



**Normative Analysis of Unlawful Acts of State Administrative Officials Related to the  
Implementation of State Administrative Court Decisions  
(Case Study of Ambon State Administrative Court Decision Number:  
10/G/2015/PTUN.ABN By the Mayor of Tidore Islands)**

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Abstract:

This study aimed at determining and finding: (1) whether the unlawful act of the State Administrative Officers as a Defendant was caused by the Article formulation 116 (2) and paragraph (3) of Law Number 51 of 2009 concerning the Second Amendment of Law Number 5 of 2009 1986 concerning the State Administrative Court; and 2) the legal consequences if the defendant (TUN official) does not implement the decision of the State Administrative Decision. By using normative legal research methods which is examining secondary data or library materials that are focused on testing the application of norms in positive law; Analyzing unlawful acts committed by State Administrative Officers (Mayor of Tidore Kepulauan) because State Administrative Court Decisions State which has permanent legal force were not implemented. The results of the study indicated that (1) There was an unlawful act committed by the State Administrative Officers, in this case the Mayor of Tidore Kepulauan, which was not carried out by Ambon State Administrative Court Decision Number: 10/G/2015/PTUN.ABN on November 12, 2005. (2) There was a legal uncertainty as the decisions by the Mayor of Tidore Kepulauan were not implemented, so Ambon State Administrative Court's decision had neither been effective nor legally certain. (3) Those problems were caused by Article 116 paragraph (2) and paragraph (3) of Law Number 5 of 1986 which handed over the implementation of Ambon Administrative Court decision to the defendant (*Contrarius Atus* principle). (4) There was a legal uncertainty for the plaintiff. 5) Unclear guarantees of the rights of the plaintiffs.

**Keywords:** *Legal Certainty in the State Administrative Court Process*

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## INTRODUCTION

Indonesia is a State of Law, as stated in Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia that Indonesia is a State of law. The elements of the rule of law (rechtsstaat) are (a) There is a guarantee of human rights (grondrechten) (b) There is a division of power (scheiding van machten) (c) The government must be based on legal regulations (wetmatigheid van het bestuur) (d) There is an Administrative Court (administratie rechtspraak) (Budiarjo, 1982).

In the life of the nation and the state, there is always a trade-off between power, law and democracy which originates from the perspective of understanding these three things. Even though sometimes interpreting the three principles incorrectly can occur and can balance the principles of the rule of law, democracy and human rights, it can also violate the principles of administrative law and general principles of proper governance. Therefore, one of the important and interesting aspects in this regard are the sections that tell of the meeting points or copies between the legal, democratic and administrative law sides. Every government official has the authority granted by applicable laws and regulations or based on the principle of legality.

With the given authority, the government takes legal actions in order to serve or regulate citizens. In general, the government's authority includes three things, namely authority in terms of material (bevoegheid ratione material), authority in terms of territory (bevoegheid ratione loci), and authority in terms of time (bevoegheid ratione temporis).

The Administrative Court or commonly referred to as the State Administrative Court is a court authorized to resolve State Administration issues (State Administrative Disputes). The purpose of the Administrative Court is to provide legal protection and legal certainty, not only for the people but also for the State Administration in the sense of maintaining and maintaining a balance between the interests of the community and the interests of individuals as members of the community. For state administration, order, peace and security will be maintained in carrying out their duties for the realization of a capable, clean and authoritative government in a state based on Pancasila. This means that preventively to prevent actions of state administration that are against the law and detrimental, while repressively for these actions it is necessary and must be subject to "sanctions" (Wet, 1992).

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## **LITERATURE REVIEW**

### **Meaning of Judge's Decision**

According to Sudikno Mertokusumo (2006), a judge's decision is a statement that the judge, as a state official authorized to do so, is uttered at a trial and aims to end or resolve a matter or dispute between the parties. Then Syahrani states the verdict is a judge's statement spoken at a court hearing that is open to the public to resolve or end the case, The verdict can mean a judge's statement in a court hearing that contains factual considerations, legal considerations. The understanding of the above verdict there are important elements that are a condition to be able to be called a verdict. The conditions for the decision to be said are as follows:

1. Decisions are made by state officials authorized by legislation;
2. The decision is pronounced in a conference of matters open to the public;
3. The decision passed has gone through legal process and procedure;
4. The decision is made in written form;
5. Decisions are intended to resolve or end a matter (Wantu, 2014).

