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Damages replacement lawsuit for government action for publishing an adverse state administration decision

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Abstract
This study aims are to examine and analyze the lawsuit directed to the Government for Issuing the Decision of State Administration that causes adverse effect. This research is conducted by Juridical Sociological approach, that is by conducting research on the work of law in society. The findings in this study indicate that the compensation in the state administrative dispute should not be restricted by law but must be based on legal facts and must provide a sense of justice revealed in the trial, so that the determination of the amount of compensation that can be obtained by the plaintiff is Taking into account the real circumstances based on judicial considerations of justice.

Keywords: damages replacement lawsuit, government action, state administrative decision

1. Introduction

Based on the provisions of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the State of Indonesia is a state of law. The goal of social justice is the formation of a just, orderly, and peaceful society, in which everyone has the opportunity to build a decent life so as to create a general welfare. Social justice is intended to realize or create social welfare for all people of Indonesia [1].

The State of Indonesia is known as a state of law means that in the material sense or welfare state,[2] which is a country that intensively interferes with the whole life of its individual citizens, with the aim that individuals living in the country to attain a prosperous life [3].

The emergence of state administrations is accompanied by ongoing controversy between judges, lawyers, legislators, presidents, executive officers, academics, business leaders, trade union leaders, and policy activists. Judging from the functions and duties of the state, the most important element in the legal state of the material (welfare state) is [4].

1. Guarantees of human rights;
2. Separation / distribution of power;
3. Legality of government;
4. A free and impartial administrative judiciary;
5. The realization of the general welfare of its citizens;

The state is the highest organization among one group or several groups of people who have the same ideals to unite life within a certain area, and have a sovereign government [5]. The duty of state are divided in to three things, namely:

First, the state must provide protection to the population within a particular area. Secondly, the state supports or directly provides a range of social services, social, economic, and cultural services. Third, the state becomes an impartial referee between the conflicting parties in society and provides a judicial system that guarantees basic justice in community relations [6].

The task of the state according to modern schools today (in a welfare state or social service state), is to organize the public interest to provide prosperity and prosperity as much as possible based on justice in a state of law [7]. In achieving the goals of the state and running the state, implemented by the government. Regarding the government, there are two understandings, namely the government in a broad sense and the government in a narrow sense [8]. Although the state

[1] Anis Mashdurohatun, M Ali Mansyur, *Model Fair Use/Fair Dealing Hak Cipta Atas Buku dalam Pengembangan IPTEK pada Pendidikan Tinggi*, Artikel dalam Jurnal Hukum IUS QUIA IUSTUM NO. 1 VOL. 24 JANUARI 2017, p.37.

2 welfare state merupakan negara yang selalu terjaga negara yang selalu aktif dalam segala bentuk kemajuan riset dan tekhnologi, Volume 5, Number 1 Journal of Legal Analysis 2013 p. 63

3 S F Marbun, Dimensi-dimensi Pemikiran Hukum Administrasi Negara, UII Press, Yogyakarta, 2002, halaman 7.

[4] B Hestu Cipto Handoyo, *Hukum Tata Negara, Kewarganegaraan dan Hak Asasi Manusia (Memahami Proses Konsolidasi Sistem Demokrasi di Indonesia)*, Universitas Atmajaya, Yogyakarta, 2003, p. 14.

[5] M Mahfud M D, *Dasar dan Struktur Ketatanegaraan Indonesia*, Rineka Cipta, Jakarta, 2000, p. 64.

[6] Y Sri Pudyatmoko, *Perizinan, Problem dan Upaya Pembenahan*, Gramedia Widiarsana Indonesia, Jakarta, 2009, p. 1.

