



The function of the state administrative court as supervision of the implementation of the general principles of good government (AAUPB) as an effort to realize good governance

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Abstract

The State Administrative Court has an important role in supervising the administration of government based on examining the General Principles of Good Governance and legislation. The General Principles of Good Governance (AAUPB) have undergone important developments. It is necessary to examine more deeply the function of the judicial control of the State Administrative Court in realizing good government. The main problem to be answered in this study is how the State Administrative Court functions in the context of realizing good government, what factors affect the function and what steps are taken by the State Administrative Court in carrying out its functions to create good government. Then find the obstacles to the PTUN's function that have not been maximized in realizing good governance. This research was conducted using a normative legal approach (normative juridical), bearing in mind that what will be revealed is a matter of rules or norms, namely the function of the State Administrative Court in carrying out its function to create good government. Data collection was carried out by means of a documentation study or library research.

Keywords: state administrative court, AAUPB, supervision

Introduction

The founding fathers of the nation (The Founding Fathers) designed the model for the Indonesian State to be inspired by the obsession of a state building with Indonesian characteristics so that it too idealized the principle of kinship, village democracy, the principles of harmony, harmony and balance for the sake of the politics of integration rather than the politics of liberation against the absolutism of power as a form of constitutionalism. power as a pattern of constitutionalism, as a result of which this nation is never suspicious of the possibility of abuse of authority which Lord Acton referred to as the stone law "power tends to corrupt and absolute".

The concept of constitutionalism forms Indonesia as a constitutional state. The rule of law requires that all actions or deeds of citizens and authorities have a clear legal basis or have legality, both based on written and unwritten laws.

The 1945 Constitution and the laws and regulations under it during the Old Order and New Order eras have not guaranteed the independence of the judiciary, including the State Administrative Court, so it is only natural that in practice the judicial institution seems to be a punitive institution for political enemies who oppose the authorities or it can be called as an institution that provides legal legitimacy to acts of maladministration or abuse of power by authorities, this condition is a legal fact which is of concern that the existence of judicial institutions, especially the State Administrative Court (PTUN) has not been able to bring justice to society within the scope of government administration, let alone realize the agenda great success of good government. Some say that the legitimacy of the state governing is because the state is a neutral, impartial institution, standing above the interests of all groups in society, and serving the public interest. (Arif Budiman, 1996) [2].

The rule of law basically aims to provide legal protection for the people. According to Philipus M. Hadjon, legal protection for the people against government actions is based on two principles, namely the principle of human rights and the principle of a rule of law. Recognition and protection of human rights has a primary place and can be said to be the goal of a rule of law. Conversely, in an authoritarian state there is no place for human rights. (Philipus M. Hadjon, 1987) [7].

The concept of a rule of law state was born from a struggle against absolutism so that its nature can be said to be very revolutionary. One example in Roman times, the prominent power of the king was to make regulations through decrees. This power is then delegated to administrative officials, so that it is administrative officials who make written directions for judges on how to decide on a dispute. So great is the role of state administration, that it is not surprising that there is a relationship between state administrative officials and the people, and the development of the role of state administration is expanding. Because of this, it is necessary to think about steps to limit the administrative power of the state.

The judicial basis in the 1945 Constitution can be found in article 24 which states that:

1. Judicial power is an independent power to administer justice in order to uphold law and justice.
2. Judicial power is exercised by a Supreme Court and judicial bodies under it in the general court environment, religious court environment, military court environment, state administrative court environment, and by a Constitutional Court.
3. Other bodies whose functions are related to judicial power are regulated by law.

As the implementation of Article 24 of the 1945 Constitution, Law Number 14 of 1970 was issued and it was replaced by Law Number 4 of 2004 concerning Judicial

Power and replaced by Law Number 48 of 2009 concerning Judicial Power. In Article 18 of Law Number 48 of 2009 above it is stated that:

"Judicial power is exercised by a Supreme Court and judicial bodies under it in the general court environment, the religious court environment, the military court environment, the state administrative court environment, and by a Constitutional Court."

Thus the administration of Administrative Courts (PTUN) in Indonesia is a constitutional will in order to provide maximum legal protection for the people. With the enactment of Law Number 5 of 1986 concerning State Administrative Court which based on Article 144 can be called the Law on State Administrative Courts, today legal protection for citizens for acts committed by authorities can be carried out through 3 (three) bodies, namely as follows: (Soerjono, 1993) ^[9]

- a. State Administrative Agency, through administrative efforts.
- b. State Administrative Court, based on Law Number 5 of 1986.
- c. General Court, through Article 1365 of the Civil Code.

The function of the State Administrative Court which is most important in encouraging the realization of good government is not an easy agenda, let alone it is not an open secret that the Indonesian state is still in the top rank in terms of corruption, collusion and nepotism. To realize the highest ideals of good government, progressive efforts are needed towards a government that upholds legal principles as well as upholds ethical values in state practice as well as the existence of an independent and impartial Administrative Court institution.

