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Legal Dualism Norm Administrative Decision

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Abstract:

The legal implications of the legal dualism,State Administrative Decisions (KTUN), settings in the administrative dispute is legal uncertainty. This means that the law is uncertain. In theory, legal certainty stated that the law should be clear and logical. Obviously in the sense that there is no logical vagueness of the norm and there is no clash of norms. Legal certainty is a condition or circumstance arising because of a rule that has been created and compiled then enacted with certainty to clearly and logically. Understanding Obviously no blurring of norms or doubts (multiple interpretations) and understanding Logis is a system of norms with other norms so as not to clash or conflict norms. Legal certainty refers to the application of the law is clear, permanent, consistently and consequently, the implementation of which can not be influenced by circumstances subjective nature.

Key Terms: Legal dualism, Administrative Decision

1. Introduction

Government Administration Act specifically actualize the constitutional norm the relationship between the state and citizens. Settings Administration under this Act is an important instrument of a democratic constitutional state, where decisions and / or actions specified by the agency and / or government officials, or other state apparatus that includes institutions outside the executive, judicial, and legislative carrying out government functions that allow it to be tested through the courts. These are the ideals of a state of law. Implementation of state power must side with the citizens and not vice versa. Act is necessary in order to give assurance to the citizens who originally as an object into a subject in a state of law that is part of the embodiment of popular sovereignty. Sovereignty of citizens in a country does not by itself either in whole or in part can be realized.

Administration settings ensure that the decisions and / or actions the agency and / or government officials against citizens can not be done arbitrarily. With this Law, citizens will not easily become the object of state power. In addition, this law is a transformation of the principle of good governance that has been practiced for decades in governance, and dikonkritkan into a binding legal norms (Ahmad Mujahidin, 2007)

Principles of good governance will continue to evolve along with the growth and dynamics of society in a state of law. Therefore penormaan principle into the Act is grounded in the principles that evolved and has become the basis for governance in Indonesia over the years. Law is the basis of law in governance in an effort to improve good governance (good governance) and to deter corruption, collusion, and nepotism. Thus, the Act must be capable of creating a bureaucracy is getting better, transparent, and efficient. The setting of the Administration is essentially an effort to establish the main principles, mindset, attitude, behavior, culture and pattern of administrative acts of a democratic, objective and professional in order to create fairness and legal certainty. Law is an overall effort to reorganize the decisions and / or actions the agency and / or government officials under the provisions of the legislation and the principles of good governance. This Act is intended not only as a legal basis

for the government administration, but also as an instrument to improve the quality of government services to the public so that the existence of this law actually can realize good governance for all agencies or government officials in central and local In governance, communities are often faced with complicated situations, limited human resources of the state apparatus, lack of professional government officials, carelessness of officials, bribery case and so forth. It is also part of the apparatus of non-compliance to the principles of good governance (Eko Sugitario, Tjondro Tirtamulia, 2012). This resulting reasons or considerations led to law administration. Community enthusiastically welcomed the law's administration. There are interesting things that in Article 53 of Law No. 30 Year 2014 on Government Administration, said:

(1) Deadline obligation to establish and / or make decisions and / or actions in accordance with the provisions of the legislation.

(2) If the provisions of the legislation does not specify a time limit liability referred to in paragraph (1), the Agency and / or Government Officials to establish and / or make decisions and / or actions within a period of 10 (ten) business days after the complete application is received by the Agency and / or Government officials.

(3) If within the time limit referred to in paragraph (2), the Agency and / or Government officials did not establish and / or carry out decisions and / or actions, then the request shall be deemed granted legally.

(4) The applicant submitted an application to the Court to obtain a ruling receipt of the request referred to in paragraph (3).

(5) The court shall decide on the application referred to in paragraph (4) within 21 (twenty one) days after the application is submitted.

(6) Loss and / or Government officials must establish decision to implement the Court judgment referred to in paragraph (5) 5 (five) working days after the Court's decision set.

