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Administrative Appeal Efforts in Indonesian Administrative Dispute Resolution After the Government Administration Law (Pre-Omnibus Law)

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Abstrak

Upaya administrasi merupakan upaya penyelesaian sengketa di Pengadilan Tata Usaha Negara Indonesia. Upaya administratif ini berubah setelah Omnibus Law diperkenalkan. Namun, Omnibus Law sendiri nantinya akan diubah karena ada tuntutan adanya putusan MK. Oleh karena itu, upaya administratif berpotensi untuk berubah kembali seperti sebelum adanya Omnibus Law. Penelitian ini bertujuan untuk mengetahui kompetensi perubahan yang ada dalam upaya administrasi. Metode penelitian ini dilakukan dengan menggunakan pendekatan normatif yang didasarkan pada penelusuran bahan pustaka atau data sekunder. Hasil yang ingin dicapai dalam penelitian ini adalah memberikan resep bahwa Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan memiliki proses prosedural tersendiri, meskipun Undang-undang ini bersifat sektoral.

Kata Kunci: Upaya Administrasi; Proses Prosedural; Pengadilan Tata Usaha Negara

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Abstract

Administrative effort is an effort to resolve disputes in the Indonesian State Administrative Court. This administrative effort changed after the Omnibus Law was introduced. However, the Omnibus Law itself will be changed in the future because there is a demand for a constitutional court decision. Therefore, administrative efforts have the potential to change back to what it was before the Omnibus Law. This study aims to determine the competence of existing changes in administrative efforts. This research method is carried out using a normative approach that is based on browsing library materials or secondary data. The result to achieved in this research is to give a prescription that Law Number 30 of 2014 concerning Government Administration has its own procedural process, even though this Law is sectoral.

Ahmad Dahlan
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Introduction

The State Administrative Court is one of the judicial powers recognized in the 1945 Constitution. Just like other judicial powers, the main function and purpose of the establishment of this court is to administer justice to uphold law and justice.

Basically, the legal umbrella for PTUN's procedural law is Law Number 5 of 1986. This law has been in effect for 28 years. However, there are many criticisms of this law. One of the criticisms of the a quo law is that it makes society an object and seems to be treated arbitrarily. Moreover, coupled with the existence of negative fictitious principles in this law. Therefore, in 2014 Law Number 30 of 2014 was issued as a solution and legal reform to the Administrative Court Law. This also has implications for the appeal process in administrative efforts.

Law Number 30 of 2014 concerning Government Administration (UUPA) has its own procedural process, although this law is sectoral. Therefore, the principle of *lex specialis derogat legi generale* applies in this law. Implicitly, it can be said that the Government Administration Act is a legal umbrella and takes over the position of the Administrative Court Law in several respects.

After the government administration law, there was a paradigm shift in the PTUN proceedings. This can be observed in the government administration law which does not regulate administrative efforts. The implication of this is that the determination of administrative measures in the a quo law is determined by the judge (Sugiharto & Abrianto, 2018) .Therefore, the mechanism for Settlement of Disputes by Appeal in the context of the Government Administration Law is different from Law Number 5 of 1986.

Administrative actions in Law Number 30 of 2014 are mandatory and apply to all state administrative disputes. This means that the TUN dispute resolution must first be pursued through an administrative effort body consisting of administrative objections and appeals. After all administrative efforts have been exhausted but there is no settlement, then a lawsuit can be filed in court (Sumakul & Paransi, 2021).

In this case, the court is positioned as a last resort or Ultimum Remedium for the settlement of TUN disputes. That is, the law wants to encourage every state administrative dispute to be resolved as far as possible through administrative efforts. If all administrative efforts have been completed but there is still no resolution, then the dispute can be submitted to the State Administrative Court for examination and decision. Construction in the settlement of state administrative disputes is considered to be better and more in line with the principles of state administrative law where the first settlement of every state administrative dispute must be carried out first within the (internal) government itself. After the government's internal settlement efforts (administrative efforts) are made but fail, a lawsuit can be filed with the Administrative Court (Arzhi Jiwantara, 2019).

