IMPLEMENTATION OF ADMINISTRATIVE MEASURES IN STATE ADMINISTRATIVE (TUN) DISPUTES

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ABSTRACT

The implementation of Regulation of the Supreme Court of the Republic of Indonesia (PERMA) Number 6 of 2018, dated 4 December 2018 concerning Guidelines for Settlement of Government Administrative Disputes after taking administrative measures, which is a further regulation of the provisions in Articles 75, 76 and Article 77 of Law Number 30 of 2014 concerning Government Administration, bringing about changes in the state administrative justice system in Indonesia, namely relating to administrative efforts. This then raises issues regarding first, whether administrative measures are an obligation that must be taken first before filing a state administrative dispute lawsuit with the PTUN; and secondly, what are the legal procedures for making objections to State Civil Service (ASN) employment disputes; and thirdly what are the legal consequences of non-implementation of administrative efforts by the Plaintiff. The aim of this research is to analyze and describe the application of administrative efforts to state administration disputes. Normative juridical research methods are used to answer this problem. The results of the research show that administrative efforts must be carried out as legal protection for the people in State administrative disputes, and the legal procedure for making objections to ASN disputes is regulated in Article 129 of Law Number 5 of 2014 concerning State Civil Apparatus, and the Judge will reject the Plaintiff if not. take available administrative measures.

Keywords: Implementation, Administrative Efforts, State Administrative Disputes

INTRODUCTION

State Administrative Disputes are disputes that arise in the field of State Administration between individuals or civil legal entities and State Administrative Bodies or Officials, both at the central and regional levels (Susrama, & Sukma, 2019). Legal protection for the resolution of problems related to state administrative disputes as a result of the issuance of state administrative decisions (beschikking) according to FH van der Burg can be achieved through two possibilities, first through state administrative courts/administrative justice (administratief rechtspraak) and secondly through administrative appeals (administratief beroep) (Burg, 1985). Indonesia as a state of law (Nuna et al, 2020) is based on the philosophy of the Pancasila State, Philipus M. Hadjon formulated the elements or elements of the Pancasila rule of law as follows: 1. harmony of relations between the government and the people based on the principle of harmony; 2. proportional functional relationship between state powers; 3. the principle of deliberative and judicial dispute resolution is the last means; 4. balance between rights and obligations.

It is hoped that the existence of a balance between rights and obligations in the Indonesian Legal State will give birth to the principle of harmony. The principle of harmony will create harmonious relations between the government and the people. In the Pancasila legal state, the main principle put forward in resolving disputes between the government and the people is the principle of resolving disputes through deliberation, including through administrative means, so that it is hoped that harmony and harmony can be restored in the relationship between the government and the people. If through administrative measures, the people are not satisfied with the decisions of these administrative measures, then the final means and effort to resolve the dispute between the people and the government is through the State Administrative Court.

In accordance with the provisions of Article 48 of Law Number 5 of 1986 concerning State Administrative Courts which states that not every Administrative DecisionThe state (beschikking) as the object of a State Administration dispute can be directly sued through the State Administrative Court, because if administrative measures are available, then the state administration dispute must first be resolved through administrative measures before being resolved through the State Administrative Court. The State Administrative Court is a court that has the authority to examine, adjudicate and decide state administrative disputes. The Elucidation to Article 48 of Law Number 5 of 1986 concerning State Administrative Courts states that administrative measures are a procedure that can be taken by a person or civil legal entity if they are not satisfied with a State Administrative Decision. This procedure is carried out within the government itself and consists of two forms, namely Administrative Objection and Appeal.

In this case, the settlement must be carried out by a superior agency or another agency from the one that issued the decision in question, where the procedure is called "administrative appeal". Prior to confirmation by the issuance of Regulation of the Supreme Court of the Republic of Indonesia (PERMA) Number 6 of 2018, dated 4 December 2018 Regarding Guidelines for Resolving Government Administrative Disputes After Taking Administrative Efforts, previously there were two routes or two streams of litigation in the State Administrative Court. For State Administrative Decisions which did not recognize administrative efforts, lawsuits were addressed to the State Administrative Court as the court of first instance, whereas for State Administrative Decisions which recognize the existence of administrative measures, the lawsuit is directly addressed to the State Administrative High Court (Hadjon, 2002), then the State Administrative Court and its procedural law as contained in Law Number 5 of 1986 (and its amendments), at that time). is currently facing a number of dynamics in its implementation in connection with the enactment of Law Number 30 of 2014 concerning Government Administration. The presence of Law Number 30 of 2014 concerning Government Administration (hereinafter abbreviated as UUAP) is material law in the state administrative justice system (Wahyunadi, 2016). And provide quite significant changes in material law and formal law in the procedural process at the State Administrative Court. These changes include, among other things, the revitalization of the meaning of state administrative decisions, the existence of testing regarding abuse of authority which is tangential to criminal law, the

opening of opportunities for testing of acts against government law (onrechtmatigeoverheisdad), including the birth of a new paradigm for Administrative Efforts whose initial concept has been regulated in the Regulations Law. . In Law Number 5 of 1986, administrative measures only apply to certain State Administration (TUN) disputes for which administrative measures are provided for by statutory regulations. Meanwhile, apart from that, namely State Administrative Disputes (TUN) for which administrative measures are not available, can be directly submitted to the State Administrative Court (PTUN).

