



Dualism of legal basis for administrative dispute resolution at the state administrative court

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Abstract

State Administration disputes are the result of conflicts between the government (TUN bodies or officials) and natural persons or legal entities. Therefore, the emergence of administrative disputes is no exception; Rather, it is a matter that must be resolved and resolved in a manner regulated by applicable laws and regulations. The State Administrative Court Law provides a legal source for the resolution of such disputes. The results showed that the Regulatory Position stipulated by Law Number 51 of 2009 concerning PTUN and Law Number 30 of 2014 concerning Government Administration regulates how judges handle state administrative disputes actually have a close relationship.

Keywords: law, administrative court, PTUN

Introduction

If there is a conflict of interest between a person or civil law entity and a certain government (Badan / Dina TUN), the resolution of State Administration disputes can usually be resolved peacefully through deliberation and consensus, but sometimes it develops into a legal dispute that must be resolved in court. Therefore, the emergence of State Administration disputes is not something unusual.

In addition, Law Number 30 of 2014 is more detailed about the concept of KTUN. This results in a new construction of the components of the KTUN that will be the subject of a lawsuit in the PTUN. The government administration decision, also referred to as a State Administrative Decree or State Administration Decree, is a written decision made by government agencies and officials on matters related to the administration of government. This is defined in Article 1 Paragraph (7). The meaning of KTUN will be expanded due to major changes in the making of the Government Administration Law.

Based on Law Number 30 of 2014 concerning Administration, the silence of the Government Agency or State Administration Officer has been changed to Positive Fictitious. This is the legal consequence of their previous silence. According to Article 53 of the Law, the State Administrative Agency or Officer must make a decision or action after a request for law.

Because of the moment due to the Government Administration Law, the administrative law of the country is moving towards a new paradigm. To achieve synchronization and harmonization of laws and regulations in Indonesia, the procedural law of the State Administrative Court must be harmonized. This is very important because the problem of legal development is increasing.

For example, the action of the Public Works Office of a city widening a highway that turned out to be done in an unprofessional way (the time for months was not done and resulted in a dangerous roadside hole that harmed residents whose homes were on the edge of the highway and road users in general, so that based on the Government Administration Law, the government's action was the object of a State Administration dispute based on the definition of

KTUN in Article 87 letter (a) of the Government Administration Law, then for other examples that can be categorized as actions are concrete actions in the administration of government by agencies or officials of the X Provincial Mining Service which are manifestly temporarily suspended from mining based on their government coercion. Or the action of the Civil Service Unit that regulates street vendors, which example has fulfilled the elements of Article 1 number 8 of the Government Administration Law So that the existence of two rules governing disputes in the State Business Court will cause new problems, such as the occurrence of legal disharmonization

Research methods

This research is a type of normative legal research centered on library materials or secondary data. There are three approaches used by researchers: the statutory approach, the conceptual approach, and the analytical approach

Results and discussion

The position of law number 51 of 2009 concerning PTUN to law number 30 of 2014 concerning government administration as a guideline for judges to examine state administrative disputes

State Administrative Court (PTUN) Regulations Number 5 of 1986, Number 9 of 2004, and Number 51 of 2009 Although the two laws are different, they apply to all administrative disputes, including administrative disputes. In this case, the provisions contained in Law Number 30 of 2014 concerning Government Administration still apply and apply to government administration disputes. However, this Act includes more specific provisions on government administration disputes, making it the primary reference for the resolution of government administration disputes. The PTUN court still has the authority to handle state administrative disputes, including government administration disputes. However, the provisions contained in the Government Administration Law Number 30 of 2014 must be considered when deciding government administration disputes. Therefore, when government

administration disputes are resolved, both laws are still valid and relevant. To protect citizens who feel aggrieved by the decisions or actions of state institutions, such as the government. Law Number 51 of 2009 concerning PTUN establishes PTUN and establishes its duties as a special court authorized to examine and decide government administration disputes, while Government Administration Legislation Number 30 of 2014 regulates good and transparent governance and governance^[1]

To maintain a good and transparent governance structure in Indonesia, the two laws are interrelated. Meanwhile, according to Law Number 30 of 2014, the way the government manages and organizes government well, so as not to cause administrative disputes that must be resolved through PTUN, PTUN is a special court that has the authority to resolve government administrative disputes between the government and legal entities or citizens.

As a result, the two laws complement each other to maintain and strengthen effective and transparent administration in Indonesia. Therefore, it is very important to understand the legal position to ensure legal security and protect the rights of the people in government administration. PTUN is a judicial institution responsible for the settlement of government administrative disputes between the government and citizens, between governments and government agencies, and other disputes related to state administration. In this case, the role of PTUN is very important to ensure legal certainty and to protect citizens' rights to government administration^[2].