The flow of State Administrative Dispute Settlement itself is pursued in two ways, namely through the judiciary and through administrative efforts, where appeals and administrative objections can be made. This paper will discuss the form and process of resolving state administrative disputes according to Law Number 05 of 1986 concerning State Administrative Courts as amended by Law Number 9 of 2004 concerning Amendments to Law Number 09 of 2004 concerning Amendments to Law No. Law Number 05 of 1986 concerning the State Administrative Court and Law Number 51 of 2009 concerning the Second Amendment to Law Number 05 of 1986 concerning the State Administrative Court. By knowing the process of resolving state administrative disputes.

Juridically, now the judicial process has changed after the creation of the job creation law (Omnibus Law). However, after the Constitutional Court Decision Number 91/PUU-XVIII/2020, the changes brought by the Omnibus Law will be lost because the Job Creation Law will be revoked in the next 2 years (Constitutional conditional) unless the legislator fixes the job creation law according to the demands made in the Constitutional Court Decision Number 91/PUU-XVIII/2020. This makes the discussion related to the previous administrative law (Pre-Omnibus Law) relevant to be discussed, regarding its weaknesses and strengths From the description stated above. Based on those problems, the problem can be formulated as follows:

What is the Competence or Authority of the State Administrative Court based on the Government Administration Law? What is the flow of dispute resolution through administrative appeals to the Government Administration Law? and hows strengths and weaknesses of the dispute resolution process through administrative appeals in indonesia?

Methods

The research method used in conducting this study is a normative legal approach which uses sources for searching library materials or secondary information. The secondary information in this case includes:

1 Primary legal materials

This material comes from certain binding and official authorities or authorities such as statutory regulations and decisions of judicial institutions and decisions of other judicial bodies (Triartha Yuliani, 2020).

2 Secondary legal material

Material is a description of primary legal materials such as the results of research or scientific journals (Arniti et al., 2019).

3 Tertiary legal materials

materials that provide instructions or explanations for primary and secondary legal materials, such as dictionaries, encyclopedias, and so on.

The mechanism of this research is to collect all legal materials and then synthesize these materials to find out what is being sought or researched.

Result anda Discussion

Competence/Authority of the State Administrative Court after UU AP

The PTUN's authority is according to Law Number 30 of 2014 or commonly referred to as UUAP, which is an extension of the Administrative Court Law or Law number 51 of 2009. However, it cannot be denied that the realm of state administrative law is different from other public laws and cannot be denied. All public laws can be tried in the State Administrative Court (Jaelani, 2017).

The objects of administrative judicial dispute after the UUAP are State Administrative Decisions (KTUN) and government administrative actions. The government administration action here is an expansion of the authority given to PTUN attributively by UUAP. In addition, the meaning of post-UUAP KTUN is also expanded.This can be seen in the provisions of Article 87 of Law No. 30 of 2014. The meaning of State Administrative decisions is expanded and becomes:

a) A written determination which also includes factual actions;
b) Decisions of State Administration Bodies and/or Officials in the executive, legislative, judicial, and other state administrators;
c) Based on statutory provisions & Good Governance Principles;
d) It is final in a broader sense;
e) Decisions that have the potential to result in legal consequences; and/or
f) Decisions that apply to Citizens.

If viewed from the Administrative Court Law, it clearly has a narrower competence (Pre-UUAP). This is stated in Article 1 paragraph 9 that the nature of state administrative decisions is:

a) Written determination;
b) State Administration Agency or Official;
c) State administrative legal action;
d) based on the applicable laws and regulations;
e) Concrete;
f) Individual;
g) Final; and
h) Has Legal consequences for a person or civil legal entity.

UUAP removes the elements of "concrete and individual" in the sense of its decision. The juridical consequence of this is that State Administrative Decisions (KTUN) in that sense can also be abstract/general in nature. This is reinforced by the expansion of the meaning of KTUN that applies to the community. In addition, the written nature in the sense of KTUN must also be interpreted as including factual actions (*feitelijke handelingen*) in contrast to the State Administrative Court Law which only defines KTUN as Legal Actions (*Rechtshandelingen*) (Wicaksono et al., 2020).

By definition, Factual Actions are concrete or physical actions taken by the Government. This action is not only limited to active action, but also passive action (The Milky Way, nd). In simple terms, Active Action is government action that actually exists and is visible. Passive Action is the omission of something by the authority for which it is responsible. Therefore, government actions (in a broad sense), both active and passive, can become objects of dispute and include state administrative decisions (KTUN)(Riza, 2019).