[7] Amrah Muslimin, *Beberapa Asas dan Pengertian Pokok tentang Administrasi dan Hukum Administrasi*, Alumni, Bandung, 1985, halaman 110. Indonesia is a state of Law that embraces the concept of the welfare state (welfare state), as implied in the fourth paragraph of the Preamble of the 1945 Constitution, which is the aim of the state. In the welfare state conception, the government is given wide authority to intervene (staatsbemoeienis) in all fields of community life in the framework of bestuurszorg, realizing the common prosperity. Such interference is contained in the provisions of legislation, in the form of laws, as well as other implementing regulations implemented by the state administration, as the state apparatus for public service. Sjachran Basah, *Eksistensi dan Tolok Ukur Badan Peradilan Administrasi Negara di Indonesia*, Alumni, Bandung, 1985, halaman 3. See Lembaga Administrasi Negara, *Sistem Administrasi Negara Republik Indonesia*, Toko Gunung Agung, Jakarta, 1997, p. 192.

[8] Government in the broad sense (regering) is the execution of the tasks of all agencies, institutions and officers who are entrusted with the authority to achieve state goals. Meanwhile, the government in the sense of narrow (bestuur) includes the organization, functions that perform government duties. Kuntjoro Purbopranoto, *Perkembangan Hukum Administrasi Indonesia*, Binacipta, Bandung, 1981, p. 1. Regarding the division of

administration has freedom, but in practice it must still be based on the law. As a consequence of the rule of law, all acts of state administration and the administration of the state shall not be contrary to the law [9].

Government in running the government using the tool of law in this case one of them is the state administrative decisions. In the process of establishing and implementing the decisions, the government must be very careful in acting, because if there is a mistake that harms the community, then there may be a government accountability lawsuit. This is an effort that can be done by people who feel harmed by government action. One of such government actions is in the form of state administrative decisions.

From a number of decisions issued by state administrative officials there is the possibility of causing a loss on the parties related to the decision, ie citizens. This possibility may be due to the government's feeling of having a stronger position against the people it controls [10], so that in carrying out its duties beyond their authority (detolvement de puvoir) or misapplying the rule of law (abus de droit). As a guarantee of legal certainty, in every act of state administration should be poured in a legal act of state administration in the form of a law (beschikking). In reality, however, it is often the case that provisions issued by the state administration are deemed to be contrary to law or to the detriment of the interests of a civilian citizen or legal entity. Thus the correct ordinance for the protection of law and justice is to sue the body or official of the state administration issuing the statute before the court [11].

If the government issues regulations (regaling) that cause a loss to a person or a civil legal entity, legal protection resulting from the issuance of legislation is pursued through the Supreme Court, by means of the right to judge material. The rules here are statutory legislation under the hierarchy of laws and regulations, for example Government Regulations; Presidential decree; Provincial Regulations; And Regency / City Regulations. Whereas if the government issued a decree (Beschikking) which turned out to cause a loss to a person or a civil legal entity, Legal protection due to the issuing of the decision can be taken thru two ways, namely administrative action and thru state administration court.

The competency of the court that are able to try government actions that cause harm to a person or a civil legal entity is seen whether the government's position is within private law or is in public law. If the position of the government in private law, the authority of the judicial authorities is the General Court, whereas if the position of government in public law, the authority of the judicial authorities is the State Administrative Court.

The claim for the damages caused in the administrative justice judicial law is an additional claim after the granting of a principal charge in the form of a void or invalid statement of the accused's decision, so that the consequences of the damages claim are not affirmative, ie in a claim the indemnification may be attached or Not specified. However, if the plaintiff has filed a claim for damages, the court will consider it after the principal charges are granted. Thus, additional demands does not stand alone, but it depends on whether or not the principal demands are granted. Based on the above description the author conclude that the problem is how the lawsuit compensation for the actions of the government issued the state administrative decisions should be done.

2. Method of Research

This research is conducted using Juridical Sociological approach that is by conducting research on legal work in society, in this case law enforcement community that should be balanced. The research is analytical descriptive, which gives a clear picture about the provisions of legislation regulating the issue of state administration related to various opinions of jurists.

3. Research Results and Discussion

1. Legal Protection for the People for Unlawful Actions by the Government

The 21st century began by the development of the concept of a state of law that is now embraced by many countries in the world. The concept of the state law is also applied in Indonesia and not to be separated from the concept of continental law state. This is because Indonesia is colonized by the Dutch who adheres to the concept of Continental European legal state. One of the elements inherited in the state of law (rechtstaat) according to Stahl, namely government based on legislation [12] means that all governmental actions must be based on the laws and regulations applicable in the country.