Therefore, PTUN Law Number 51 of 2009 and Government Administration Number 30 of 2014 must be legally applied. It is very important to ensure legal stability and protection of the rights of citizens in the administration of government. Since the two laws complement each other in the settlement of governmental administrative disputes, effective implementation of both is essential.

In addition, PTUN has the authority to determine whether government actions in the government, in accordance with applicable regulations or not, as well as to order the government to do so. PTUN can also make binding decisions for parties involved in public administration disputes.

For example, in deciding cases of state administrative disputes related to government policies in terms of licensing, the PTUN judge will consider whether the issuance of the permit has fulfilled the requirements stipulated in the applicable laws and regulations, whether the licensing process is in accordance with established procedures, and whether the policy has paid attention to benefits for the community and the state. In deciding cases, PTUN judges must also consider the public interests and personal interests of the parties, and avoid discrimination or unfair treatment. In addition, PTUN judges must ensure that their decisions do not violate applicable legal principles, including the principles of legal certainty, proportionality, and equality before the law. In making decisions, PTUN judges can also refer to similar court decisions and have permanent legal force.

Legal certainty for justice seekers with dualism guidelines in resolving administrative disputes

The paradox of regulation on TUN disputes can create legal uncertainty for justice seekers. As explained earlier, there are regulatory differences between Government

Administration Law Number 30 of 2014 and PTUN Law Number 51 of 2009, which causes legal uncertainty. For example, Law Number 30 of 2014 requires settlement efforts through mediation mechanisms or other settlement efforts before submitting objections or lawsuits to the PTUN, while Law Number 51 of 2009 does not. In addition, the jurisdiction of PTUN is different. According to law number 51 of 2009, PTUN has the authority to resolve disputes resulting from decisions or administrative actions carried out by officials or state administrative institutions. In addition, Law Number 30 of 2014 stipulates that PTUN has the authority to resolve conflicts stemming from administrative law acts. Justice seekers can be confused when determining the TUN dispute resolution procedure due to these different arrangements^[3].

In addition, this can also raise the potential for the same objection or lawsuit to be submitted to two different dispute resolution institutions, namely to the state administration mechanism or to the PTUN. To avoid legal uncertainty, coordination between the parties involved is needed, namely the government, PTUN, and state administration institutions.

To ensure that the two laws are implemented in line and do not contradict, the government must cooperate with the State Administrative Court and state administration agencies. In addition, justice seekers must consider the provisions contained in the two laws to determine the TUN dispute resolution mechanism that is appropriate to the case at hand. First of all, legal certainty is a fundamental and important legal principle in any legal system. This is because legal certainty provides confidence and stability for the community in carrying out daily life, especially in terms of resolving legal disputes. However, with the dualism of arrangements regarding TUN disputes, between Government Administration Law Number 30 of 2014 and PTUN Law Number 51 of 2009, which can cause legal uncertainty for justice seekers. This is because justice seekers may be confused about which law to use to decide the dispute, as well as the procedures of the state administrative dispute court. In addition, this dualism of arrangements can cause differences in interpretation and interpretation of law between courts that apply Law Number 30 of 2014 and courts that apply Law Number 51 of 2009^[4].

This can lead to greater legal uncertainty and may even lead to injustice in the litigation of state administrative disputes. To overcome this legal uncertainty, coordination and synergy between the parties involved are needed, including judges and legal practitioners, to ensure that disputes will be decided under the appropriate law and in accordance with applicable legal principles. In addition, it is also necessary to make efforts to integrate the two arrangements into a unity that does not contradict each other, but supports each other. In terms of dualism of arrangements regarding TUN disputes, legal certainty for justice seekers can be disturbed because it can cause confusion about the applicable law in resolving the dispute. This can hinder the TUN dispute resolution process and can raise doubts and distrust of the judicial system. However, attempts have been made to overcome such regulatory dualism. One of them is by integrating the two laws through the Constitutional Court decision Number 46/PUU-VIII/2010. In the ruling, the Constitutional Court stated that the two laws could be used jointly to resolve TUN disputes. In addition, the Constitutional Court also stressed the importance of a consistent and coherent interpretation of the two laws^[5].

In addition, the government has also made efforts to overcome regulatory dualism by formulating a draft regulation on the State Administrative Court. This draft aims to integrate the rules on TUN and government administration into one comprehensive regulation. Thus, despite the dualism of arrangements regarding TUN disputes, efforts have been made to address the issue and provide legal certainty for justice seekers. However, further efforts are needed to ensure that the two laws are implemented consistently and coherently in resolving TUN disputes. Legal certainty in a legal system is very important because it provides security and justice to the community. However, there is a dualism of dispute arrangements between Law Number 51 of 2009 concerning PTUN and Law Number 30 of 2014 concerning Government Administration, which can create legal uncertainty for justice seekers. Therefore, efforts are needed to resolve this dualism. One way this can be done is to create a new law that combines the two laws to ensure that they are aligned with each other, or to review the two laws to ensure that they are aligned with each other. To prevent the public from being confused, the government and relevant institutions can also inform people about the appropriate legal path to resolve the dispute^[6].

