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Discursus on legal expression in arrangements of corruption eradication in Indonesia

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Abstract
The purpose of this study is focused on expanding the absolute competence of the State Administrative Court (PTUN) in Law Number 30 Year 2014. The purpose of this study to obtain two things, first is the expansion of the absolute competence of the PTUN after the enactment of the Government Administration Act and the Implications of the enactment of the Government Administration Act for the legal certainty of eradication and enforcement of criminal acts of corruption in Indonesia. This study uses a normative juridical research method, and uses astatutory approach. Results The results showed that there were several forms of expansion of the absolute competence of PTUN, such as the authority to test factual actions, to test the abuse of authority, to test administrative efforts, to break positive fictitious decisions, and to test discretion. While the implications of the Government Administration Act for legal certainty in eradicating criminal acts of corruption, as it is known that in the corruption law it is also stated that one element of corruption is the abuse of authority. So, in this context there are at least two problems, namely: 1. What if there is an abuse of authority by state officials brought to two courts simultaneously, namely to the Administrative Court and to the District Court in corruption cases? 2. If at any time the PTUN decision is issued stating that there is no abuse of authority, but there are also parties who submit the case to the District Court on corruption charges. What is the attitude of the District Court, whether to accept the PTUN decision on the case or instead choose to override the PTUN decision.

Keywords: PTUN, corruption, abuse of authority

Introduction

Corruption has become a kind of daily phenomenon in Indonesia [1]. Various institutions, actions, and studies on them are endeavored in a series ofactions largewhich are usually under the heading: "eradicating corruption". In line with these efforts, skepticism actually spreads around the actions and discourses of eradicating corruption, both critical-constructive from among supporters or fighters of anti-corruption, as well as those that weaken politically from circle of collective elites who felt threatened by their interests [2]. This shows that the eradication of corruption eradication of law is not only a matter of achievement or achievements of the KPK, but also the responsibility of various parties, ranging from advocacy and monitoring institutions, existing legal institutions, to the Indonesian people themselves.

Law enforcement against corruption is very different from other crimes, including because there are many institutions that are authorized to conduct judicial proceedings against corruption as mentioned in the first alenia. This condition is a logical consequence of the predicate placed on the crime as *extra ordinary crime*. As a crime which is categorized as *an extra ordinary crime*, the crime of corruption has an extra ordinary power and destructiveagainst the joints of life of a State and nation.

Even Nyoman Serikat Putra Jaya said that the negative consequences of the existence of criminal acts of corruption are very damaging to the life of the nation, even corruption is the deprivation of economic rights and social rights of the Indonesian people [3]. The activities of law enforcers, especially law enforcement against corruption, are not always in line with expectations. The political configuration of a country will affect law enforcement activities in conducting law enforcement. This is due to law enforcement against corruption always involving state officials or state officials. This is different if the parties are ordinary people, in this case law enforcers are more free to express their authority in upholding justice and law. In the case of one of the State parties or state officials, law enforcement will be extra careful in use his authority so that the impression will appear slow, selective logging and so on [4].

As it is known that in Indonesia theregarding the provisions eradication of Corruption (Tipikor) are regulated in "Law Number 31 of 1999 concerning Corruption Crime" which has been amended and supplemented by "Law Number 20 of 2001" (hereinafter referred to as Corruption Act). In Article 3 of the Anti-Corruption Law it is said that: "*Anyone who has the purpose of benefiting himself or someone else or a corporation, abuses his authority, opportunity or means because of his position or position which can harm the country's finances or the economy of the country, is punished with imprisonment life*

[1] Sahlan Said, "Penegakan Hukum Anti Korupsi", *Jurnal Demokrasi*, Vol. II No. 7 Januari 2005, hlm. 64
[2] Ino Susanti, Refleksi Ilmu Hukum Dalam Analisis Penegakan Hukum Pemberantasan Korupsi di Indonesia, Jurnal *Dinamika Hukum* Vol. 14 No. 1 Januari 2014. hlm 123
[3] Nyoman Sarekat Putra Jaya. 2008. *Beberapa Pemikiran ke arah Pengembangan Hukum Pidana*. Jakarta: Citra Aditya Bakti. hlm. 69.
[4] Atmasasmita, Romli. 2008. *Arah Pembangunan Hukum di Indonesia, dalam Komisi Yudisial dan Keadilan Sosial*. Komisi Yudisial. Hlm. 116

imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and or a minimum fine of Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)".

The provision is based on the Constitutional Court Decision Number 25/PUU- XIV / 2016 which states that the word can be erased so that it implies that there must be a real and definite state loss resulting in a shift in article 3 of the Corruption Act from formal offenses to material offenses [5]. But still, based on the interpretation and content of the article that has changed based on Regulation the Constitutional Court Number 25 / PUU-XIV / 2016 if the article has been fulfilled, government officials or officials can be held criminally liable.