The advantages and disadvantages of Dispute Resolution through Administrative Appeals in Indonesia are; (1) A complete assessment of administrative efforts is carried out on a State Administrative Decision both in terms of Legality (Rechtmatigheid) and the aspect of Opportunity (Doelmatigheid) (2) The parties are not faced with the result of a decision of winning or losing (Winor Loose) as is the case in judicial institutions ; (3) The dispute resolution approach is carried out through deliberation; (4) Simple and fast trials without formalities like in the PTUN; (5) No need to pay court fees; (6) Completed internally at the relevant institution; (7) Submission of administrative appeals is not bound by procedural procedures such as those in the PTUN; (8) No need for a lawyer; (9) The decision is according to the applicant's wishes; (10) Can be executed immediately (strong executorial). Weaknesses of Dispute Resolution through Administrative Appeals are; (1) At the level of objectivity of assessment because the State Administration Agency/Official that issues the Decree is sometimes related to their interests directly or indirectly thereby reducing the maximum assessment that should be taken; (2) There are no definite rules, especially when the assessment or trial expires; (3) There is a chance of ignoring someone's administrative report or appeal (Khair, 2016).

Administrative Appeal, namely the completion of administrative efforts carried out by a superior agency or agency other than the one that issued the decision in question. Objection, namely the completion of administrative efforts carried out by the State Administrative Agency or Official who issued the Decision. Meanwhile, administrative efforts in Law Number 30 of 2014 concerning Government Administration are mandatory and apply to all State Administration disputes. This means that the resolution of every State Administrative dispute must first be sought through an administrative effort agency consisting of administrative objections and appeals. After all administrative efforts have been exhausted but there has been no resolution, then a lawsuit can be filed in court. Based on this description, the legal issues that will be discussed in more depth in this article are first, are mandatory administrative measures taken first before filing a state administrative dispute lawsuit with the State Administrative Court? second, what are the legal procedures for making objections to State Civil Service (ASN) employment disputes; and thirdly, what are the legal consequences of not implementing administrative measures by the Plaintiff? State of the art research regarding administrative efforts for TUN disputes, the author found several previous studies in journals, namely the Journal with the title Administrative Efforts and Their Application in Resolving Administrative Disputes (Jiwantara, 2019) which focuses on conceptual analysis regarding administrative efforts, while in this

research the author focuses on implementation, procedures, and consequences if administrative measures are not taken first. Journal with the title Reconstruction of Paradigm Shifts in Administrative Efforts in Resolving Pre-Election Disputes for Regional Heads (Hermanto, & Sudiarawan, 2019) which focuses on a new paradigm of administrative efforts related to pre-election disputes with regions, while in this research the author focuses on the implementation, procedures, and consequences if no efforts are taken. administrative first. Journal with the title Authority and Constraints of the State Administrative Court in Resolving Personnel Disputes After Administrative Efforts (Azzahrawi, & Idami, 2019) which focuses on the authority of the State Administrative Court in resolving personnel disputes after administrative efforts, whereas in this research the author focuses on the application of administrative efforts regarding TUN disputes. A journal with the title Judicial review in the Republic of Korea: an introduction (Quintero, 2010) which focuses on comparing the concept of proof in South Korean administrative justice with Indonesian state administrative justice, while in this research the author focuses on procedures in taking administrative measures for TUN disputes .The journal with the title The structures and roles in judicial review of administrative litigation in Korea (Lee, 2006) focuses on the basic structure of the Korean administrative litigation system and its role in administrative disputes, while in this research the author focuses on its implementation, procedures, and consequences if it does not take action. prior administrative efforts regarding TUN disputes.

LITERATURE REVIEW

1. What Administrative Efforts Must Be Taken First Before Filing a State Administrative Dispute Lawsuit to the State Administrative Court?
2. What are the legal consequences of non-implementation of administrative measures by the plaintiff?

METHOD

This research activity is an activity carried out as an effort to understand and solve problems scientifically, systematically and logically (makes sense). A research was initiated because there was a gap between das sollen and das sein, namely between the existing theory and the reality that occurs in the field, so the approach method used in this research is a normative juridical approach considering that the problems being researched and studied are in addition to adhering to the juridical aspect, namely based on norms, regulations, legal theories (Sonata, 2014). In other words, this research does not only refer to applicable legal products but is also based on the reality that occurs in the field. The specifications used in this research are analytical descriptive because this research is expected to obtain a clear, detailed and systematic picture, while it is said to be analytical because the data obtained will be analyzed to solve problems in accordance with applicable legal provisions. The aim of the research is to use analytical descriptive specifications. to provide an objective picture of the reality of the object being studied.

