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The Competence of Court in Corruption Investigation

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Abstract

Arbitrary empowerment of public officials or management of the state is a logical consequence of the concept of the welfare state. This opens the door for officials to commit corrupt acts. According to the provisions of the administrative law, the abuse of power by civil servants is not a crime but only the fault of the management agency. However, with the enactment of the Government Administration Act, judges in the courts dealing with corruption crimes have the power to judge whether there is an element of abuse of position. Better laws and no negative effects or more problems. Reviews and updates need to be made to achieve maximum results and satisfy all parties.

Keywords
court; competency; corruption

I. Introduction

Government Administration is regulated by a law called the Government Administration Act. Law 30 of 2014 Government Administration guarantees fundamental rights and provides protection to citizens and guarantees the implementation of state duties as demanded by state law following Article 27 paragraph (1), Article 28 D paragraph (3), Article 28 F, and Article 28 I paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Based on these provisions, citizens of the community are not objects but actively involved in government administration.

According to article 1 of Law No.30 of 2014, government administration is the procedure for making decisions and actions by government agencies and or officials. The implementation of this government has two concepts, namely authority and authority. Authority is the right owned by Government Agencies and or Officials or other state administrators to make decisions and or actions in government administration (article 1 point 5). Meanwhile, authority is the power of Agencies and or Government Officials or other state administrators to act in the realm of public law (article 1 point 6). This law was issued to make a guideline or benchmark in government administration. For officials or public services, it must be based on the Government Administration Law. This law is part of material law. Material law is a collection of rules governing things that must be done, should be done, and should not be (prohibited)

Government Administration Decisions are the product of government administration. This decree is also referred to as a State Administration Decree or a State Administration Decree. This decree has three sources of authority, namely attribution, mandate and delegation. This attribution grants authority to Government Agencies and or Officials by the 1945 Constitution of the Republic of Indonesia or Law (Article 1 point 22). Meanwhile, delegation is the delegation of authority from higher government agencies and or officials to lower government agencies and or officials with responsibility and accountability fully transferred to the delegation recipients (article 1 point 23). The

mandate is the delegation of authority from higher government agencies and or officials to lower government agencies and or officials with the responsibility and accountability remaining with the mandate giver.

Authority is closely related to this law. KBBI states that authority is the power to make decisions to govern and delegate responsibilities to others. Several figures explain authority, such as Ibrahim (1: 2011), Prajudi Atmosudirjo, and SF Marbun, H. Muladi. What differentiate this and other research is the approaching method used in this research.

II. Research Method

The first method in this research was the statute approach or the statutory approach. The statute approach is a research that places the statutory approach as an approach in the form of legislation and regulation. The second method used was a conceptual approach. These views and doctrines were used to find out the solution. The conceptual approach connects existing concepts with economic issues. This research utilizes a qualitative research method, obtaining credible secondary data from the internet and customizing it to the study's title. Data processing by looking for an overview of the research data, comparing the data obtained, and looking for the relationship between each data obtained in order to produce final conclusions about the research carried out is the analysis technique used.

III. Results and Discussion

The foundation of the concept of a constitutional state can be traced to the time of Plato and Aristotle, about five century BC. Plato put forward the concept nomoi which can regard as a forerunner of the idea of law state. Nomoi (Law) is the third written works created in his old age, while in the two previous issues, Politeia (State) and politicos (Politicians) is not the term the rule of law. Plato (429-347 BC) suggested that the implementation of sound State is based on regulation (law) is excellent. The idea of Plato's law state is increasingly assertive when supported by his student, Aristoteles, who wrote in the book Politica. According to Aristotle (384-322 BC), a country which is the well-governed state with a constitution and sovereign law (Bodin, 1992). For Aristotle, who ruled the state is not human, but good thinking and ethics that determine the merits of the proposal. People need to be educated as good citizens, who have good morals, which eventually will embody human being fair. If these circumstances had been realized, it creates a "Rule of Law."

The idea of a legal state according to Aristotle seems to be very close to the "justice," even a state would say as a state law if justice has been achieved. This way of thinking leads to a form of the rule of law in the sense of "ethical" and narrow because the purpose of the state solely to achieve justice. The theories teach that called ethical theories because according to this theory, legal content should be determined exclusively by our ethical awareness of what is fair and what is unfair.