Then in 2014 Law Number 30 of 2014 formed concerning Government Administration (hereinafter referred to as the AP Law) waswhich in Article 21 states that:

1. "The court has the authority to accept, examine, and determine whether or not there is an element of abuse of Authority carried out by Government Officials.
2. Government Agencies and / or Officers can submit applications to the Court to assess whether or not there is an element of abuse of Authority in Decisions and/or Actions.
3. The court must decide upon the application as referred to in paragraph (2) no later than 21 (twenty one) working days after the application is submitted.
4. Against the Court's decision as referred to in paragraph (3), ancan appealbe appealed to the State Administrative High Court.
5. The State Administrative High Court must decide the appeal as referred to in paragraph 6. no later than 21 (twenty one) working days after the appeal is submitted.
6. The decision of the State Administrative High Court as referred to in paragraph (5) is final and binding".

Seeing the contents of Article 21 of the AP Law above, it has implications for increasing absolute competence for the State Administrative Court (PTUN) which is known beforehand that the absolute competence of the PTUN is contained in Article 47 of Law No. 5 of 1986 which stipulates that the court has the duty and authority to examine, decide upon and resolve a state administration dispute. What is meant by said state administrative dispute, according to Article 1 number 4 is a dispute arising in the field of state administration between a person or a legal entity with a state administrative agency or agency, both at the central and regional levels, as a result of the issuance of the Administrative Decree State, including employment disputes based on applicable laws and regulations [6].

From the provisions in Law No. 5/1986 it appears that PTUN competencies are very narrow, only related to the State Administrative Decree which is considered detrimental to the community. Decisions as they are known must be concrete, individual and final, apart from that PTUN does not have the authority to try them. The above conditions last for almost 20 years, then in line with the increasing tasks that must be carried out by the government which is influenced by the understanding of the welfare state. Coupled with the government's authority to discretion, namely freedom to take policy if there is no law that regulates it or vague laws owned by the government. Therefore, the competence of PTUN contained in Law No. 5 of 1986 is no longer relevant, because it is too narrow to only hear decisions that are concrete, individual and final

For the State Administrative Court as a sub system of the system judicialin Indonesia based on RI Law Number 5 of 1986 concerning State Administrative Court as amended lastly with RI Law Number 51 of 2009 concerning Second Amendment to Law RI Number 5 year 1986 concerning State Administrative Court (Peratun Law) in Article 47 regulates the competence of PTUN in the judicial system in Indonesia, namely the duty and authority to examine, decide upon, and resolve disputes state administrative [7] ver time, the competence of PTUN has also

developed, for example the authority to examine personnel dispute issues, public information disclosure disputes. However, that authority is felt to be insufficient to guarantee the protection of the rights of community members, some of whom are also human rights. Soneeded that a much more comprehensive law isthat not only guarantees the rights of citizens but also becomes a reference for state officials in making policies [8].

Arguments built above are the main reasons that form the basis of the AP Law in Indonesia, the desire to provideprotection legalto every community that allows Citizens to submit objections and appeals to Decisions and/or Actions, to Government Agencies and/or Officials or Superiors The official concerned. Citizens may also submit claims against Decisions and / or Actions of Government Agencies and / or Officers to Administrative Court States and as a reference for State Officials in making policies [9]. However, the main problem is in the formation of the AP Law, especially Article 21 of the AP Law concerning the testing of abuse of authority by PTUN, seems to forget the formal side [10] and only focus on the formation of legislation.

It finally adds new problems, as it is said in the research Ridwan, Despan Heryansyah, and Dian Kus Pratama, which says that [11]

[5] See the Decision of the Constitutional Court Number 25 / PUU-XIV / 2016

[6] R Wiyono, *Hukum Acara Peradilan Tata Usaha Negara, Cetakan Peratama*, Jakarta: Sinar Grafika, 2007, hlm. 5.

[7] Article 47 of Law Number 51 of 2009 concerning Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts.

[8] Ridwan, et. all, Perluasan Kompetensi Absolut Pengadilan Tata Usaha Negara dalam Undang-Undang Administrasi Pemerintahan, *Jurnal Hukum Ius Quia Iustum* Vol. 25 No. 2 Mei 2018. hm 342

[9] See the Elucidation of the General Section Paragraph 5 of Law Number 30 of 2014 concerning Government Administration, it is said that in order to guarantee protection to every Citizen, this Law allows Citizens to submit objections and appeals against decisions and / or actions, to the Agency and / or Government Officials or Superior Officials concerned. Citizens can also file a lawsuit against Decisions and / or Actions of Government Agencies and / or Officials to the State Administrative Court, because this Law is a material law of the State Administrative Court system..

Then for the argument as that the AP Law is used as a reference for State Officials in making decisions, it is stated in Paragraph 8 that: Government Administration Arrangements in this Law guarantee that the Decisions and / or Actions of Government Agencies and / or Officials against Citizens can be done arbitrarily. With this Law, citizens will not easily become objects of state power.

[10] In the explanation of Law Number 30 of 2014 concerning Government Administration it is clear that *"..... This law is a material law of the State Administrative Court system*".

[11] The results of interviews conducted by Ridwan, et.all show that: "So far there have been difficulties by the judges in exercising the authority mandated by Law No. 30 of 2014, because since the beginning the judges

"The expansion of absolute competence in administrative court creates legal effect of its own either formally or materially, and in practice there are also problems new arising from the expansion. This is because in the PTUN itself has long established a standardized system and procedural law, of course it has not accommodated the existence of these new authoritie".