The government in their relationships with citizens always happens every time because the government can not implement without the people. Every act of government should be based on a legislation as a form of prevention of the government not doing arbitrary acts against the people.

The word protection according to the Indonesian General Dictionary means shelter or an act of (protecting) things, for example, giving protection to a weak person. According to

government's definition, it is also found in the book S F Marbun and M. Mahfud M D entitled Principles of State Administration Law, but there is little difference in the formulation of the meaning of government in a broad sense or in a narrow sense. The meaning of government in the narrow sense is the organ / equipment of the state which is entrusted with governmental duties or implementing the law. In this sense the government serves only as an executive body (bestuur). The government in the broadest sense is all the bodies that organize all power within the state both executive power as well as legislative and judicial powers. S F Marbun dan M Mahfud M D, *Pokok-Pokok Hukum Administrasi Negara*, Liberty, Yogyakarta, 2006, p. 8.

[9] Indonesia as a state of law with the aim of achieving the welfare of its people requires a law used by the government to regulate the community in order to create a desired welfare. The law is the Law of State Administration, a law governing the legal relationship between state instruments and citizens. Soehino, *Asas-asas Hukum Tata Pemerintahan*, Liberty, Yogyakarta, 1984, p. 2.

[10] Rochmat Soemitro, *Peradilan Tata Usaha Negara*, Eresco, Bandung, 1987, halaman 3. Lihat M Nata Saputra, *Hukum Administrasi Negara*, Rajawali, Jakarta, 1988, p. 45. Said that the establishment of the in-concreto rule of law is based on the authority granted by the rule of in-abstracto law on this instrument of administration by van Der Pot is called besehikking or determination. They are often qualified as a declaration of will from the governing tool (bestuurorgan).

[11] Philosophically, with the state administrative court, considering that the competence of general justice is more directed to the inter-community order in relation to justice, whereas the state administrative court is one of the major milestones to revive the social control function of society towards the government. Supandi, *Karakteristik dan Asas-Asas Hukum Acara Peradilan Tata Usaha Negara serta Perbedaannya Dengan Hukum Acara Perdata*, Makalah disampaikan pada In-House Legal Training Hukum Administrasi Negara dan Peradilan Tata Usaha Negara bagi pegawai di Lingkungan Bank Indonesia, LPP-HAN, Jakarta, 19 - 29 Juli 2004, p. 2.

[12] Miriam Budiardjo, *Dasar-Dasar Ilmu Politik*, Gramedia, Jakarta, 1982, p. 76.

Sudikno Mertokusumo is a collection of rules or rules that have the content of a general and normative, common because it applies to every person and normative because it determines what should be done, what not to do or should be done and determine how to implement compliance On this rules [13] Thus the protection of the law is an act of protecting legal subjects with applicable laws and regulations and enforcement can be imposed with a sanction.

The State of Indonesia as a legal state based on Pancasila must provide legal protection to its citizens in accordance with Pancasila. Therefore, legal protection based on Pancasila means the recognition and protection of the law of human dignity on the basis of the value of Belief in the Almighty, Humanity, Unity, Consultation and Social Justice. These values give birth to the recognition and protection of human rights in a unified state unit that upholds the spirit of kinship in achieving mutual prosperity.

Legal protection within a state based on Pancasila, an important principle is the principle of harmony based on kinship [14]. The principle of family-based harmony requires that efforts to resolve problems related to the community to the extent possible addressed by the parties to the dispute. Legal protection for the people is a universal concept, in the sense embraced and applied by each country that put forward as a state law. However, as Paul E Lotulung mentions, each country has its own way and mechanism of how to realize the protection of the law, and also to what extend does the legal protection is provided [15].

The purpose of the government should be carried out in accordance with the legislation, intended to ensure the protection of human rights if the government's actions harm the people. To guarantee these rights the concept of a state law (rechtstaat) also provides a legal protection to the people that is the administrative court in a dispute between the government and the disadvantaged people.