RESULTS AND DISCUSSION

A. Administrative Efforts Must Be Taken First Before Filing a State Administrative Dispute Lawsuit to the State Administrative Court

In Law Number 30 of 2014 concerning Government Administration regulates administrative efforts in a separate chapter, namely Chapter aggrieved by the Decision and/or Action, you can submit Administrative Remedies to the Official who determined and/or carried out the Decision and/or Action, paragraph (2) states that the administrative efforts as intended in paragraph (1) consist of: a. object; and b. appeal.

Based on the provisions contained in Article 75 paragraphs (1) and (2) of Law Number 30 of 2014 concerning Government Administration, it is in accordance with the provisions of Article 48 paragraph (1) and the explanation of Article 48 of Law Number 5 of 1986 Concerning State Administrative Courts". So the State Administrative Court acquired new authority, namely TUN disputes with the object of the dispute being government administrative actions (Heriyanto, 2018). Administrative measures are a procedure that can be taken to resolve a problem relating to a Civil Legal Entity, this is done if the person or individual feels less/dissatisfied with a state administrative decision (KTUN) which is within the scope of administration or the existing government itself (Prahastapa, Leonard, & Putriyanti, 2017). Referring to the provisions of Article 1 number (16). Article 75, Article 76, Article 77 and Article 78 in the Government Administration Law, there are a number of fundamental changes related to the administrative effort process in the Government Administration Law, namely first, there is an intention to unify the Administrative Justice system with administrative efforts, with the existence of the requirement that the final process for Administrative Efforts be a lawsuit to the Administrative Court. This means that the administrative process, namely both objection procedures and administrative appeals, is a premium remedy (primary option) as implied in Article 75 of the Government Administration Law.

This is a different paradigm from the PTUN Law which requires that administrative efforts towards state administrative decisions whose resolution processes are regulated by certain laws through internal mechanisms. Second, there is a requirement that all cases that question state administration decisions issued by state administration officials must go through an administrative objection and appeal procedure mechanism or in short through an internal mechanism, thus encouraging efforts to resolve disputes through non-judicial mechanisms, however, not all state administrative officials or state administrative bodies that already have an internal administrative objection and appeal mechanism (Hermanto, & Sudiarawan, 2019). Whereas the existence of Article 2 paragraphs (1) and (2) in the Republic of Indonesia Supreme Court Regulation (PERMA RI) Number 6 of 2018 concerning Guidelines for Resolving Administrative Disputes After Taking the Administrative Efforts mentioned above is mandatory and applies to all State Administrative disputes . This means that

resolving State Administration disputes must first take administrative measures consisting of objections and administrative appeals.

That after exhausting administrative efforts but not finding a resolution, the dispute can be submitted to the State Administrative Court. The State Administrative Court, in accordance with the purpose of its formation, functions to resolve disputes between the government and citizens or legal entities, namely in the form of disputes arising from the consequences of government actions as State Administrative Officials which are deemed to violate the rights and interests of citizens or legal entities themselves (Hasibuan, & Suranta, 2013). This is part of the formal requirements that must be met to file a lawsuit at the State Administrative Court before testing the main substance of the dispute.

B. What are the legal consequences of non-implementation of administrative efforts by the plaintiff?

When examining and deciding State Administrative disputes, the State Administrative Court only reviews the disputed State Administrative Decisions only from a legal perspective. Whether or not administrative measures are available for a State Administrative Decree is determined by a law, so objections which are only in the nature of a protest or complaint which have no basis in the laws and regulations are not administrative measures according to the meaning of the law, so that the complaint is not There is an influence on how to submit a lawsuit to the Court, whether the objection is successful or not. If the Plaintiff wants to challenge the decision in question, he still has to file a lawsuit with the Court of First Instance.

Starting from the provisions in positive law, in terms of the basic regulations providing for administrative measures, the State Administrative Court has the authority to examine, decide and resolve state administration disputes if the available administrative measures have been fully used and the court has no authority to examine the State Administrative dispute if the efforts The available administration has not been used in its entirety. In practice, if a person or civil legal entity (Plaintiff) files a lawsuit at the State Administrative Court which has not taken the administrative measures available based on statutory regulations then based on the provisions of Article 48 of Law Number 5 of 1986 concerning the State Administrative Court, The judge will declare that the lawsuit is not accepted because the available administrative measures have not been used by the person concerned.

CLOSING

Conclusion

As a Pancasila legal state that places Pancasila as an ideology and a way of thinking and behaving in all actions, administrative efforts must be carried out as legal protection for the people in state administrative disputes, administrative efforts must be taken by individuals or civil legal entities first before settlement. through the State Administrative Court. The legal procedure for making objections to State Civil Servant (ASN) employment disputes can be seen in the provisions of Article 129 of Law Number

5 of 2014 concerning State Civil Servants. If a person or civil legal entity (Plaintiff) files a lawsuit at the State Administrative Court that has not taken the available administrative measures, the judge will declare the lawsuit not accepted.

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