In Article 53 paragraph (3) of Law No. 30 Year 2014 on Government Administration, clearer

Legal protection should be given in the course of administration dispute resolution should be to protect the interests of communities affected by conflict, especially when associated with greater powers possessed by officials of the state administration. In the administrative dispute settlement procedure there are at least two forms of protection that should be given in particular to the public, namely protection against acts that violate administrative law (against) the law or the law and protection against improper administrative actions. In protection against an unlawful act or law court proceedings will certainly have a major role in the proof of this happening. However, in the protection against acts of administration that is unnatural, such as acts of administration officials who are not cooperative in providing access to information, does not want to meet with those who are victims of disputes, hid letters or documents pentimng and various other measures, then there must be a mechanism that ensures that there is no obligation to open access in an effort to attempt resolving administrative disputes, especially to those affected by the dispute as part of legal protection of the right to know the data, documents and information related to the dispute.

Adding to the above by, the substance of protection for these communities may consist of (Indroharto, 1994)

1. The arrangements that explicitly and easily understood by the public about the judicial institution where a dispute can be resolved. This means that this Act shall contain matters any, or in terms of what the lawsuit can be filed to the general courts (protection in the field of civil) in the Context of action melawab law made by the State or the Government, and when submitted to the Administrative Court states (administrative effort or administrative appeals and judicial).

2. The government's obligation to continue rnenerus foster, enhance and regulate the apparatus to be able to be tool that is efficient, effective, clean and dignified and in performing their duties is always based on law.

3. Loading the material with respect to the possibility of a lawsuit as a class action (c / ass action) in cases of a number of governmental actions that harm or group of people who are victims and also a lawsuit by community institutions (legal standing) are specifically concerned about the administrative services government.

4. The important thing that is also related to the protection of legal and government administrative law enforcement is that the Law of Administration shall also providing for sanctions against government officials who are not implementing the decision of the Administrative Court. As we know that one of the biggest obstacles in the judicial system of the state administration has been the reluctance government officials implement administrative court ruling.

In the event of a dispute as a result dlari an administrative action, it is necessary to regulate their legal protection against third parties who assume an important role in the settlement of the dispute. Third parties must also be granted legal protection if aware or have some important information related to the existence of an illegal administrative act or in the event of a breach by the competent administrative authorities in making an administrative policy.

Decisions or governmental action not set in stone that can not be revised or reversed. The same thing applies to the decisions made by the State Administrative Court in their lawsuit against an administrative decision. Community objections can be made to review the judgment (judgment) on the question of law and fact happened. The objection against the decision of the State Administrative Court may be submitted to the State Administrative Court. It is intended to provide maximum legal protection to the public in terms of their errors in judgment and the judge or the discovery of new facts that support certain individual rights. State Administrative Court decision in the case against an administrative decision concerning the interests of the individual as such can be revised, canceled or sought to be suspended by decision of the State Administrative High Court. If the decision is favorable individual concerned, the High Administrative Peiradilan ordered the agency or government official who issued the decision (Jimly Asshiddiqie, 2012).

It is possible that citizens may suffer a loss as a result of an administrative act although citizens do not commit a single mistake. In such cases, the aggrieved citizen can sue for damages if legislation

The use of state power against citizens is not unconditional. Citizens can not be arbitrarily treated as objects. Decisions and / or actions against the public must comply with the provisions of the legislation and the general principles of good governance (hereinafter referred AUPB). Supervision of the decision and / or action is the testing of the treatment to the communities involved have been treated in accordance with the law and observing the principles of legal protection that can effectively be done by the state institutions and the State Administrative Court (hereinafter called the Administrative Court) free and independent. Therefore, systems and procedures for the implementation of the task of governance and development should be regulated in the Act.

The task of government to realize the goal of the state as defined in the Preamble to the Constitution of the Republic of Indonesia Year 1945 and the task is an immense task. Once the extent of coverage of government so that necessary regulatory tasks that drive governance becomes more in line with the expectations and needs of the community (citizen friendly), to provide the foundation and guide the agency and / or government officials in carrying out the task of governance.