A judge's decision or commonly referred to as a court decision is something that is highly desired or awaited by the parties to the case in order to resolve the dispute between them in the best possible way. Because with the judge's decision, the disputing parties expect legal certainty and justice in the matters they face. Through this definition it appears that the judge's decision aims to end or resolve a dispute. In PTUN, the dispute in question is a dispute that arises in the field of state administration between a person or civil legal entity with a State Administrative Agency or Official, both at the center and in the region, as a result of the issuance of KTUN, including personnel disputes based on legislation that applies. The main decision of the Administrative Court judge is to impose obligations on the defendant to:

1. revoke the disputed KTUN;
2. revoke the disputed KTUN and issue a new KTUN;
3. issue KTUN in the event that the lawsuit is based on Article 3 of the Administrative Court Law.

It has been stated that the decision of the Administrative Court judge imposes obligations that must be borne by the defendant.

### **State Administrative Court Decision**

In the decision of the State Administrative Court (PTUN) there are times when a decision that is condemnatory can also be a constitutive decision.

The statement that a decision is void or invalid is *ex tunc*, only declaratory. Decisions that are constitutive in nature, for example, are decisions on the imposition of compensation payments, the imposition of carrying out rehabilitation and the determination to postpone the implementation of the State Administrative Decree (KTUN), which results in a temporary delay in the enforcement of a government decision. Decisions that are constitutive, even though they create a new legal situation or negate the old legal situation, cannot be implemented immediately and require a sentencing decision as a follow-up so that the material for the constitutive decision becomes real. Therefore, what is relevant for implementation is a condemnatory decision.

If it is related to the form of decision regulated in Law Number 5 of 1986, then the decision which is condemnatory includes:

a. Obligation to revoke administrative decisions that have been declared void (Article 97 paragraph (9) letter a); Obligation to revoke administrative decisions and issue replacement decisions (Article 97 paragraph (9) letter b);

a. The obligation to issue a decision in the event that the object of dispute is a negative fictitious decision (Article 97 paragraph (9) letter c);

b. Obligation to pay compensation (Article 97 paragraph (10));

c. The obligation to carry out rehabilitation and pay compensation in employment disputes (Article 97 paragraph (11)).

Decisions of the State Administrative Court regulated in Law Number 5 of 1986 in conjunction with Law Number 9 of 2004 can be qualified into 4 (four) categories, namely:

a. Main Verdict

The main decision is a statement that the disputed state administration decision is invalid or invalid (the claim is based on Article 53 paragraph (1) of Law Number 9 of 2004).

b. Additional Verdict

In the event that the lawsuit is granted, then the decision can determine the obligations that must be carried out by the government official who issued the decision. These obligations are in the form of:

1) Revocation of the decision of the state administration concerned; Revocation of the administrative decision concerned and issue a new decision.

2) Issuance of a decision in the event that the object of the lawsuit is a negative fictitious decision.

c. Remedial Judgment (recovery)

Remedial decisions are to restore the consequences that have been caused by government decisions that are declared null and void, in the form of compensation and rehabilitation.

d. Reinforcing Judgment (effectiveness)

Reinforcing Decisions, namely decisions as a means of coercion, so that condemnatory decisions can be carried out, namely:

### **Execution of Decision**

According to Sudikno Mertokusumo (2006), the implementation of the judge's decision or execution is essentially nothing but the realization of the obligations of the parties concerned to fulfill the achievements listed in the decision. Implementing a decision means being willing to fulfill the obligation to excel that is imposed by the judge through his decision.

With the verdict being handed down by the judge examining the case, in practice it often happens that the decision cannot be said to have been completed. The problem that arises is whether or not the decision can be implemented or executed. This is so that the plaintiff does not win formally (Wantu, 2014).

Decisions of the State Administrative Court that can be implemented are decisions that have permanent legal force, namely a decision that cannot be changed again through a legal remedy (Article 115 UPTUN). In the implementation of the decisions of the State Administrative Court, it is not possible for coercion to use the security apparatus, as is the case in the implementation of the decisions of the criminal courts and civil courts.