This certainly causes the absence of" regulating "(*regulatiry*) between the AP Law which causes an expansion of the absolute competence of PTUN, coupled with the existence of *conflict norms* that cause uncertainty [12] between Article 21 AP Act and provisions of Article 3 of the Law on Corruption [13] *juncto Article 5 and Article 6 of Law Number 46 Year 2009 concerning Corruption Criminal (Corruption Law Court Court)* [14], which one of the elements regulates Corruption as a result Corruption of acts ofabuse of authority, where absolute competence to examine the matter is given to the Corruption Court.

So based on the above problems, through this paper the writer will describe and discuss about how the form of expansion of thecompetence absolute of the State Administrative Court as an effort to prevent (*preventive*) corrupt acts in the AP Law and legal uncertainty in efforts to eradicate corruption in Indonesia after the formation of the Act The AP.

Discussion

PTUN Absolute Competency Expansion

Absolute competence is related to the authority of the Administrative Court to examine and adjudicate a dispute according to the object or material or principal of the dispute. Even though state administrative bodies / officials can be sued at PTUN, not all actions can be tried by PTUN. The actions of state administrative bodies / officials that can be sued in PTUN are regulated in Article 1 paragraph (3) and Article 3 of Law No. 5 of 1986, while the remaining actions become the competence of the General Courts or Military Administrative Courts or even for the problem of making regulations (regeling) which is made by the government and is of a general nature, the authority to try it rests with the Supreme Court through the Right to Judge Material [15].

Article 47 of Law No. 5 of 1986 states: the court has the duty and authority to examine, decide and settle state administrative disputes. What is a state administration dispute? Article 1 number 4 of Law No. 5 of 1986 also formulates disputes arising in the field of state administration, both at the center and in the regions, as a result of the issuance of state administrative decisions, including employment disputes based on applicable laws and regulations [16].

KTUN is the basis for the birth of a state administration dispute. What is KTUN? Article 1 number 3 formulating KTUN is a written stipulation issued by a state administration body or official containing legal action on state administration based on applicable legislation that is concrete, individual and final, which results in legal consequences for a person or entity civil law. The provisions in Law No. 5/1986 were deemed no longer relevant to be maintained, so the government issued Law No. 30 of 2014 concerning Government Administration as its successor. The issuance of this Act provoked pros and cons among administrative law experts related to various materials that were arranged, especially in terms of expanding the absolute competence of PTUN.

UU No. 5 of 1986 concerning State Administrative Court is deemed no longer relevant to the development of society, so it must be renewed, namely through the presence of Law Number 30 of 2014 concerning Government Administration. While the government's actions in running the government must also be given a reference. So the substance of this Government Administration Act gives a lot of new authority to PTUN. Many people call it the PTUN material procedural law. Some of the authorities mandated by Law No. 30 of 2014, based on the study of researchers include the following:

1. Meaning of the State Administrative Decree

Referring to Law No. 5 of 1986 as also regulated in Law Number 51 of 2009, that the meaning of the Decree of the State Administration is a written stipulation issued by the State Administration Agency or Officer which contains the legal action of the State Administration based on statutory regulations applicable, which are concrete, individual, and final, which cause legal consequences for a person or private legal entity [17]. Compare with Article Law Number 30 of 2014, TUN Decree is interpreted: "Written decree issued by the Government Agency and / or Officer in the administration of government" [18]. This provision does not yet provide a concrete explanation regarding the criteria of the Decree. Then in Article 87 Transitional Provisions [19] the criteria of the State Administrative Decree shall be understood as:

a. "A written determination which also includes factual action;
b. Decisions of State Administration Agencies and / or

have only trained to carry out Law No. 5 of 1986. This of course it has an impact on the professionalism and quality of the decisions issued by the judges," see in Ridwan, *et al*, Perluasan Kompetensi Absolut Pengadilan Tata Usaha Negara dalam Undang-Undang Administrasi Pemerintahan, *Op.cit.* hlm 343

[12] Regulatory (regulatory) and certainy (certainy) legal rules are needed to support the functioning of the legal system properly and smoothly. Mirza Satria Buana, *Hubungan Tarik-Menarik Antara Asas Kepastian Hukum (Legal Certainpi) Dengan Asas Keadilan (Substantial Justice) Dalam Putusan-Putusan Mahkamah Konstltusi*, Yogyakarta: Tesis Magister Ilmu Hukum Universitas Islam Indonesia, 2010, hlm. 34

[13] UU Pemberantasan Tipikor diundangkan tanggal 16 Agustus 1999 (LNRI Tahun 1999 Nomor 140, TLNRI Nomor 3874). Sedangkan UU Nomor 20 Tahun 2001 diundangkan tanggal 21 Nopember 2001 (LNRI Tahun 2001 Nomor 134, TLNRI Nomor 4150).

[14] UU Pengadilan Tipikor diundangkan tanggal 29 Oktober 2009 (LNRI Tahun 2009 Nomor 155, TLNRI Nomor 5074).