2. Research Method

This study is normative legal research and going to examine legal regulation, legal concepts, or legal principles as the backround of need legal dualism norm administrative decision. This study focuses on statute, conceptual, comparative, and case approaches. The legal materials are collected, calculated, and analized in prescriptive and focus the legal implications that could arise from legal dualism setting an administrative decision

3. Discussion

Legal Implication for Dualism Norm Administrative Decision

The legal implications of the legal dualism setting an administrative decision to be passive in Administration dispute that certainly is the law is uncertain or there is legal uncertainty. In theory, legal certainty stated that the law should be clear and logical. Obviously in the sense that there is no logical vagueness of the norm and there is no clash of norms. Legal certainty is a condition or circumstance arising because of a rule that has been created and compiled then enacted with certainty to clearly and logically. Understanding Obviously no blurring of norms or doubts (multiple interpretations) and understanding Logis is a system of norms with other norms so as not to clash or conflict norms. Legal certainty refers to the application of the law is clear, permanent, consistently and consequently, the implementation of which can not be influenced by circum s an ces subjective nature (Sjachran Basah, 2012).

Researchers think Law No. 5 of 1986 concerning State Administrative Court reinforced with Perma No. 5 of 2015 regarding Guidelines for Proceedings To Acquire Decision On Admission Request To Obtain Decision And / Or act Agency or Government officials. It has been very precise, where a panel will continue to investigate and adjudicate in accordance with the evidence in the trial process. Reasoning law (legal reasoning) is the activity of thinking problematic tersistematis (gesystematiseerd probleemdenken) on the subject of law (human) as individual and social beings in the circle of culture. Legal reasoning can be defined as the thinking that intersect with the multi-faceted legal meaning (multidimensional and multifaceted).

Legal reasoning as problematic thinking activities tersistematis have distinctive characteristics. According to Berman the hallmark of legal reasoning is T(itik Triwulan T dan Ismu Gunadi Widodo, 2011).

1. The legal reasoning attempts to achieve consistency in the rules of law and legal rulings. Basic thinking is the principle (belief) that the law should apply equally to all persons under its jurisdiction. The same case should be given the same verdict based on the principle similia similibus (equation);

2. Reasoning law seeks to maintain continuity in time (historical consistency). Legal reasoning will refer to the legal rules that have been formed earlier and the decisions of the previous law so as to ensure the stability and prediktabili-bag;

3. In the legal reasoning occurs dialectical reasoning, which is weighing the claims of the opposite-an, both in the debate on the formation of the law and in the process of considering the views and facts presented by the parties in the judicial process and in the negotiation process.

   From the scientific side of law it is clear that the rules on UUAP and contradictions in it is not based on good legal reasoning. If in accordance with the historical consistency, then UUAP should falsifies new administrative rules rather than add to the polemic in administrative courts.

   In the identification of the rule of law is often found the state of the rule of law, namely the legal vacuum (leemten in het recht), conflicts between legal norms (antinomy of law), and the norm is vague (vage normen) or norms are not clear. In the face of a conflict between a legal norm (antinomy of law), then the operator from the principles of conflict resolution (principle of preference), namely:

1. Lex SUPERIORI derogat legi inferiori, that legislation would cripple the higher the legislation is lower;

2. lex specialis, namely the special regulations that would cripple the general regulations or regulatory nature khususlah should come first;

3. Lex posteriori derogat legi priori, that the new regulation to defeat or cripple the old regulation.

   Be aware there is a principle of lex posteriori derogate legi priori, where the entry into force of the new law waives the old law. but in the case of conflict of norms of Article 53 paragraph (3) of Law No. 30 of 2014 on Government Administration with the Law No. 5 of 1986 concerning State Administrative Court reinforced Jo Perma No. 5 of 2015 regarding Guidelines for Proceedings To Acquire Decision On Admission Request To Obtain Decision And / Or act Agency or Government Officials considered more appropriate in resolving disputes and state administration.

   When analyzed using the Lex SUPERIORI derogat legi inferiori, that legislation would cripple higher legislations lower, between Article 53 paragraph (3) of Law No. 30 of 2014 on Government Administration with the Law No. 5 of 1986 concerning State Administrative Court Auran both are equal. But in practice UUAP impossible and even silly to be implemented.

4. CONCLUSION

From the above provisions can be concluded, that the Administrative Court will continue to investigate and adjudicate the petition of the applicant.

(2) The legal implications of the legal dualism setting an administrative decision to be passive in Administration dispute that certainly is the law is uncertain or there is legal uncertainty. In theory, legal certainty stated that the

law should be clear and logical. Obviously in the sense that there is no logical vagueness of the norm and there is no clash of norms.

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