But what is special is that in implementing the decisions of the State Administrative Court, it is possible for the president to intervene as the head of government. In this case, the president as head of government is responsible for fostering civil servants/government officials. The President as the head of government is responsible for fostering government officials to comply with applicable laws and regulations, including obeying court decisions in accordance with the principles of the rule of law (Yusrizal, 2015). The implementation of the decision is in accordance with the ruling issued by the State Administrative Court, the punishment for the

defendant in this case is a state administrative body or official to carry out an obligation in the form of:

1. Revocation of the relevant State Administrative Decree; or
2. Revocation of the relevant State Administrative Decree and issuing a new State Administrative Decree; or
3. Issuance of State Administrative Decisions in the event that the lawsuit is based on Article 3 of Law Number 5 of 1986;
4. Pay compensation;
5. Provide rehabilitation.

### **Compensation**

In the event that the court's decision contains an obligation to pay compensation, 3 days after the decision has permanent legal force, a copy of the decision is sent to the defendant and the plaintiff. At the same time, a copy of the decision is also sent to the State Administration Agency or Official who is burdened with the obligation to pay the compensation. According to Article 120 paragraph (3) of Law Number 5 of 1986, the amount of compensation and the procedure for implementing the provisions as referred to in Article 97 paragraph (10) shall be further regulated by a government regulation (Article 120 UPTUN). The government regulation that regulates this compensation is Government Regulation Number 43 of 1991. In this government regulation it is stipulated that the minimum amount of compensation that can be given is Rp. 250,000, - and the maximum is Rp. 5.000.000,-. The compensation charged to the Central State Administration is paid through the State Revenue and Expenditure Budget (APBN), while the compensation charged to the Regional State Administration is paid through the Regional Revenue and Expenditure Budget (APBD). The procedure for payment of compensation paid through the APBN will be further regulated by the Minister of Finance, while the procedure for payment of compensation paid through the APBD will be further regulated by the Minister of Home Affairs.

### **Rehabilitation**

If in an employment dispute the lawsuit is granted along with the obligation to provide rehabilitation, then within 3 days, a copy of the court decision that already has permanent legal force is sent to the plaintiff and the defendant. A copy of the court's decision is also sent to the State Administration Agency or Official who will carry out the rehabilitation within 3 days after the decision has permanent legal force. This rehabilitation is provided with the aim of restoring the plaintiff's rights in terms of ability, dignity and worth as a civil servant as before and in this case includes the right to position (Article 121 of the Administrative Court Law). If the original position has been filled by another person, the person concerned may be appointed to another position at the same level as his original position and if this is not possible, the person concerned will be given first priority to occupy the vacant position at the same level as the original position.

### **State Administrative Agency or Official**

In the state administrative judicial process, the State Administrative Agency or Official is always placed as the defendant, as specified in Article 1 number (6) "The defendant is the State Administrative Agency or Official who issues decisions based on the authority it has or is delegated to it. , sued by a person or civil legal entity ". Then who is meant by a State Administrative Agency or Official? According to the provisions of Article 1 number (2) of the PTUN Law "State Administrative Agency or Official is an Agency or Official that carries out government affairs based on applicable laws and regulations. In the explanation it is stated that what is meant by government affairs is executive activities (Ridwan, 2002).

Then what needs to be realized is the nature of the authority of the executors of government affairs is their authority to form and maintain positive laws. Furthermore, as a result of the implementation of governmental authority, by the TUN Agencies and Departments can give birth to positive law in the form of various variations of TUN Decisions that are regulatory and very general to the most concrete and individual KTUN called written determination or decision that is civil law acts. The ability to cause legal consequences also means having the authority/right to do something. But the right to do so is also always within the limits set by positive law (Indroharto, 2000)

### **Authority**

Authority has an important position in the study of Constitutional Law and State Administrative Law. The authority which contains rights and obligations, according to P. Nicolai is as follows (Ability to take certain legal actions, that is, actions intended to cause legal consequences, and includes the emergence and disappearance of legal consequences).