Aristotle was the most excellent pupil of Plato, but in many ways, there is a big difference between the two is influenced by the circumstances and the time of his life. Plato in his teachings are still mixing up all his research object, while Aristotle separates them, which is about justice written in the open it named Ethica, and of the state in his book called Politica. His book, Ethica, is an introduction than Politica (Irwin, 1995). In the history of the concept of the rule of law that was born since the 5th century BC it had sunk centuries, then the new law state term became popular in the 19th century concept of a law

state is applied in several stages, with the final stage as a law state is the welfare state that childbirth the general principles of good governance. In Indonesia, the 1945 Constitution is a constitution which is also the implementation of the rule of law.

In accordance with Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, sovereignty rests with the people and is exercised according to the Constitution. Furthermore, according to Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the state of Indonesia is a constitutional state. This means that the Republic of Indonesia's governing system must be based on the principle of people's sovereignty and the rule of law. Based on these principles, all forms of Government Administration Decisions and or Actions must be based on the people's sovereignty and the law, which reflects Pancasila as the state ideology. Thus it is not based on the power inherent in the position of the governing body itself.

The position of the Supreme Court is the same, both before and after the amendment to the 1945 Constitution is the pinnacle of the judicial bodies in the four courts. Four judicial environment consisting of 1 (one) general court environment and 3 (three) special judicial environment, namely: religion, military and state administration. Fourth. Each of these judicial environments has a judicial body (court) first and appeal. These judicial bodies culminate in an MA. For the state administrative court environment based on Law number 5/1986 concerning the State Administrative Court as amended by Law number 9 of 2004 concerning Amendments to Law number 5 of 1986 regarding the State Administrative Court in Article 47 regulates the competence of PTUN in the justice system in Indonesia, namely the duty and authority to examine, decide, and resolve state administrative disputes. Court's authority to accept, examine, decide to settle cases submitted to him are known as competence or authority judge. PTUN has the competence to resolve state administrative disputes at the national level first. While the State Administrative High Court (PT.TUN) for the level of appeal. However, for state administrative disputes that must be resolved, first through administrative efforts based on Article 48 of Law no. 5 of 1986 in conjunction with UU No. 9 of 2004 then PT.TUN is a judicial body of the first level. To PT.TUN's decision does not have an appeal but a cassation.

In a legal state, one of the most important principles is the principle of legality. This principle implies that any government action should be based on legislation. Legislation should be the source of authority for any government action. For the government, the basis for public legal acts is the authority (bevoegdheids). Through the authority sourced from the legislation, the government takes legal action. The granting of such powers shall be expressly stated in the laws and regulations. In the Law of the State Administration, which is attached with the authority or person with the rights and obligations of public law is the position. While the basis for committing private legal acts is the existence of acting skills (bekwaamheid) of legal subjects. The subject of law in this case is anything that can obtain, or assume the rights and obligations and may be human and legal persons.

Concerning the newest Law, Law No.30 of 2014, the State Administrative Court's important role is to supervise juridical government legal actions that must be developed. This supervisory function is juridical supervision. The State Administrative Court's role in relation to government administration is as a touchstone for the object of government administration disputes. In carrying out its role, the State Administrative Court is based on good governance's general principles:

1. The principle of equality, the principle that the same things should be treated equally, is seen as one of the most fundamental principles of law and rooted in the consciousness of the law, especially regarding the understanding of wisdom is to

demonstrate the embodiment of the principle of equal treatment or the principle of equality;

2. The principle of belief, the principle of trust is included in the most basic legal principles of public law and civil law, in administrative law adopted as the principle that the expectations generated should be fulfilled wherever possible. This principle is the juridical basis of promises, statements, rules of discretion and forms of plan (which are not regulated by law);

3. The principle of legal certainty, the principle of which has two aspects, one is more of a material law, the other is formal. Material legal asphyx is closely linked to the principle of trust, the principle of legal certainty precludes governmental bodies from withdrawing a provision or altering it for an interest loss.

4. The principle of precision, this principle implies that a decision must be prepared and taken carefully. Or can be interpreted as a decision must mean, that a decision must be prepared and taken carefully.

5. The principle of reasoning (motivation), is a decision must be supported by the reasons used as the basis.

6. The prohibition of 'detournement de pouvoir' (abuse of authority), is an authority should not be used for purposes other than for a given purpose.

7. Prohibition of acting arbitrarily.

The State Administrative Court also examines the legality of administrative law regarding the use of governing power and officials' behaviour in implementing services to the community. This government power is exercised based on legality principles.