From the background above, the author draws the formulation of the problem, namely how are the General Principles of Good Government (AAUPB) related to Law no. 30 of 2014 concerning Government Administration and what are the obstacles that make the function of the State Administrative Court not work properly so that it has not been able to realize good governance?

Research Methods

This research was conducted using a descriptive-analytical method with a normative juridical approach. The research phase includes library research. To obtain data, several data collection techniques were used, namely literature study with various data sources, namely statutory regulations, namely Law Number 30 of 2014 concerning Government Administration.

Research Results

1. The General Principles of Good Government (AAUPB) are linked to Law Number 30 of 2014 concerning Government Administration

The action or intervention of the government in the concept of the welfare state as the party responsible for realizing the welfare and prosperity of its citizens is getting bigger. As a rule of law, the government's actions to provide welfare must also be based on applicable laws and regulations or often act based on *Freies Ermessen*, but these actions often lead to abuse of authority which results in conflicts of interest between citizens and the government.

According to Jazim Hamidi, based on the formulation of the understanding of the experts and the additional

understanding of the author (Jazim Hamidi) about AAUPB, it can be drawn the elements that form a comprehensive understanding of AAUPB, namely: (Jazim Hamidi, 1999).

- a. AAUPB are ethical values that live and develop in the legal environment of state administration.
- b. AAUPB serves as a guide for State Administration Officers in carrying out their functions, is a test tool for administrative judges in assessing state administration actions (which take the form of determinations/*beschikking*), and as a basis for filing lawsuits for the plaintiff.
- c. Most of the AAUPB are still unwritten principles, still abstract, and can be explored in the practice of life in society.
- d. Some of the other principles have become written legal norms and are scattered in various positive legal regulations. Some of the principles have turned into written legal principles, but their nature remains as legal principles.

Good governance is always developing and following global developments, it is not possible to be only national. The administration of government is to provide public services to the community, which are influenced by political dynamics, the economy, developments in information technology, socio-culture, all of which mix and influence the administration of government. (Aju Putrijanti *et al*, 2018) ^[1]

The administration of governance in developed countries is certainly different from developing countries, several important factors have an influence, namely ways of thinking that prioritize service quality, transparency, integrity, capacity building capabilities and are supported by other things that are non-technical in nature but very supportive of good governance. Administration of government is not only determined by how the government works but also determined by the policies taken for the welfare of the citizens. (Michael Chi Man Ng, 2016). The policies implemented must still be based on AAUPB and applicable laws and regulations.

Law Number 30 of 2014 concerning Government Administration is very necessary for all parties, both the government, the community and PTUN with different factors of interest but overall have something in common, namely to improve good governance. Apart from being based on statutory regulations, government administration is also based on AAUPB, both those that have been included in legislation, as well as judge decisions that have permanent legal force and government practices.

The new paradigm contained in Law Number 30 of 2014 concerning Government Administration needs to be followed by changes in the procedures for administering government, meaning that by prioritizing the quality of public services, including the issuance of decrees. For the issuance of a decree, all procedural standards must be followed, including the authorities, procedures and substances that will be included. Procedures for good governance need to start from the regional level or the lowest level organizationally to the central level. The neglect of AAUPB is clearly very detrimental both individually and as a whole, namely for the community.

The application of the general principles of good governance in the implementation of public services in the context of realizing community welfare other than those mentioned in Article 10 of Law Number 30 of 2014

concerning Government Administration outlines the scope of AUPB that applies in government administration, including: (HR, Ridwan, 2014) ^[4].

a. The Principle of Balance

This principle requires a balance between office punishment and negligence or negligence of an employee. This principle also requires clear qualifications regarding the types or qualifications of violations or omissions committed by a person so as to facilitate its application in every existing case and in line with equality of treatment and in line with legal certainty.

b. The Principle of Not Mixing Authority

A government official has the authority that has been determined in laws and regulations both in terms of material, area, and time. Aspects of this authority cannot be exercised beyond what has been specified in the applicable regulations.

c. Principle of Justice and Fairness

This principle of justice requires action in a proportionate, appropriate, balanced and in harmony with the rights of every person. Meanwhile, the principle of fairness emphasizes that every activity of the government or state administration pays attention to the values prevailing in society, whether related to religion, morals, customs, or other values.

As an effort to realize good governance, AAUPB must be used as the basis for administering government. The relationship between PTUN, Government and Society and the position of AAUPB is important. State Administrative Court carries out the supervisory and judicial functions, the Government administers the government, as well as the community as citizens who are entitled to receive services from the Government and file lawsuits with the State Administrative Court and AAUPB which form the basis for the government in carrying out its duties and functions as well as a touchstone for state administrative decisions made being sued. The new paradigm contained in Law no. 30 of 2014 concerning Government Administration, needs to be followed by changes in the procedures for administering government, meaning that by prioritizing the quality of public services, including the issuance of decrees. For the issuance of a decree, all procedural standards must be followed, including the authorities, procedures and substances that will be included. Procedures for good governance need to start from the regional level or the lowest level organizationally to the central level. The neglect of AAUPB is clearly very detrimental both individually and as a whole, namely for the community.

