratun_2017/prof_dr_philipus_m_hadjon_sh/Kompetensi%20Absolut%20Peradilan%20Tata%20Usaha%20Negara.pdf.

[48] Indroharto dalam buku Direktorat Jenderal Badan Peradilan Militer dan Peradilan Tata Usaha Negara Mahkamah Agung Republik Indonesia, Dasar Dasar Pemikiran Peratun Menuju Peradilan Modern

Actually the intention of this is that factual actions fall within the authority of the Administrative Court to examine them, so that they are also interpreted as decisions. However, in my opinion, what should be more appropriate in compiling the norms is that directly in UUAP authority is given to PTUN specifically (specialis) and does not need to be juxtaposed directly with the Administrative Court Law so that it seems forced as stated in Article 87 of the Government administration Law.[49].

b) State Administrative Decisions in the form of speech

As in the Decision of the State Administrative Court, Number: 230/G/TF/2019/PTUN-JKT, the form of factual action that is the object of action at PTUN is [50]:

a) Government actions of throttling or slowing of access/bandwidth in several areas of West Papua Province and Papua Province on 19 August 2019 from 13.00 WIT (East Indonesia Time) to. 20.30 WIT.
b) Government action, namely blocking data services and/or completely terminating internet access in Papua and West Papua Provinces (13 Cities/Districts) dated 21 August 2019 until at least 04 September 2019 at 23.00 WIT;
c) Government action, namely extending the blocking of data services and/or termination of internet access in 4 cities/regencies in Papua Province (namely Jayapura City, Jayapura Regency, Mimika Regency, and Jayawijaya Regency) and 2 cities/districts in West Papua Province (namely City of Manokwari and City of Sorong) from 04 September 2019 at 23.00 WIT to 09 September 2019 at 18.00 WIB / 20.00 WIT.

The form of factual action above is an example that was tried at the Jakarta State Administrative Court with the position of the case as absolute competence of the court based on Law no. 30 of 2014 concerning Government Administration.

That apart from the provisions [51] UU no. 30 of 2014 and PERMA No. 2 of 2019 mentioned above, related to the Object of State Administrative Lawsuits has also been discussed in the Legal Formulation of the State Administrative Chamber as referred to in the Supreme Court Circular Letter Number 4 of 2016 concerning the Enforcement of the Formulation of the Results of the 2016 Supreme Court Chamber Plenary Meeting as a guideline for the Implementation of Duties for the Court (hereinafter referred to as SEMA No. 4 of 2016), which states as follows:

Berbasis Elektronik (e-court) (Kumpulan Makalah Indroharto, S.H. dan lampiran Perma No. 1 Tahun 2019, Perma No. 2 Tahun 2019, serta SK. KMA No. 129/KMA/SK/VIII/2019) (Jakarta: Direktorat Jenderal Badan Peradilan Militer dan Peradilan Tata Usaha Negara Mahkamah Agung Republik Indonesia, 2019) Hal. 16.

[49] *Op.cit* Hidayat Pratama Putra,

[50] Putusan Pengadilan Tata Usaha Negara, Nomor: 230/G/TF/2019/PTUN-JKT, hal. 8-9

[51] Putusan Peradilan Tata Usaha Negara Jakarta Nomor : 99/G/2020/PTUN-JKT, Hal. 31

The object of the lawsuit at the State Administrative Court includes:

a) Written determination and/or factual action.
b) Issued by Government Agencies/Officials.
c) Published based on statutory regulations and/or general principles of good governance (state administrative decisions and/or actions originating from bound authority or free authority).

1) Characteristics:

a) Concrete-Individual (example: decision on a building permit, etc.).
b) Abstract-Individual (example: decisions regarding the conditions for granting licenses, etc.).
c) Concrete-General (eg decisions on setting regional minimum wages, etc.).