Rights contain the freedom to do or not to do certain actions or demand that others do certain actions, while obligations include the obligation to do or not to do certain actions. According to GR Terry, Authority in State Administrative Law is the official power and the power of an official to order another party to act and obey the party who has that authority, According to RC Davis in his book, Fundamentals of Management: Authority/Authority in State Administrative Law is the right that enough, which allows a person to complete a certain task/obligation. Thus, authority is the basis for acting, doing and performing activities/activities of the organization. Without authority people cannot do anything.

In a state of law, which places the principle of legality as the main joint in the administration of government, the authority of the government comes from statutory regulations. R.J.H.M Huisman expressed the following opinion that a government organ cannot assume that it has its own government authority. Authority is only given by law. Legislators can give government authority not only to government organs, but also to employees (eg tax inspectors, environmental inspectors, etc. or to special bodies such as election boards, special courts for land lease cases, or even private legal entities). ). According to Prajudi Atmo Sudirdjo, legality is a condition that states that no act or decision of state administration may not be carried out without a (written) legal basis, in a broad sense if something is carried out under the pretext of an "emergency" then the emergency must be proven. cannot be proven, the act can be sued in court.

## **RESEARCH METHODS**

### **Research sites**

This research was conducted in Tidore City, North Maluku Province, because in 2014 there were simultaneous Village Head Elections in 26 villages and there were 5 villages that had problems and led to disputes in the Ambon State Administrative Court.

### **Types of research**

Based on the problems posed in this study which emphasizes the simultaneous election of village heads in the City of Tidore Islands, this study uses several approaches, namely: Normative research, which is intended, namely research conducted by examining secondary data or library materials focused on testing application of norms in positive law.

## **RESEARCH RESULTS AND ANALYSIS**

### **Acts against the Law of State Administrative Officials as Defendants**

The government in its position as an organ of state has a broad or narrow understanding (Susilo, 2013). Government in a broad sense includes all affairs carried out by the state in

carrying out the welfare of its people and the interests of the state itself, not only the executive but including the legislature and judiciary (Kusnardi and Harmaily Ibrahim, 1983). In other words, the Government in a broad sense includes all state apparatus, which basically consists of the branches of executive, legislative and judicial powers or other state apparatuses which also act for and on behalf of the state. According to C. Van Vollenhoven (1985), in this broad sense the government is often called *regering*.

From a narrow point of view, the government only includes the organization of functions that carry out government duties (executive) that can be carried out by the Cabinet and its apparatus from the Central to the Regional levels (*bestuur*). So, in a narrow sense, government is a branch of executive power (law applying organ). In relation to the constitutional system, the executive branch of government has a structure and function

different organizations from other branches of government (legislative, judicial, etc.). The executive branch of government represents or contains two characters. First, as a state apparatus. Second, as a state administrative body. As a state apparatus, the executive branch of government acts for and on behalf of the state. Executive action as a tool of the state is an act of the state. As state administration, the executive branch of government has independent powers delegated by the state. This independent power allows the state administration to take independent actions both in the field of regulation (*regelen*) and in the administration of state administration (*besturen*).

Law in general and State Administrative Law specifically requires the principle of legality. In Administrative Law the legality principle is referred to as *wetmatigheid* which means that government organs operate or act based on the law (requires that the organs of government operate through the law) (Efendi and Freddy Poernomo, 2017). John Alder stated that the definition of the rule of law that is often heard is government based on law, which means the implementation of government based on legal regulations made and announced by the legislature. Based on the principle of legality, every public authority must have a legal basis, beyond that, officials commit acts against the law.

Basically, unlawful acts committed by government organs are closely related to the authority they have.

Government authority in this regard is considered as the ability to implement positive law and by doing so, legal relations can be created between the government and citizens (Ridwan and Sudrajat, 2019). Associated with the principle of legality HD. Stout stated that the substance of the principle is authority, in other words every state and government administration must have legitimacy (Ridwan and Sudrajat, 2019). HD. Stout states that authority is an understanding that comes from the law of government organizations and can be explained as a whole set of rules relating to the acquisition and use of government authority by public legal subjects in public legal relations.