[15] Look at Moh Mahfud MD, *Lingkup Kompetensi Peradilan Tata Usaha Negara dan Kapasitas Tuntutan atas Satu Tuntutan Administrasi*, dikutip dari. SF. Marbun,, *Peradilan Administrasi Negara dan Upaya Administrasi di Inodnesia*, Yogyakarta: Liberty, 1997. hlm 41

[16] Phulipus M Hadjon, dkk., *Pengantar Hukum Administrasi Indonesia (Introduction to the Indonesian Administrative Law), Cetakan Keenam*, Yogyakarta: Gadjah Mada University Press, 1999, hlm. 318.

[17] See Article 1 number 3 Law no. 5 of 1986 and Article 1 number 9 of Law No. 51 of 2009

[18] See Article 1 number 7 of Law No. 30 of 2014.

[19] Many have criticized the detailed provisions of this decision that are only included in the Transitional Terms. Because the substance of this transitional provision is very basic, it is actually placed in the core article of the law. There are even experts who say that this provision contradicts Hans Kelsen's theory of stufenbau das rechts. Lihat misalnya, Yodi Martono Wahyunadi, *Kompetensi Absolut Pengadilan Tata Usaha Negara Dalam Konteks Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan*, Disertasi FH Univ. Trisakti, Jakarta, 2016., hlm. 140-141.

Officers in the executive, legislative, judicial, and other state administration circles;
c. Based on statutory provisions and AUPB;
d. Is final in a broader sense;
e. Decisions that have the potential to cause legal consequences; and / or
f. Decisions that apply to Community Members ".

From the provisions in Article 87, some interesting notes are: First, if previously the decision was always associated with a concrete, individual, and final nature, where decisions that do not cover the three things cumulatively cannot be submitted to PTUN. However, in this Government Administration Act no longer must include these three characteristics, in this Article it is only said "Final in a broader sense".
Second, government administration is not only limited to decisions as in the PTUN Law, but also includes factual actions. This means that the Government Administration Act equalizes the term decision with action. This factual action is a new term that is not yet known in the previous law, although theoretically it has been widely discussed by many administrative law experts. PTUN handles the object in the form of government administrative actions (Article 1 number 8 of the Government Administration Law) which was originally tested by courts in the general court environment through Acts against the Law by Officials (PMHP) using Article 1365 of the Civil Code. Even in Article 85 of the Law on Government Administration, it is stated that the filing of a lawsuit on Government Administration disputes that have been registered at a general court but have not yet been examined, with the enactment of this Law transferred and resolved by PTUN. From the monthly reports of all PTUNs throughout Indonesia there are no cases of delegation from the District Court.
Third, the scope of government administrative arrangements that not only cover the executive field, but government in a broad sense, namely executive, legislative, and judiciary. This provision is clearly stated in Article 4 which reads: The scope of government administrative arrangements in this law covers all the activities of government agencies and / or government officials who carry out government functions within the scope of the executive, legislative, judiciary, and other state institutions. Thus, at this time the decision that can be sued to the PTUN is not only the decision of the president, governor, regent, or mayor as has been going on. But it also includes the decision of the chair of the DPR and the decision of the chairman of the Supreme Court.

2. Administrative Efforts

The existence of administrative efforts actually get resistance from many experts. So according to them it should no longer be regulated in the law. This condition is supported by the reality of the existence of administrative efforts which have so far been rarely successful in solving problems. Yet according to the PTUN Law this administrative effort is a must. SF Marbun, for example, states that the existence of administrative efforts has several technical issues, namely: the absence of procedural law, lack of information, assessment of policy aspects, determination of deadlines and lack of facilities [20].

[20] SF Marbun, *Peradilan Administrasi…. Op. Cit.,* hlm. 102-103

Administrative efforts regulated in the PTUN Law, the Law on Civil Apparatus (Law No. 5 of 2014), and the Government Administration Law are in principle the same, namely administrative objections and appeals. Addresat filing objections and administrative appeals is also the same, namely objections filed to officials who issue decisions while administrative appeals are submitted to superiors of officials who issue decisions or other agencies [21].
However, there are differences in the process leading to a lawsuit in the PTUN Law and the Government Administration Act. In the PTUN Law regime, if a dispute resolution requires administrative efforts, all administrative efforts must be taken first. The court is only authorized to hear cases if the administrative efforts available have been taken by the community. Whereas in the Government Administration Law regime, Article 75 paragraph (1) states, "Citizens who are harmed by a Decree and / or Actions may submit administrative efforts to government officials or superiors of officials who determine and / or make decisions and / or actions".
Some argue that the word "can" in Article 75 paragraph (1) of the UUAP is an addresat norm which means that one may not exercise his right to submit administrative efforts because he accepts the decision / action, but when the person concerned will file a lawsuit then the administrative effort available it is still mandatory to be taken first. This opinion arises because the Government Administration Act does not explicitly require administrative efforts to be taken before filing a lawsuit with the Administrative Court. However, there are still other laws which require administrative efforts that have not been firmly revoked so that they are still relevant using administrative efforts.
However, there are also those who argue that in the Government Administration Law there is no rule that the new court is authorized to examine, hear, and resolve disputes when all administrative efforts have been taken first. This means, if the community members choose not to use administrative efforts and directly file a lawsuit it remains justified. Therefore the court cannot declare the claim as unacceptable on the grounds that the plaintiff has not yet taken administrative measures.
Another principle difference is that in the PTUN Law resulting from public dissatisfaction over the settlement of administrative appeals, then submit a lawsuit to the State Administrative High Court (PT TUN), based on Article 51 paragraph (3) of the PTUN Law which states, "The State Administrative High Court is tasked with and have the authority to examine, decide upon and settle at the first level the State Administration dispute referred to in Article 48 ". Whereas according to the Government Administration Law which has the authority to adjudicate due to this administrative effort is the State Administrative Court (PTUN), in Article 76 paragraph (3) the Government Administration Law states, "In the event that the Citizens do not accept the settlement of appeals by the Superiors' Officials, Citizens can filed a lawsuit to the Court ". Article 1 number 18 of the Government Administration Law states that what is intended by the Court in this Law is the State Administrative Court.
PTUN's absolute absolute competence according to the