With regard to legal protection in the field of State Administration Law, in general there are three kinds of government act, namely the act of government in the field of legislation (regeling), government action in the issuance of decree (beschikking) and government action in civil area (materialele daad). The first two areas occur in the public sphere, and are therefore subject to and governed by public law, and the latter specifically in the civil field, and hence are subject to and governed by civil law [16].

Based on the concept of State Administration Law, the teachings of legal protection that can be given to the people from government actions that violate the law and harm the people can be classified into two, Namely :

1. Legal protection in the field of public law (publiek rechtsbecherming);
2. Legal protection in the field of private law (private rechtsbecherming).

Legal protection both in the field of public law (in this case the Law of State Administration), as well as in the field of private law, is closely related to the concept of government legal standing and the concept of government action (bestuur handelingen). Government legal action is actions that are based on the nature of the legal consequences. The most important characteristic of legal action taken by governments is unilateral government decisions. It is said to be one-sided because whether or not an act of law of the government depends on the will of the other party and is not required to have a will (wilsovereenstemming) with another party.

Why should citizens get legal protection from government action? There are several reasons, namely first, because in many cases citizens and civil legal entities are dependent on government decisions, such as the need for permits required for trade, companies or mining. Therefore, citizens and civil legal entities need to have legal protection, especially to obtain legal certainty and security guarantees, which are the determining factors for the life of the business world; Second, the relationship between the government and the citizen does not run in parallel position, the citizen is in fact the weaker party than the government; Third, the various disputes of citizens with the government concerned with the decision, as a unilateral government instrument in the intervention of citizen life [17].

Decision-making based on free authority (vrije bevoegdheid), will open up opportunities for violations of the rights of citizens.

In Indonesia legal protection for the people due to government legal action are divided into several possibilities, depending on the legal instruments used by the government when taking legal action. It has been mentioned that the commonly used legal instruments are legislation and decisions.

Legal protection due to the issuance of a decision (beschikking) is pursued through two possibilities, namely administrative efforts (administrative beroep) and administrative court (administatieve rechtspraak). It is also regulated in Indonesia pursuant to Law Number 5 Year 1986 concerning State Administration Courts, where the legal protection resulting from the issuance of the decision can be pursued through two channels, through administrative efforts and through the State Administrative Court.

These administrative efforts are of two kinds, namely administrative appeals and objection procedures. The administrative appeal, ie, the settlement of a state administrative dispute is carried out by the superior agency or other agency from which the dispute is issued, while the objection procedure is the settlement of a state administrative dispute by the agency issuing the decision.

Provisions concerning the settlement of state administrative disputes through state administrative courts are contained in Article 53 paragraph (1) of Law Number 9 Year 2004 which reads; An individual or a civil legal entity who feels his or her interest is harmed by a state administrative decision may file a written complaint to the competent court containing the demand that the disputed state administrative decision be declared null and void, with or without the claim of compensation and / or rehabilitation.

Based on Law Number 9 Year 2004 regarding the Amendment of Law Number 5 Year 1986 regarding State Administrative Court of the reason for filing a lawsuit, contained in Article 53

[13] Sudikno Mertokusumo, *Mengenal Hukum* (*Suatu Pengantar*), Liberty, Yogyakarta, 1991, p. 38.

[14] Philipus M Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia*, Bina Ilmu, Surabaya, 1987, p. 84.

[15] Paulus E Lotulung, *Beberapa Sistem tentang Kontrol Segi Hukum terhadap Pemerintah*, Citra Aditya Bakti, Bandung, 1993, p. 123.

[16] Ridwan H R, *Hukum Administrasi Negara*, Raja Grafindo Persada, 2013, p. 268.

[17] Van Wijk, H D, en Willem Konjinenbelt, *Hoofdstukken van Administratief Recht*, Utrecht. Uitgeverij Lemma BV, 1995, p. 533.

paragraph (2) there is a change, which becomes as follows: Reasons that can be used In the lawsuit as referred to in paragraph (1) shall be:

1. The Decision of the State Administration being contested is against the prevailing laws and regulations;
2. The Decision of the State Administration that is sued is contrary to the general principles of good governance.