2) Final State Administrative Decisions and/or Actions in a broad sense, i.e. State Administrative Decisions that have given rise to legal consequences even though they still require approval from superiors or other agencies (for example: permits regarding investment facilities by the Investment Coordinating Board (BKPM) , Environmental Permit, etc.).

3) State Administrative Decisions and/or Actions that have the potential to cause legal consequences (eg LHP of the Financial and Development Supervisory Agency (BPKP), etc.).

4) State Administrative Decisions and/or Positive Fictitious Actions. Decision of the Government Internal Supervisory Apparatus Agency (APIP) for a request for review of abuse of authority as referred to in Article 21 Law Number 30 of 2014 concerning Government Administration.

Seeing and observing all existing provisions, the words of the Attorney General as the defendant in this case fulfill the element of being an act of government administration or factual action. This is in line with the opinion of the panel of judges at the Court which explained in the "Considering[52], that based on all of these considerations, the court concluded that the governmental action taken by the Defendant was flawed in substance because the Defendant's statement did not match the actual facts, so that the Defendant's actions must be declared an unlawful act by a government agency and/or official."

If you examine the words of the Attorney General, it is very difficult to determine the limits of this action with legal certainty. This also has implications for how to prove in court. Because of that, for the writer to adjudicate these remarks, it is very difficult to prove them in court proceedings, so legal certainty is very difficult to achieve. This was also consciously acknowledged by the panel of judges at the Court as outlined in the court decision in the Considering section:

[52] *Ibid,* hal. 114-115

"that in order to avoid legal uncertainty regarding the Defendant's actions which have been declared unlawful by government bodies and/or officials, where the statement was recorded in the minutes of the DPR Commission III meeting on January 16, 2020, the Court is of the opinion, to maintain law and order and transparency handling of alleged gross human rights violations in Semanggi I and Semanggi II, requiring the Defendant to make a statement regarding the handling of the alleged gross human rights violations in Semanggi I and Semanggi II in accordance with the actual situation in the next working meeting with Commission III of the DPR RI, as long as no decision/decision has been made stated otherwise"[53].

When reading and looking further at the statement above, of course the panel of judges consciously finds it difficult to achieve legal certainty in adjudicating the case. Therefore, legal strengthening needs to be further encouraged as well as limits on actions that can be tried as objects of dispute in court.

Basically in the provisions of Law no. 5 of 1986 concerning the State Administrative Court has provided clear limits to the concept of decisions that can be tried in the state administrative court which stipulates that only written decisions can be tried in the state administrative court.

CONCLUSION

Based on the results and discussion above, it can be concluded that in general the concept of state administrative decisions can be divided into two forms, namely: First: written state administrative decisions and second: unwritten state administrative decisions. Unwritten state administrative decisions are also divided into two forms, namely: first: factual acts, and second: state administrative decisions in spoken form. The concept of a written state administration decision is an acceptance of the contents of Article 1 Paragraph (3) Law no. 5 of 1986 concerning the State Administrative Court. Furthermore, unwritten decisions are the result of the elaboration of the meaning of factual actions regulated in Article 87 of Law no. 30 of 2014 concerning Government Administration. State administrative decisions are very important to know in depth because state administrative decisions are absolute objects of dispute in state administrative courts.

Based on the conclusions above, it is important to give suggestions that it is necessary to harmonize norms against the provisions of Article 1 Paragraph (3) Law no. 5 of 1986 concerning the State Administrative Court with Article 87 of Law no. 30 of 2014 concerning Government Administration. In the provisions of Article 1 Paragraph (3), it expressly says that state administrative decisions must be written as well as being the

[53] *Ibid.*

object of dispute in the state administrative court. This is different from Article 87 which mandates that state administrative decisions as referred to in Article 1 Paragraph (3) must be interpreted in the same way that "written decisions also include factual actions". This is a serious problem today, because between written decisions and factual actions are very different. So that there is chaos in the practical world when faced with the context of law enforcement.

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