[21] Tri Cahya Indra Permana, *Catatan Kritis terhadap Perluasan Kewenangan Mengadili Peradilan Tata Usaha Negara*, Yogyakarta: Genta Press, 2016, hlm. 5.

Government Administration Act is to test the consequences of administrative efforts that are not approved by the community. While previously it was the competence of the State Administrative High Court. Thus there are two legal norms governing administrative efforts. In relation to the completion of administrative efforts the community members still want to submit to the court, there are two courts namely PT.TUN in accordance with Article 48 of the Peratun Law and to the PTUN in accordance with Article 76 paragraph (3) of the UUAP.

3. Request for Positive Fictitious Decisions

There is a principle difference between the PTUN law and the AP Law regarding negative fictitious decisions and positive fictitious decisions. Article 3 of the PTUN Law regulates negative fictitious decisions, namely if a State Administration Agency or Officer does not issue the petition for a decision while the time period has passed, then the State Administration Agency or Official is deemed to have refused to issue the said decision.

According to Article 53 UUAP in principle regulates if within a specified time limit, the Government Agency or Officer does not issue and / or make a decision and / or action, then the application is considered legally granted.

In this positive fictitious decision, the applicant does not automatically obtain the results of his application, but must first submit a request to the Administrative Court to obtain a decision on receipt of the request. PTUN must decide on the application no later than 21 (twenty one) working days after the application is submitted. The PTUN decision is final and binding, there is no other remedy. Government Agencies and / or Officers must determine the Decree to implement the PTUN decision no later than 5 (five) working days after the decision of the Court is determined.

Completely regulated in Article 53:

a. "The deadline for the obligation to determine and / or make a decision and / or action in accordance with the provisions of the legislation.
b. If the provisions of the legislation do not specify the time limit for the obligations referred to in paragraph (1), the Government Agency and / or Officer shall determine and / or make a Decision and / or Action within a maximum period of 10 (ten) working days after the application is received completely by the Government Agency and / or Officer.
c. If within the time limit referred to in paragraph (2), the Agency and / or Government Official does not stipulate and / or make a Decision and / or Action, then the said application is considered legally granted.
d. The applicant submits an application to the Court to obtain a decision on receipt of the application as referred to in paragraph (3).
e. The court is obliged to decide on the application referred to in paragraph (4) no later than 21 (twenty one) working days after the application is submitted.
f. Government agencies and / or officials are obliged to determine a decision to implement the court's decision as referred to in paragraph (5) no later than 5 (five) working days after the decision of the court is determined ".

The birth of positive fictitious decisions is inseparable from the change in the paradigm of public service which requires government agencies or officials to be more responsive to community requests. One of the basic desires and direction of legal politics in government administration laws is to improve the quality of government administration. The reality is that PTUN is domiciled in the provincial capital, making it difficult for justice seekers to gain access to justice. The condition of some regions which are geographically difficult or expensive, according to the writer, is not effective with positive fictitious provisions through the PTUN.

4. Authority to Evaluate the Elements of Abuse of Authority

The Government Administration Act gives PTUN the authority to assess whether or not there is an element of abuse of authority committed by a government agency or official. This provision is regulated in Article 21 of Law No. 30 of 2014, which reads in full:

a. "The court has the authority to accept, examine and decide whether or not there is an element of abuse of authority carried out by Government Officials;
b. Government agencies and / or officials may submit an application to the court to assess whether or not there is an element of abuse of authority in decisions and / or actions.
c. The court is obliged to decide on the application referred to in paragraph (2) no later than 21 (twenty one) working days after the application is submitted.
d. Against the Court's decision as referred to in paragraph (3), an appeal can be appealed to the State Administrative High Court.
e. The State Administrative High Court must decide the appeal as referred to in paragraph (4) no later than 21 (twenty one) working days after the appeal is submitted.
f. The decision of the State Administrative High Court as referred to in paragraph (5) is final and binding ".