2. Obstacles that make the function of the State Administrative Court not work properly so that good governance is not yet maximized

In essence, the administrative justice body is one of the bodies formed to in a certain way supervise government actions and has the authority to make corrections to irregularities committed by government organs in addition to other oversight organs (Lotulung, 1993) ^[6]. This essence is in line with the main competency of the State Administrative Court as an administrative justice body established for the purpose of resolving administrative disputes between the government and citizens. For this

reason, the Administrative Court functions as a guard over the administration of government which acts to oversee the actions of the government, in carrying out its duties while at the same time providing guarantees for the protection of people's rights.

The implementation of the Administrative Court's function in terms of the supervisory function of the administration of government is carried out together with the judicial function, namely through a Judge's decision which contains the epistemology and axiology of the decision. In addition to carrying out judicial functions, the PTUN also carries out a juridical oversight function, which was stated by Prajudi Atmosudirdjo that the presence of administrative courts is to develop and maintain state administration that is appropriate according to law (*rechtmatic*) or according to law (*wetmatig*) or functionally appropriate (*effective*). and function efficiently. (Priyatmanto Abdoellah, 2016)

In accordance with the duties of a judge in Law 48 of 2009 concerning Judicial Power, a judge's decision can find laws in accordance with existing conditions, carry out legal reforms or create laws, especially to explore AAUPB that arise in government practices. (Share Manan, 2009)

Another obstacle that occurs in the PTUN function is the failure of the State Administrative Court system, due to substantial systematic and procedural failures (Yos Johan Utama, 2007) ^[11] in the sub-systems of the state administrative justice system in order to carry out their functions in order to realize good government:

a. The inability of the case acceptance subsystem is caused by several factors:

1. The ambiguity of the meaning of several terms, to determine which cases fall under the competence of the State Administrative Court.
2. The ambiguity of several definitions of legal terms, as well as measurements that directly affect the mechanism of state administrative justice, include:
 - a. State administration,
 - b. Public interest,
 - c. Emergency,
 - d. Urgent circumstances, and many more legal terms, which do not have a complete explanation.
3. Setting the deadline for filing a lawsuit, is not accommodating to practical needs.
4. The mechanism for delaying disputed TUN decisions is ineffective.
5. Failure to seek a system, which is oriented towards reducing the time and costs of litigation.

b. Inadequate case management subsystem.

The failure of the Administrative Court system in carrying out its case management role is caused by several factors:

1. There is no supporting instrument for the brief justice system, thus causing failure in trying to handle cases quickly or briefly.
2. Injustice in the imposition of sanctions on the parties to the dispute.
3. Absence of a peace mechanism, in resolving disputes between parties.
4. Limiting the value of compensation, compensation, causes the sense of justice from the justice seekers to not be accommodated.

5. The ambiguity of the contents of the decision, resulting in the emergence of problems in the implementation of the decision.
6. Unclear understanding of legal terms, in the case management mechanism
7. Unclear duties of bailiffs.

The results of the author's research on the factors that become obstacles to the implementation of the functions of the State Administrative Court in the context of realizing good government related to the authority of the Neara Administrative Court relating to jurisdiction, including the meaning: State administrative disputes object of the case, subject of the case.

The inhibiting factor for the functioning of the State Administrative Court was the execution of decisions, including obstacles to non-compliance by the government in carrying out adjournments, this was due to the many decisions of the State Administrative Court which were not obeyed and ignored by the authorities in the New Order. Implementation of the decision sometimes also takes a long time.

The executory power of administrative court decisions is questioned by many people about their efficacy, if the decision is not carried out voluntarily by the government, there is a view in organizational theory that each state administrator, including government agencies, perceives the world around them within their own limits and the principle is unwilling controlled from the outside, government actions are mostly controlled by their superior officials, therefore it is necessary to make efforts so that the implementation of control decisions by government agencies can run well.

The state administrative justice system has failed to function as a judicial control to realize good government, the failure to function can be seen from the following factors:

1. There are several principles/principles of State Administrative Law that do not support the implementation system of court decisions, namely:
 - a. Basic principles/principles "dat de rechter niet op de stoel van het bestuur mag gaan zitten" (Judges may not sit in government seats)
 - b. The basic principle/principle of "Rechtmatigheid van bestuur" superiors cannot/have the right to make decisions that become the authority of their subordinates;
2. The State Administrative Court system is very vulnerable, to changes in the constitutional structure, as well as to changes in the relationship between the central and regional governments. So that the effectiveness of the mechanism for implementing the decision system is highly dependent on these changes.
3. Attitudes, understanding, and legal perceptions of state administrative officials, who do not/lack of respect for the existence of state administrative justice, as access to state administrative justice.

A good government will never exist if the legal system in the country is corrupt and authoritarian. The purpose of administering the Indonesian state according to Law no. 28 of 1999 is a good government, so it must be supported by a clean legal system as well. The reality is that our legal system is still tainted by various political interests of the authorities, so that this reality will affect the implementation of the functions of the state administrative justice institutions, moreover a good government free from

corruption, collusion and nepotism is still the hope for the future (*ius constituendum*).

Conclusion

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