In addition, the meaning of "Final" in the KTUN in the UUAP is also widely interpreted. Final meaning according to the description in article 87, including decisions taken by the competent superior. It is different from the KTUN in the Administrative Court Law which defines Final in a narrow sense. According to the author, this is because in Article 2 letter c of Law no. 9 of 2004 explains that the KTUN in the Administrative Court Law cannot be sued if it still requires approval. Therefore, the KTUN which is taken over by the superior of the competent authority is also included in the phrase “final” in UUAP.

In the Administrative Court Law, the State Administration Agency or Official is the Agency or Official that carries out government affairs according to the applicable laws and regulations. By definition, the government referred to in the definition does not refer to a more narrow definition of government. This is clearly seen in the book of State Administration by Siti Soetami which explains about State Administrative Court Officials which contains the following meanings:

a) Official government agency (executive)
b) Agencies within the state power environment (outside the executive)
c) Private legal institutions that carry out government duties.
d) Legal entities that are collaborating both between the government and the private sector are both carrying out government duties.

Therefore, government decisions from the legislature must be implicitly included in the definition. However, in practice, the pre-UAP definition of State Administration Agency/Official is used for government agencies/officials in a narrower sense. Therefore, in the UUAP there is an explicit expansion of understanding and emphasis in the sense that the TUN Agency/Official includes the executive, legislative, judicial, and other state administrators.

Judging from article 87 of the UUAP, the Petitioner can also file a lawsuit against the Administrative Court Decision which has the potential to cause harm. The juridical consequence of this is that there is no need for material losses to befall the applicant. This is different from the State Administrative Court Law which requires legal consequences as a condition for disputed administrative decisions. Therefore, the Petitioner is obliged to prove that the decision is clearly detrimental and not just a probability. It can be seen

that the use of the phrase "potentially" in Article 87 of the UUAP allows the applicant to prevent future losses due to KTUN.

In addition to broadening the meaning of KTUN, UUAP also gives more authority to the courts of first instance to adjudicate lawsuits before and after Administrative Efforts (Article 75 paragraph (1) of the AP Law and Article 76 paragraph 3 of the AP Law)(Heriyanto, 2018).

This law also explains the definition of administrative effort clearly, this is different from the Administrative Court Law which does not provide a clear definition of administrative effort. This understanding is contained in Article 1 paragraph 16, which reads that Administrative Efforts are the process of resolving concurrency or disputes carried out within the Government environment as a result of the issuance of adverse decisions and/or actions.

In addition to providing clarity on definitive administrative actions, providing a clear definition also separates legal and administrative measures. If this is not done as in the Law on State Administrative Courts, then there is a definite ambiguity in the use of the term and the application between legal remedies and administrative remedies in court proceedings. This of course will also provide legal uncertainty (Legal Uncertainty) and weaken the existence and dignity of the law itself.

Procedurally, the administrative efforts in the UUAP are divided into 2, namely:

a) Appeal

   Settlement of State Administrative concurrency or dispute which is carried out by the State Administration Agency/Official who issues the State Administrative Decree (KTUN).

b) Objection

   Settlement of State Administrative disputes carried out by superior agencies or other agencies of the State Administration Administration/State Administration who issued the State Administrative Decree (KTUN), which is authorized to re-investigate the disputed State Administrative Decree (KTUN).

This differentiation is still the same as in the Administrative Court Law. However, in the Administrative Court Law, the administrative appeal procedure or objection procedure is carried out a complete assessment, both in terms of law application and in terms of policy by the agency that decides (Hasanah, 2016).

Flow Of Dispute Resolution Through Administrative Appeals To The Government Administration Law

As stated in the explanation of the Government Administrative Law (UUAP), it is a procedure set out in a law to resolve state administration disputes that are carried out within the government area (not by an independent judicial body), one of which is the administrative appeal procedure (Soemarjono & Erliyana, 1999, p. 8).