Legal uncertainty for justice seekers is caused by differences in regulations on the settlement of state administrative disputes (TUN) in Indonesia. This regulation consists of Law Number 30 of 2014 concerning Government Administration and Law Number 51 of 2009 concerning Settlement of State Administrative Disputes. For example, if a dispute occurs in an administrative court, which is regulated in Law Number 30 of 2014, or in a State Administrative Court (PTUN), which is regulated in Law Number 51 of 2009, it must be chosen by the community. Undoubtedly, this raises doubts and does not provide legal security to communities wishing to resolve TUN disputes. In addition, the dualism of this system causes differences in decisions between the PTUN and administrative judicial bodies such as the Supreme Court and PTUN. This also creates legal uncertainty and can complicate the TUN dispute resolution process. Therefore, efforts are needed to overcome the dualism of these arrangements, for example by consolidating between the two laws or by establishing clearer and firmer rules in determining the settlement of TUN disputes. Thus, the community can obtain legal certainty and facilitate their access to seek justice in resolving TUN disputes^[7].

Legal certainty is a basic principle in the legal system that aims to create certainty and consistency in the application of law. However, in the case of dualism of arrangements on state administrative disputes (TUN), this can threaten legal certainty for justice seekers. Therefore, it is important to have a clear and consistent regulatory system regarding TUN disputes. This will help create legal certainty for justice seekers and encourage efficiency in resolving TUN disputes. Efforts to integrate laws on government administration and PTUN can help overcome regulatory dualism and create greater legal certainty for justice seekers^[9].

Regulatory dualism in the settlement of state administrative disputes can create legal uncertainty for justice seekers. This is because there is a lack of clarity regarding the types of cases that must be resolved using the PTUN Law or the Government Administration Law, as well as the possibility

of different interpretations between the two laws. For example, in a case of a state administrative dispute, there is a possibility that both parties to the dispute will file a lawsuit in different courts, namely PTUN or general court. If one party files a lawsuit to the general court on the grounds that the case does not fall within the realm of the PTUN, while the other party files a lawsuit to the PTUN, then there is a dualism of arrangements in resolving the dispute. As a result, this can lead to confusion among justice seekers as to which court should decide the dispute. In addition, there is also a risk of differences in decisions between the general court and the PTUN in resolving similar cases. This can create legal uncertainty and harm the disputing parties. Therefore, efforts are needed to resolve regulatory dualism in the settlement of state administrative disputes. One solution that can be done is to simplify regulations and clarify the scope of the two laws so that there is no overlap or even contradiction in their application. In addition, coordination can be carried out between the general court and the PTUN so that there is an understanding of the types of cases that fall within the realm of each court^[10]

Meanwhile, Law Number 30 of 2014 concerning Government Administration regulates the procedures for administering good and correct government administration. The law also emphasizes the importance of protecting human rights and the rights of citizens in exercising their rights and obligations before the government. In this case, PTUN judges can consider this law as a reference in resolving TUN disputes related to government administration. Therefore, PTUN judges can use these two laws as a legal basis in resolving TUN disputes. In this case, PTUN judges not only consider the technical and legal aspects that apply, but also pay attention to aspects of justice, expediency, and humanity. Both laws can be used by judges to resolve administrative disputes, depending on the nature and type of dispute at hand.

Conclusion

Actually, there is a relationship between Government Administration Law Number 30 of 2014 and Law Number 51 of 2009 concerning PTUN, which is intended to realize good and correct governance and reduce the number of state administrative disputes.

Thus, PTUN Law Number 51 of 2009 and Government Administration Number 30 of 2014 are closely related to the achievement of good and correct governance and fair and effective settlement of state administrative disputes. Prior to Law Number 5 of 1986 concerning PTUN and Law Number 30 of 2014 concerning Government Administration, there were two different guidelines for the resolution of administrative disputes

The existence of differences of opinion and interpretation between the two laws can cause legal uncertainty, which can lead to uncertainty in the process of resolving state administrative disputes. In addition, the existence of dualism of guidelines can also create difficulties for judges in deciding administrative disputes, because they have to consider both laws. However, despite the dualism of guidelines in the resolution of administrative disputes, there is still potential to deal with disputes. Thus, justice seekers may feel legally unsure because of the standard dualism in the resolution of administrative disputes. However, the principle of legal certainty must be applied by judges when

deciding disputes fairly and objectively. Therefore, efforts need to be made to integrate the two laws so that there is no legal uncertainty when resolving state administrative disputes.

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