5. Authority to Test Discretion

Ermessen's discretion or freies are defined as a means of providing space for officials or state administrative bodies to take action without having to be fully bound to the law, or actions taken by prioritizing the achievement of objectives (doelmatigheid) rather than in accordance with applicable law (rechtmatigheid) [22]. Freies Ermessen is used mainly because: first, emergency conditions that are not possible to set written rules, second, there are no or no regulations governing them, third, there are rules but the editorial is vague or multiple interpretations *(vogue norm)* [23]. Meanwhile, according to Bagir Manan, the characteristics of policy regulations are [24]

a. "Policy regulations are not statutory regulations.
b. The principles of restriction and testing of laws and regulations cannot be applied to policy regulations.
c. Policy rules cannot be tested wetmatigheid, because there really is no legal basis for making policy policy decisions.
d. The policy rules were made based on Ermessen's freies and the absence of administrative authority concerned

[22] Bachsan Mustafa, *Pokok-Pokok Hukum Administrasi Negara*, dalam Ridwan HR, *Tiga Dimensi Hukum Administrasi dan Peradilan Administrasi*, *Cetakan Pertama*, Yogyakarta: UII Press, 2009, hlm. 81

[23] *Ibid*

[24] Bagir Manan, *Peraturan Kebijaksanaan*, dalam Ridwan HR, *Ibid*, hlm. 85.

making laws and regulations.
e. Testing of policy regulations is more up to doelmatigheid and therefore the test stones are general principles of proper governance.
f. In practice, various forms and types of rules are given, in the form of decisions, instructions, circulars, announcements, etc., which can even be found in regulations.

Based on the description above, according to Bagir Manan, the restriction on the implementation of discretion is the general principles of proper governance. If a policy complies with these principles, it can continue but if not, the policy can be canceled. So based on Ermessen's freies, the government can issue various policies both in the form of regulations, announcements, guidelines, circulars, instructions, and so forth. Philipus M Hadjon added that Ermessen's freies had to be written down in order to become policy regulations [25].

In connection with this discretion there is a dilemma, on the one hand discretion and policy regulations are the necessary governance and instruments of governance that are even called "discretion is a heart of agency power" for the implementation of government tasks, especially in providing services to citizens effectively and efficient. But on the other hand, discretion and policy regulations have aroused suspicion, concern, and are considered a ruthless master. Discretion is like a double-edged sword: it can be used for good and benefit as well as for evil and arbitrariness [26].

Provisions regarding discretion are regulated in Article 22 of the administration law. It was stated that the use of discretion was intended to: expedite the administration of government; fill the legal vacuum; provide legal certainty; and overcome the stagnation of government in certain circumstances for the benefit and public interest. 27 Provisions on discretion cover two things at once, namely the procedure for the use of discretion by state officials and discretionary testing if there are people who feel their rights are violated on the implementation of a discretion.

Discretion that can be sued in the State Administrative Court and canceled by the Administrative Court is a discretion which: is categorized as over authority, is categorized as a confusing authority, and is categorized as an arbitrary act if issued by an unauthorized official. These three categories of discretion which according to Articles 30, 31 and 32 become invalid or can be canceled. However, in the articles governing discretion, indeed there is not a single word that clearly gives the right to test for discretion is PTUN.

Legal Uncertainty in Eradicating Corruption

As the authors stated earlier that the AP Law grants authority to PTUN to assess whether or not there is an element of abuse of authority committed by a government agency or official, this can be seen in Article 21 of the AP Law [27]. So, what is meant by abuse of authority? UUAP provides quite detailed limitations in this law. However, the scope of abuse of authority in UUAP differs from what is regulated in Article 53 paragraph (2) letter b of Law No. 5 of 1986, namely the state administrative body or officials when issuing a decision as referred to in paragraph (1) have used their authority for other purposes from the purpose of granting that authority. That reason is interpreted as an abuse of authority. In the UUAP expand and distinguish three forms of abuse of authority as stipulated in Article 17 which reads as follows:

1. "Government Agencies and / or Officials are prohibited from abusing authority.
2. Prohibition on Family Planning The authority referred to in paragraph (1) includes:

a. prohibition exceeds Authority;
b. prohibition of mixing up Authorities; and / or
c. prohibition of acting arbitrarily".

The criteria for exceeding authority, confusing authority, and acting arbitrarily are further regulated in Article 18 as follows:

1. "Government Agencies and / or Offices are categorized as exceeding the Authority as referred to in Article 17 paragraph (2) letter a if the Decree and / or Actions taken:

a. beyond the term of office or the validity period of the Authority;
b. beyond the territorial validity of the Authority; and / or
c. contrary to statutory provisions.

2. Government Agencies and / or Officials are categorized as confusing the Authority as referred to in Article 17 paragraph (2) letter b if the Decree and / or Actions taken:

a. outside the scope of the field or material given Authority; and / or
b. contrary to the stated purpose of the Authority.

3. Government Agencies and / or Offices are categorized as acting arbitrarily as referred to in Article 17 paragraph (2) letter c if the Decree and / or Actions taken:

a. without the basis of Authority; and / or
b. contrary to court decisions that have permanent legal force".