In practice, administrative procedures are sometimes not easy to find in the daily regulations that we read (for example administrative efforts against Building permits decisions), because the basic regulations are still sourced from and contained in the regulations of the Dutch colonial era, while the regional regulations which we read and consider as advanced rules are not mentioned at all. Therefore, from the State Administrative (TUN) judges, it is expected that accuracy and thoroughness in tracing the basic rules of each disputed state administration decision.

Procedures or procedures with administrative appeals in the explanation include, among others, procedures for resolving disputes in the State Administrative Court (PTUN) through the Tax Advisory Council, the Central Labor Dispute Settlement Committee (P4P). While the example regarding the objection procedure is called the procedure of Article 25 of Law Number 6 of 1983 concerning General Provisions of Taxation. Furthermore, in the explanation of the Law, it is explained that the main difference between state administrative procedures and the resolution of concurrency or State Administrative disputes through the Court is in the administrative efforts by the dispute settlement agency, a complete assessment of the disputed dispute. state administrative decisions are made.

The procedure with administrative appeals at the TUN court in examining and deciding on TUN disputes, only examines the disputed TUN decisions from a legal point of view and this legal test is carried out by testing the disputed TUN decision by assessing whether the TUN decision is not violating a statutory provision in force in (paragraph 1a); Violating the prohibition of Abuse of power or principles *de'tournement de pouvoir* (paragraph 2b), It is a legal action that violates the *willekeur* prohibition / Unlawful Act (paragraph 2c), Violating one of the principles of Good Governance (AAUPB) (Tobrani, 2018).

Regarding the basis for this last assessment, it is not regulated in law, but it seems that all parties have begun to base it that every legal action of the government must not violate the AAUPB principle. In Article 122 of the Administrative Court Law it is explained that the PTUN can be requested for an appeal examination by the plaintiff or defendant to the State Administrative High Court (PTTUN). This article provides equal justice to the litigants and if the appeal is only given to one of the parties, then it is quite clear that the defeated party is the party who was not given the opportunity to file legal remedies and it is very possible that the decision of the state administrative court has not been accepted.

In Article 125 paragraph (1) of the State Administrative Court Law (PTUN) it is stated that the submission of an administrative appeal has a grace period of 14 days after the court's decision is legally notified to him. After that an application for an administrative appeal filed by the applicant or his/her authorized legal adviser to the Administrative Court that renders the decision. Thus, if the grace period expires and the aggrieved party does not file a legal right in the form of an appeal, then the said party has accepted the PTUN decision.

According to Sudikno Mertokusumo, at the appellate level, it is not permissible to grant more than what is demanded, meaning that the chief judge at the appellate level must leave the decision at the first judicial level as long as it is not disputed at the appeal level / *tantum devolutum quantum applelatum* (Mertokusumo, 1985, p. 196).

However, it should be stated that not all PTUN decisions can be appealed against PTUN decisions that cannot be appealed, such as the following:

a) The stipulation of the Chairman of the TUN Court regarding the submission of an application for litigation is based on Article 61 paragraph (2) that the decision made at the first and final levels cannot yet allow for an administrative appeal, specifically if the application is not accepted.
b) The dismissal decision from the Chairman of the State Administrative Court based on Article 62 paragraph (3) letter a of the Administrative Court Law, that an appeal cannot be filed, the legal remedy that can be applied is resistance.
c) The decision of the Administrative Court regarding the objection requested by the plaintiff for dismissal based on Article 62 paragraph (6) of the Administrative Court Law cannot be appealed.

d) The Court's decision regarding a lawsuit against a third party prior to the implementation of a decision that is legally binding is based on Article 118 paragraph (2) and Articles 62 and 63 also apply, so that in that decision there is no administrative appeal.
e) The decision of the PTUN, the high court of first instance, could not be disputed and an appeal was requested.

Strengths And Weaknesses Of The Dispute Resolution Process Through Administrative Appeals In Indonesia

In Article 1 number 10 of Law No. 51 of 2019, it is explained that state administrative disputes are concurrency or disputes that arise in the field of state administration involving persons/individuals or civil legal entities with TUN bodies/officials, both at the central government as well as in the regions as the issuance of KTUN, including staffing issues in accordance with applicable laws and regulations (Jannah, 2021).