The authority possessed by the government results in the emergence of government action because basically, in simple terms, authority is seen as the ability to implement positive law. These are what are referred to as government independent actions as previously mentioned, these actions in particular are the actions of implementing state administration (*besturen*) (Susilo, 1995). As a legal subject and a supporter of rights and obligations, the government carries out independent government actions (*besturen*) which are divided into concrete actions and legal actions. Real actions are actions that have no relevance to the law and therefore do not cause legal consequences. While legal action is an action based on its nature that can lead to legal consequences. In the field of state administrative law, a legal act of state administration is a statement of will that arises from the organs of state administration in special circumstances with the aim of causing legal consequences in the field of state administrative law. Legal consequences that arise from legal actions are impacts that have

relevance to the law, such as the creation of new legal relationships, changes, or termination of existing legal relationships.

Government legal action has several elements, namely:

1. The action is carried out by government officials in their position as rulers or as government equipment (bestuursorgan);
2. Actions are carried out in the context of carrying out government functions (bestuursfunctie);
3. The action is intended as a means to cause legal consequences (rechtsgevolgen) in the field of administrative law;
4. Actions taken in the context of maintaining the public interest;
5. Actions are carried out based on the norms of government authority; and
6. The action is oriented towards a specific goal based on the law

Both real actions and legal actions of government organs, if carried out not in accordance with the law, arbitrarily, outside their authority, or abuse of authority will result in the action being categorized as mala-administration, namely behavior or acts that are against the law, exceed authority, use authority for other purposes that become the purpose of such authority, including negligence or neglect of legal obligations in the implementation of public services carried out by State Administrators and the government that cause material and/or immaterial losses to the community and individuals. Specifically related to unlawful acts, it can be stated as an action that is not in accordance with positive law or neglecting positive law. Government actions that deviate from positive law or violate the law in the field of state administrative law are referred to as *onrechtmatige overheidsdaad*.

An unlawful act by a government agency or official is a violation of the law against all decisions and or factual actions of government administration carried out by government agencies or officials who are authorized to carry out government affairs, with the characteristics of public legal disputes and benchmarks for the validity of a decision and/or factual action. This is from the aspect of the legality of laws and regulations as well as the general principles of good governance. In relation to this research, there are unlawful acts committed by the Mayor of the City of Tidore Islands as the Defendant in Decision No. 10/G/2015/PTUN.ABN November 12, 2015. This study does not look at the basis or reasons for the decision that accepted the plaintiff's claim, but focuses on the conditions after the decision was issued.

## CONCLUSION

1. Acts against the law cause material and/or immaterial losses to the community and individuals. An act against the law is an act against the law can be stated as an act that is not in accordance with positive law or neglecting positive law. The actions of the Mayor of Tidore Islands as the Defendant who ignored the Administrative Court Decision Number 10/G/2015/PTUN.ABN dated November 12, 2015 was against the law. The underlying thing is the legal uncertainty governing Article 116 of Law Number 51 of 2009, the absence of strict sanctions for State Administrative Officials who do not heed or ignore the decision of the State Administrative Court, and the vacancy of the executor structure of the decision; and
2. The unlawful act in the form of negligence by the Mayor of Tidore Kepulauan towards the Administrative Court Decision Number 10/G/2015/PTUN.ABN dated November 12, 2015 resulted in legal uncertainty and unclear guarantees of the Plaintiff's rights. The plaintiff experienced legal uncertainty even though the Administrative Court gave a decision that had permanent legal force (inkracht van gewijsde) but was ignored by the Mayor of Tidore Islands. The Plaintiff also experienced uncertainty over the guarantee of rights even though the Administrative Court believed that the KATUN which was the object of the dispute had indeed harmed the Plaintiffs' rights so that the decision was

present to recover the Plaintiff's losses as a guarantee of the Plaintiff's rights, but the Mayor of Tidore's neglect of the decision had an impact on the non-recovery of the losses suffered by the Plaintiff.

### **Suggestion**

1. The compliance of State Administrative Officials in complying with the law by implementing the Administrative Court decision becomes a problem of the ineffectiveness of judicial decisions, especially the plaintiffs in seeking justice and legal certainty over the judicial decisions because if the decision is not carried out/not implemented then of course the people who have been harmed are those who have tried go through the judicial process; and
2. Legislators need to review the provisions of Article 116 of Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning the State Administrative Court, so that in its implementation it is effective and can guarantee legal certainty in the process. TUN court.

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