In the Republic of Indonesia Supreme Court Regulation (PERMA) No. 4 of 2015 concerning Procedure Guidelines for Evaluating the Abuse of Authority, regulating parties in the application, Government Agencies and / or Officers who feel that their interests have been impaired by the results of supervision by the government internal control apparatus can submit an application to the competent Court containing demands that the Decision and / or Acting of Acting Officials Government is declared to have or not an element of abuse of Authority [28].

As the author mentioned earlier that the implications of the enactment of the AP Law in particular Article 21 of the AP Law resulted in the competence of PTUN to test the validity

[25] Philipus M. Hadjon, *et al*., *Pengantar Hukum Administrasi Indonesia*, Yogyakarta: UGM Press, 1993, hlm. 152.
[26] Ridwan, *Diskresi dan Tanggung... Op. Cit.*, hlm. 153
[27] a. "The court has the authority to accept, examine, and decide whether or not there is an element of abuse of authority committed by Government Officials; b. Government Agencies and / or Officials can submit a request to the Court to assess whether or not there is an element of abuse of authority in decisions and / or actions; c. The court is obliged to decide the application as intended in paragraph (2) not later than 21 (twenty one) working days from the time the application is submitted; d. (3) An appeal may be submitted to the Court's decision as referred to in paragraph (3) at the High State Administrative Court; e. (2) The High State Administrative Court is obliged to decide on the appeal as referred to in paragraph (4) not later than 21 (twenty one) working days after the appeal is filed; f. The decision of the State Administrative High Court as referred to in paragraph (5) is final and binding".
[28] Article 3 of the Supreme Court Regulation No. 4 of 2015 concerning Guidelines for Conducting the Assessment of Elements of Abuse of Authority

of government actions in terms of law (legality). The concept of abuse of authority in UUAP is a mistake of private officials (maladministration). For this reason, it is not appropriate for personal responsibility to become PTUN's competence. In addition, the formulation of abuse of authority in Article 17 paragraph (2) UUAP:

a. "Prohibition goes beyond authority;
b. prohibition of confusing authority; and / or
c. prohibition of arbitrary actions ".

In the opinion of the author the concept of abuse of authority in UUAP violates the theory of Administrative law. Abuse of authority should use authority not in accordance with the purpose of granting authority, known as the principle of detournement de pouvoir. Article 53 paragraph (2) of Law Number 5 of 1986 has precisely formulated the abuse of authority.

Another implication related to the abuse of authority is the intersection between criminal law and state administrative law. As it is known that in the corruption law it is also stated that one of the main elements of corruption is the abuse of authority. So, in this context there are at least two problems, namely: 1. What if there is an abuse of authority by state officials brought to two courts simultaneously, namely to the Administrative Court and to the District Court in corruption cases? 2. If at any time the PTUN decision is issued stating that there is no abuse of authority, but there are also parties who submit the case to the District Court on corruption charges. What is the attitude of the District Court, whether to accept the PTUN decision on the case or instead choose to override the PTUN decision.

Furthermore, even though PERMA No. 4 of 2015 has stated that PTUN has the authority to accept, examine, and decide upon an application for assessment of whether or not there is abuse of authority in the Decisions and / or Actions of Government Officials prior to criminal proceedings. Four words from before the criminal process ". The word is a keyword limiting the intersection of authority to try to abuse the authority between the TUN Court and the Corruption Court. However, "Perma Number 4 of 2015 does not provide an explanation of what is meant by criminal proceedings" [29].

Explicitly it can be interpreted that the limitation in the form of "before the existence of criminal process" seems to give the impression that "the criminal justice process can override the administrative justice process related to the assessment of the presence or absence of abuse of authority" [30]. Therefore, it is appropriate for the sake of and for legal certainty to do an elaboration and harmonization of the two Laws (the AP Law and the Anti-Corruption Law), also an effort must be made to revise the TUN Justice Law considering that several provisions in the AP Law have not been regulated in the formal regulations namely the Law State Administrative Court.

[29] "Budi Suhariyanto, Persinggungan Kewenangan Mengadili Penyalahgunaan Diskresi Antara Pengadilan TUN dan Pengadilan Tipikor, *Jurnal Hukum dan Peradilan*, Volume 7 Nomor 2, Juli 2018". hlm 218

[30] "Dani Elpah, *Titik Singgung Kewenangan Antara Pengadilan Tata Usaha Negara dengan Pengadilan Tipikor dalam Menilai Terjadinya Penyalahgunaan Wewenang*, (Jakarta: Puslitbang Hukum dan Peradilan MA, 2016)", hlm.69

Conclusion

Based on the analysis described above, it can be concluded that: First, the form of expansion of the absolute competence of the State Administrative Court according to Law Number 30 of 2014 concerning Government Administration includes: Expansion of the meaning of government decisions and administration which includes executive, legislative, government decisions and judicial and factual actions; Testing the results of administrative efforts; Application for positive fictitious decisions; Second, the implication of expanding the absolute competence of PTUN in government administrative law is that there is conflict with administrative law theory so confusing the public and law enforcement officials themselves also creates uncertainty about law enforcement for criminal acts of corruption.