In resolving disputes resulting from the issuance of the KTUN, it can be done using 2 (two) possibilities, first through the State Administrative Court or the Administrative Court (Koraag et al., 2021). The second possibility could be through an administrative appeal mechanism. In the administrative appeal procedure, it can be carried out by a higher agency or other agency from the State Administration Agency/Officer that issues the KTUN which is authorized to re-examine the disputed KTUN.

Referring to Article 48 of Law no. 5 of 1986, it is explained that administrative efforts are a method that can be used by individuals/civil law entities to file a lawsuit if they are not satisfied with the KTUN. There are 2 (two) litigation routes at the State Administrative Court. The first line, if the decision of the State Administration does not recognize the existence of an administrative effort, the lawsuit can be submitted to the State Administrative Court as a court of first instance. Meanwhile, in the second line, for the KTUN which acknowledges the existence of an administrative effort, the lawsuit can be directly submitted to the State Administrative Court.

Administrative appeal is the settlement of concurrency or state administrative disputes that are administratively carried out by superior agencies or other agencies from issuing relevant decisions (Rumokoy, 2012).

In the TUN Procedural Law, there are 2 (two) institutions or agencies that have the authority to handle and carry out administrative appeals, including:

a) Institution or agency superior to the official issuing the state administrative decision (KTUN); and
b) Other institutions authorized to handle it.

In the agency/institution, superiors show a hierarchical relationship, both structurally and in coordination. Meanwhile, other agencies do not show a hierarchical relationship between the makers of State Administrative Decisions (KTUN) and these other agencies (Pandeiroot et al., 2021).

The presence of Law Number 30 of 2014 concerning Government Administration (hereinafter abbreviated as UUAP) is a material law in the state administrative justice system. As well as providing significant changes in material law and formal law in proceedings at the State Administrative Court. These changes include, among others, revitalizing the meaning of state administrative decisions, testing for abuse of authority that relates to criminal law, opening up opportunities for testing acts against government law, including the birth of a new paradigm of Administrative Efforts whose initial concept has been regulated in the State Administrative Court Law.

In the settlement through the trial, of course, has advantages and disadvantages. Administrative appeals are no exception.

The advantages in resolving disputes through administrative appeals in Indonesia are as follows.

a) In this administrative appeal, an assessment of administrative efforts is carried out in full on state administrative decisions (KTUN), both in terms of Legality and Opportunity.
b) The decision conveyed to the parties is not a win or loss decision like in a judicial institution.
c) In resolving disputes, using an approach by means of deliberation. So it's a joint decision, not unilateral.
d) The trial was carried out in a simple and fast way, not as formal as in the Administrative Court.
e) There is no need to pay fees or court fees.
f) In the process of submitting an Administrative Appeal, it is not bound by procedural or procedures like in the Administrative Court.
g) The result of the decision obtained from the administrative appeal, in accordance with what was requested by the applicant.

h) The settlement is carried out internally, which is related to the institution.
i) No need to be represented by another person, such as a lawyer.
j) In addition, it can be directly executed.

If there is an advantage, there must be a weakness in it. Weaknesses of dispute resolution through administrative appeals in Indonesia.

a) At the level of objectivity of the assessment, the TUN agency/official that issues the Decision Letter is sometimes related to direct or indirect interests, thereby reducing the maximum rating or assessment that should be taken.
b) In the administrative appeal process, there is no rule that regulates the expiration time regarding the assessment or trial.

In this process, there is an opportunity to ignore a report or administrative appeal from someone (Safitri & Sa, 2021).

Conclusion

First, Based on the description above, it can be concluded that after the AP Law, the administrative court's authority has expanded. This is indicated by the existence of Article 87 of the AP Law which expands the interpretation of the KTUN and authorizes the court to decide, examine the positive fictitious decision formally, but for administrative effort procedures, both administrative appeals and administrative objections are basically the same.

Second, The flow of appeals basically starts from making administrative efforts (Article 77 of the AP Law) against a KTUN, both legal actions (*Rechttilijk Handelingen*) and factual actions (*Feitilijk Handelingen*) through an objection procedure then if not satisfied with the decision, there is an administrative appeal procedure. At this point, if a satisfactory decision is obtained, the comparison can be executed. However, if you do not get a satisfactory decision, you can go to the next stage, namely a lawsuit (litigation).

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