Legal protection for the people against legal action of the government, in its capacity as representative of a public legal entity, is conducted through a public court. The position of government or state administration in this case is not different from a person or a civil law entity, ie parallel. So the government can become a defendant or a plaintiff. It is in this context that the principle of equal standing in the deopan of law is implemented. In other words, civil law provides the same protection to either the government or a civil person or legal entity [18].

Legal Protection directed for the people should also have a better understanding so that a government action is not only based on a decision issued by the government or this state officials or administration. But what should be emphasized is what kind of government action is carried out in conducting legal relations with the people. This is important for the aim of leading to a concept of legal protection and how the concept of legal settlement for a government action that harms the people.

If the government acts in its quality as a government, then the only law is the public force, whereas if the government acted in the quality of government, the private law are then can be applicable [19]. in other words, when the government is involved in the association of civil and not in his capacity as a party to maintain public interest , It is no different from the private sector, that is subject to private law.

Indroharto argues that in relation to the unilateral public law action that: The state administrative law act is always one-sided, and the state administrative law action is unilateral because the act of legal action of the state which has the force of law ultimately depends on the unilateral will of State administrative bodies or authorities that have the authority of government to do so [20].

2. Lawsuit for damages Replacement against Disruptive Acts by the Government for Issuing an adverse State Administrative Decision

Using Moh.Mahfudz MD's opinion, that law can not be simply regarded as the articles that are imperative or necessary nature of das sollen, but must be seen as a subsystem which exist in reality (das Sein) is not possible is determined by politics, either In the formulation of the material and its articles and in its implementation and enforcement [21].

Article 120 paragraph (3) of Law Number 5 Year 1986 states that: The amount of compensation and the procedure of implementation of the provisions as referred to in Article 97 paragraph (10) shall be further regulated under a Government Regulation. This provision is further stipulated in Government Regulation No. 43 of 1991 stating that the limit of compensation is between Rp. 250.000, - up to maximum Rp. 5.000.000, -. The source of compensation financing is from the State Budget (APBN) for the decision of the central state administration and the Regional Revenue and Expenditure Budget (APBD) for the regional administration decisions. The existence of this Government Regulation does not mean that the possibility of filing a civil claim based on the provisions of Article 1365 of the Criminal Code is closed.

Change losses against the issuance of an administrative decision, the decision of the State Administrative Court No. 06 /G.TUN/2002 Jayapura, in the case of H. Asikin Baco, and comrades, against the regent of Jayapura in its legal considerations stated that....The Court assessed the real demand for the change if it is deemed necessary to be prosecuted to the General Court, according to the authors contrary to the principle of justice, fast, simple and low cost. But the compensation related to the issuance of an administrative decision by the General Court, in Purwokerto national Court decision No. 73 / Pdt.G / 2013 / PN.Pwt, in the case of Fransiscus Xaverius Untung Gunawan, and Fransisca Lana Riani, as plaintiff against the University of General Sudirman (UNSOED) Purwokerto, the Government of the Republic of Indonesia C / q Minister of Education and Culture of the Republic of Indonesia, the C / q Directorate General of Higher Education (Directorate General of Higher Education), the Land Office Kebupaten Banyumas At the National Land Agency (BPN) Banyumas regency; Local Government of Banyumas Regency, and Government of the Republic of Indonesia C / q. Minister of Finance of the Republic of Indonesia; In the Ministry of Finance of the Republic of Indonesia the Directorate General of State Assets (DJKN), Regional Office of Central Java and D.I. Yogyakarta, State Wealth Service Office and Auction (KPKLN) Purwokerto as Defendant. In his verdict stated that the Purwokerto District Court is not authorized to adjudicate the a quo case.

The work of law enforcement agencies is, first of all, determined and limited by formal standards which can be determined from the formulations in various laws. But the culture of law enforcement agencies play a very important role [22].

Thus, the judicial competence in adjudicating disputes of a claim for damages against the issuance of state administrative decisions need to be clarified, and determining the amount of compensation needed for reconstruction, because the payment of compensation does not satisfy the justice and legal needs of the community; The unofficial costs required to deal with the indemnity are considerably greater than the sum obtained by each plaintiff; And there is no guarantee of legal certainty for the claimant applying for compensation.