References

1. Nyoman Sarekat Putra Jaya. Beberapa Pemikiran ke arah Pengembangan Hukum Pidana. Jakarta: Citra Aditya Bakti, 2008.
2. Romli Atmasasmita. Arah Pembangunan Hukum di Indonesia, dalam Komisi Yudisial dan Keadilan Sosial. Komisi Yudisial, 2008.
3. Wiyono R. Hukum Acara Peradilan Tata Usaha Negara, Cetakan Peratama, Jakarta: Sinar Grafika, 2007.
4. Marbun SF. Peradilan Administrasi Negara dan Upaya Administrasi di Inodnesia, Yogyakarta: Liberty, 1997.
5. Phulipus M Hadjon, *et al*. Pengantar Hukum Administrasi Indonesia (Introduction to the Indonesian Administrative Law), Cetakan Keenam, Yogyakarta: Gadjah Mada University Press, 1999**.**
6. Tri Cahya Indra Permana. Catatan Kritis terhadap Perluasan Kewenangan Mengadili Peradilan Tata Usaha Negara, Yogyakarta: Genta Press, 2016.
7. Bachsan Mustafa. Pokok-Pokok Hukum Administrasi Negara, dalam Ridwan HR, Tiga Dimensi Hukum Administrasi dan Peradilan Administrasi, Cetakan Pertama, Yogyakarta: UII Press, 2009.
8. Ridwan HR. Hukum Administrasi di Daerah, Cetakan Pertama, Yogyakarta: UII Press, 2009.
9. Philipus M Hadjon, *et al*., Pengantar Hukum Administrasi Indonesia, Yogyakarta: UGM Press, 1993.
10. Siti Fatimah, Iswantoro, Udiyo Basuki, Rian Saputra, Abdul Kadir Jaelani. The Public Policy Of Local Government In Protecting Geographic Indication As A Leading Regional Product, International Journal of Advanced Science and Technology, 2020, 29(4).
11. Ach Tahir, Iswantoro, Siti Fatimah, Resti Dian Luthviati, Rian Saputra, Abdul Kadir Jaelani, The Model Of Criminal Policy To Customary Law Society After Decision Of The Constitutional Court Of The Republic Of Indonesia Number 95/PUU-XII/2014, International Journal of Advanced Science and Technology, 2020, 29(4).
12. Dani Elpah, Titik Singgung. Kewenangan Antara Pengadilan Tata Usaha Negara dengan Pengadilan Tipikor dalam Menilai Terjadinya Penyalahgunaan Wewenang, (Jakarta: Puslitbang Hukum dan Peradilan MA), 2016.
13. Rian Saputra, Development of Creative Industries as Regional Leaders in National Tourism Efforts Based on Geographical Indications, Jurnal Bestuur Vol. 8, Issue 2, December, 2020.

14. Budi Suhariyanto. Persinggungan Kewenangan Mengadili Penyalahgunaan Diskresi Antara Pengadilan TUN dan Pengadilan Tipikor, Jurnal Hukum dan Peradilan, 2018, 7(2).
15. Ino Susanti, Refleksi Ilmu Hukum Dalam Analisis Penegakan Hukum Pemberantasan Korupsi di Indonesia, Jurnal Dinamika Hukum, 2014, 14(1).
16. Mirza Satria Buana. Hubungan Tarik-Menarik Antara Asas Kepastian Hukum (Legal Certainpi) Dengan Asas Keadilan (Substantial Justice) Dalam Putusan-Putusan Mahkamah Konstltusi, Yogyakarta: Tesis Magister Ilmu Hukum Universitas Islam Indonesia, 2010.
17. Ridwan, *et al*. Perluasan Kompetensi Absolut Pengadilan Tata Usaha Negara dalam Undang-Undang Administrasi Pemerintahan, Jurnal Hukum Ius Quia Iustum, 2018, 25(2).
18. Sahlan Said. "Penegakan Hukum Anti Korupsi", Jurnal Demokrasi, 2005, 2(7).
19. Yodi Martono Wahyunadi. Kompetensi Absolut Pengadilan Tata Usaha Negara Dalam Konteks Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan, Disertasi FH Univ. Trisakti, Jakarta, 2016.
20. Undang-Undang Nomor 51 Tahun tentang Perubahan Kedua atas Undang Undang Nomor 5 tahun 1986 tentang Peradilan Tata Usaha Negara, 2009.
21. Undang-Undang Nomor 30 Tahun tentang Administrasi Pemerintahan, 2014.
22. Undang-Undang Nomor 20 Tahun Tentang Tindak Pidana Korupsi, 2001.
23. Undang Nomor 46 Tahun tentang Pengadilan Tindak Pidana Korupsi, 2009.
24. Putusan Mahkamah Konstitusi Nomor 25/PUU-XIV/2016Peraturan Mahkamah Agung RI No. 4 Tahun Tentang Pedoman Beracara Dalam Penilaian Unsur Penyalahgunaan Wewenang, 2015.