This State Administrative Court has a unique relationship with good governance. The concept of good governance is a process of exercising state power in providing public goods and services. With this regulation of the State Administrative Court, it is hoped that the results of court decisions that take into account the people's interests will be obtained. The State Administrative Court provides a glimmer of hope for the administration of law in Indonesia.

The State Administrative Court also plays a role in assessing the acts of authority of government administrators. It is one of the references so that the government does not abuse the power it has been given. In conducting the assessment, the judge will tend to ask questions about the contradiction with the Law on State Business Administration and must also pay attention to the system and procedures of the administration of government and development tasks carried out by the government. The government has objectives set out in the law. These objectives are comprehensive; therefore, supervision and attention must be carried out carefully so that the government can continue to carry out its duties following the established foundations and guidelines.

This expansion certainly has an impact on increasing the number of cases resolved by the State Administrative Court. Pressure, intervention, influence from external institutions and the parties are also getting higher. Judges are also not immune to community intervention. Not infrequently, there are several cases, especially cases of bribery, which cause the judges' integrity to below, and of course, they are straightforward to influence. This bribery case shows that the handling of disputes based on the Government Administration Law causes the State Administrative Court's function to become weaker. This expansion of the courts' absolute competence can actually strengthen and weaken the functioning of the judiciary itself. However, this depends again on the independence of the parties involved in the court. This expansion causes the State Administrative Court's absolute authority to be increasingly exposed to intervention from

outside the court. An example of a recent case is the matter of the Medan State Administrative Court.

To get a guarantee of obtaining fair protection from the judiciary, independence is very important. The existence of a court without independence is like a knife without a sharpener, and it is useless. Therefore, several standards for the independence of the judiciary are drawn up.

Corruption is bribery, abuse of power, forgery and other wrong things. A criminal act of corruption is an act against the law, enriching oneself, another person, or an entity that directly or indirectly harms state finances, or is known or suspected by him to be detrimental to state finances and the state economy. Based on Law No.30 of 2014, the most visible problem is granting discretionary rights to government officials in making an action or decision. The definition of discretion, according to Article 1 Number 9 of Law No.30 of 2014, states that "Discretion is a decision and or action determined and or carried out by Government Officials to overcome concrete problems faced in the administration of government in terms of laws and regulations that provide options, not regulating, incomplete or clear, and or stagnation of government".

Giving discretion to government officials or state administrations is a logical consequence of the welfare state concept that overrides the role of the legality principle. It can obstruct the maximum effort in providing services for the community's interests, which continue to develop rapidly due to the progress of the times. The negative thing is that in every administration of governmental affairs, there is an element of maladministration, which is detrimental to the citizens themselves. This expansion of discretion can be unsettling for society because it transcends the boundaries of the public interest. This doesn't seem right goes against the real purpose of discretion. However, suppose it gets an informed consent to the superior of the official. In that case, this discretion can be allowed, which means without any restrictions. What's more, this opens up opportunities for officials to commit corruption.

This also complicates the eradication of corruption. Based on the administrative law, state officials' abuse of power is not a criminal offence but purely the administration's fault. It is contrary to the Corruption Crime Law, which threatens the perpetrator with a maximum of 20 years in prison. The Corruption Court judges have charged corrupt misuse of authority. This abuse is prosecuted by Article 3 of the Corruption Crime Law, which can be punished for a minimum of one year, a maximum of 20 years, or a fine of at least IDR 50 million and a maximum of 1 billion. However, with the issuance of the Government Administration Law, court judges from Corruption Crime have their right to judge whether there is an element of abusing their authority or not.

Supervision based on article 20, paragraph 1 is carried out by the government internal control apparatus. This internal control is that there is no error, there are administrative errors, and there are administrative errors that cause losses to state finances. Here lies the mistake. If there is an administrative error, it is followed up in the form of administrative improvements following the provisions of the legislation. The weakness occurs if there is a state loss.

The Government Administration Law does take a criminal element in the abuse of this power, but the Corruption Crime Law has not been revoked. It causes state officials who are still acting arbitrarily by the State Administrative Court to be tried by the Corruption Court. It can be said that this criminalization makes corruption eradication in circles very complicated.

IV. Conclusion

Some of the things above certainly state that there are still problems arising from the enactment of Law Number 30 of 2014, especially on constitutional grounds, State Administrative Courts, and Corruption based on discretion. Several journals and studies have been conducted to corroborate this question. Therefore, it is necessary to make adjustments and improvements in several areas to obtain a better law and does not cause adverse impacts or a growing number of problems. Evaluation and updating must be carried out to get maximum results and satisfy all parties.

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