State administrative justice is a step to obtain legal protection for the administrabelle party and to exercise control over the actions of the authorities [23]. indemnity in the state administrative court is an additional demand after the grant of

[18] Ridwan H R, *Op, Cit*, p. 274.

[19] N E Algra, *Mula Hukum, Beberapa Bab Mengenai Hukum dan Ilmu untuk Pendidikan*, Bina Cipta, 1981, p. 173.

[20] Indroharto, *Usaha Memahami Undang-Undang tentang Peradilan Tata Usaha Negara.* Pustaka Sinar Harapan, Jakarta, 1993, p. 147.

[21] Anis Mashdurohatun, M.Ali Mansyur, *Identifikasi Fair Use/Fair Dealing Hak Cipta Atas Buku Dalam Pengembangan Iptek Pada Pendidikan Tinggi di Jawa Tengah,* Artkel dalam Jurnal Hukum Fakultas Hukum UNS,Surakarta, Yustisia Vol.4 No.3 September - Desember 2015,p.24.

[22] Anis Mashdurohatun, *Mengembangkan Fungsi Sosial Hak Cipta Indonesia (Suatu Studi Pada Karya Cipta Buku),* UNS Press, Surakarta, 2016.p. 109.

[23] Muchsan, *Seri Hukum Administrasi Negara: Peradilan Administrasi Negara,* Liberty, Yogyakarta, 1981, p. 8.

the principal suit, as stated in Article 53 paragraph (1) of Law Number 9 Year 2004 (First Revision of Law Number 5 Year 1986), that: Or a civil legal entity that feels its interest has been impaired by a state administrative decree may file a written claim to the competent court containing the requirement that the disputed state administration decree be declared null and void, with or without a claim for compensation and / or rehabilitation.

Through its elucidation it is stated that: in contrast to the lawsuit before the civil court, what can be prosecuted before the state administrative court is limited to 1 (one) principal demands in the form of a demand for a state administrative decision that has harmed the plaintiff's interests being declared void or invalid. Additional demands allowed only in the form of compensation claims and only in the employment dispute alone are allowed any additional demands in the form of rehabilitation demands.

Similarly, it is stated in the provisions of Article 97 paragraphs (8), (9) and (10) of Law Number 5 of 1986 as follows:

1. Paragraph (8): In case of a lawsuit granted, State enterprises that issue state administrative decisions.
2. Paragraph (9): The obligations referred to in paragraph (8) are in the form of ;

a. Revocation of the relevant state administrative decree; or
b. Revocation of the relevant state administrative decree and issuing new state administrative decisions; or
c. The issue of state administrative decisions in the case of a lawsuit is based on Article 3.

3. Paragraph (10): The obligations referred to in paragraph (9) may be accompanied by the imposition of damages.

From these provisions indicates that in the state administrative court there are 2 (two) demands, namely: basic demands and additional demands. Principal requirements are demands for a disputed state administrative decision to be declared null and void, while additional claims of compensation and / or rehabilitation payments. As compensation is an additional claim, the consequences of these damages are not affirmative, meaning that in a suit the claim of compensation may be listed or not included. However, if in the court's decision the plaintiff may include a claim for damages, the court will consider it after the principal charges are granted. Thus, additional demands do not stand alone, but it depends on whether or not the principal demands are granted.

Furthermore, the restrictions on compensation in the state administrative court are determined in Article 1 number 1 of Government Regulation Number 43 of 1991, which states that: Indemnification is the payment of a sum of money to civil persons or legal entities at the expense of state administrative bodies based on administrative court rulings because The material losses suffered by the plaintiff.

It shall also be stated in Article 1 letter a of the Minister of Finance of Indemnification that: Payment of compensation shall be the payment of a sum of money to a person or heir or a civil legal entity due to an administrative court decision which has had permanent legal force, which incurs compensation to the body or official state Administration.

Based on the two formulation of the above article, it can be drawn several element that must be fulfilled for the implementation of payment of compensation in the state administrative court, namely:

1. There is a decision of the state administrative court which has obtained permanent legal force;
2. The ruling shall specify the imposition of compensation to the state administration body or officer;
3. The existence of the requesting party, namely a person or heir or a civil legal entity; and
4. The existence of the requested party, namely the body or the administrative officer of the state..

Some of the reasons for the importance of the determination of compensation by state administrative court judges are as follows: [24]

1. In connection to the purpose of the state administrative court which provides protection and legal certainty not only for the people solely, but also for state administration, is authorized to decide the claim for compensation. For the administration of the state will be maintained order, tranquility and security in the implementation of its duties for the sake of the establishment of a strong, clean and authoritative government. This means that, in preventive term, to prevent unlawful and disadvantageous state administration actions, whereas a representative of such actions shall be subject to sanctions, in which case compensation;
2. If the state administrative court is incompetent in determining compensation, then for that matter the follow-up shall be submitted to the district court. As a result, the process will take time and cost, thus keeping the expectations of Article 4 paragraph (2) of Law 14 of 1970 which reads that: the judiciary is done simply, quickly and lightly;
3. Judgment of the state administrative court in which, among others, determines that compensation may be used as a means by his superiors to assess the acts of state administration officials, and then select them for future careers.

Based on the above description, then the compensation in the administrative court of the country then the state administrative court should be important, because:

1. To provide legal protection for the publication of adverse state administrative decisions;
2. To realize a judiciary that is done with simple, fast and low cost; and
3. To serve as the basis for his superiors assess the officials who issue state administration decisions in the next career ladder.

Furthermore, to determine to whom the compensation is appropriate to be ordered and charged, it must be seen carefully some of the characteristics contained in the office or organ of government are as follows :

1. The government bodies to run their authority on behalf of their own responsibilities, which in the modern sense, are said to be responsible as per political responsibility and to the employment or as the responsibility of the government itself before the judge in the exercise of such authority. The organs of government are to assume responsibilities;
2. The run their authority in the context of maintaining and maintaining administrative law norms, organs of government may act as a defendant (the defendant) in the judicial process, namely in the case of any objection, appeal or resistance;

[24] Sjachran Basah, *Op, Cit*, p. 259.

3. Besides being a defending party (the defendant) the government may also appear to be a dissatisfied party (against the opposing party), meaning as a plaintiff;
4. In principle, the government bodies do not have their own assets. The government bodies is but a part (tool) of legal entity which according to private law have his own property. The office of the regent or mayor is the bodies of the district general body. Based on the legal rules of this public body that can have property, not the bodies of the government. Therefore, if there is a judge's verdict in the form of fines or forced money (dwangsom) imposed to the bodies of the government or damages for damages, the obligation to pay and compensation shall be borne by the legal entity as the holder of property.

Based on the fourth characteristic above, it is clear that the position or; The bodies of government does not have property, because it is only as a tool of a legal entity, which has property is a legal entity. Therefore, in the judgment of the state administrative court if the claimant's claim of damages replacement is proven and granted by the judge, the bodies must declare to punish the defendant (state administration official) to pay the damages replacement to the plaintiff charged to his legal entity, for example if the defendant Mayor then the compensation should be charged to the city government.

4. Conclusion

The determination of the amount of compensation in the administrative court does not satisfy the sense of justice and the legal needs of the community. In accordance with the decision of the State Administrative Court of Jayapura Number 06 /G.TUN/2002 and the verdict of State Administration of Purwokerto Court Number 73 / Pdt.G / 2013 / PN.Pwt; The unofficial costs required to deal with the indemnity are considerably greater than the sum obtained by each plaintiff; And there is no guarantee of legal certainty for the claimant applying for compensation. Compensation for the action of the government to issue a state administrative decision, namely the provision of Article 120 paragraph (3) of Law Number 5 Year 1986 jo Article 3 paragraph (1) shall be revoked because the amount of compensation shall not be restricted by law but shall be based on fact Law and must provide a sense of justice that is revealed in the trial, so the determinant factor of how much the damage replacement that the plaintiff can claim is by the judge's justice consideration on the real evidence presented at court.

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