

AUTHORITY OF THE JUDGE OF ADMINISTRATIVE COURT TO REVISE THE GOVERNMENT OFFICIAL DECISION

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ABSTRACT

This paper seeks to describe the authority of state administrative judges in revising the Decision of State Administration. Referring to the legislation in force in Indonesia which specifically regulates the judiciary of state administration, and is contextualized with various state administrative literature and the views of constitutional law experts, the results of the study show that the judges are limited to only stating the decision of State Administrative Court is against the law invitation or General Principles of Good Governance or not, so the decision of Administrative Court is declared null or invalid. The judge can not provide direction to provide a concept of decision of Administrative Court as to what gives more justice for society. Judges tend to accommodate certain individual interests, and ignore other interests that should be deemed necessary.

Based on these findings, the Judge can be given the authority to revise the decisions of government officials, in the event that the power separation theory is not rigidly translated. During this time, the authority of the judge did not include the authority to revise the decision of Administrative Court, because the authority was considered to hit the principle of separation of powers. The judge's authority to revise the decision of Administrative Court is considered a form of judicial interference with the executive. Based on the author's opinion, the judge's authority to revise the decision of Administrative Court is not a judicial interference with the executive, but is part of the judge's authority to resolve the dispute in the Administrative Court. In resolving a dispute, the Administrative Court must examine, decide and resolve the dispute fairly and thoroughly. This can only be achieved if the judge of the Administrative Court is given the authority to revise the decision of Administrative Court.

Keywords: Judicial Authority, State Administrative Court, Administrative Decision.

INTRODUCTION

The State Administrative Court is established with the intention to provide legal protection for the people who are harmed by the decisions made by the State Administrative Officers. Communities harmed by decisions made by government officials may sue the government official to the State Administrative Court. In a lawsuit filed by a civilian to the Administrative Court, the plaintiff can only file a principal appeal in order for the decision of an adverse government official to be declared null and void. Based on the plaintiff's lawsuit, the verdict of the Administrative Court Judge is only limited to state the validity of the state administrative decisions issued by government officials. In dispute resolution in the

Administrative Court, the judge does not have the authority to revise the decision of government officials.

With the authority of the Administrative Court only deciding on the validity of the decision of the government official being sued, this causes in certain cases not to satisfy the parties, not to provide justice for the parties. This resulted in the decision of the Administrative Court Judge to be of no benefit to the public, especially to the parties. The judge's disability revised the decision of Administrative Court, causing the judge to be unable to make breakthroughs and to create new things in the decisions he made. Whereas in certain cases, it takes creativity and innovation of judges to produce decisions that provide more just legal protection for the community. In cases of great public interest, such as the case of the environment, the creativity and innovation of judges in the case of decision-making are required, resulting in decisions that provide justice for the community as well as legal protection for environmental sustainability. This is difficult to achieve within the jurisdiction of justices to be limited to declaring null and void decision of Administrative Court, but it requires more authority than that which is the authority to revise the decision of Administrative Court. The paper further attempts to analyze the weakness and disenchantment of judges of the Administrative Court revising the decisions of government officials. This paper would like to describe the authority of the judges of the Administrative Court to revise the decisions of government officials.

LITERATURE REVIEW

The Nature of Case Review by a State Administrative Court Judge

Testing by Administrative Court judge is characterized as “*rechtmatigheidstoetsing*” that assessing the defendant's decision of Administrative Court is unlawful or not, if the decision of Administrative Court is found to be unlawful, the judge of the Administrative Court shall declare the invalidity of the decision of Administrative Court. The nature of testing by this Administrative Court judge can be inferred from Article 53 paragraph (1) of Law No. 9 of 2004 which states that a civil person or legal entity that feels its interests are harmed by decision Of Administrative Court may file a written claim to the competent court containing the claim that the disputed decision of Administrative Court shall be declared null and void, with or without the claim of compensation and/or rehabilitation.

The judge dismissed Administrative Court dispute based on the claim filed by the claimant in the lawsuit. Based on the provision of Article 53 paragraph (1) of Law no. 9 of 2004 mentioned above, the claimant's claim is that the disputed decision of Administrative Court is declared null and void, thus the judge's authority only to decide upon the disputed decision of Administrative Court is null and void. Based on Article 53 paragraph (2) of Law no. 9 of 2004, the basis of the test/rating “*toetsingsgronden*” used by the Administrative Court judge to cancel or declare the invalid decision of Administrative Court which is the object of the dispute shall be:

1. Legislation applicable.
2. General Principles of Good Governance.

The judgment of the Administrative Court judge is “*rechtmatige*” is reinforced in the Technical Guidelines of Administrative and Technical of State Administration Judicature Court. The technical guidelines state that in the case of a lawsuit being granted, the ruling contains (the Supreme Court, 2008):

1. Granted the plaintiff's claim.
2. Declare the defendant's action to issue a disputed decision of Administrative Court in violation of law or violate General Principles of Good Governance.
3. Cancel or declare any unlawful decision of Administrative Court disputed or issued by an official or Administrative Court board.
4. Require the defendant to withdraw the disputed decision of Administrative Court or; require the defendant to withdraw the disputed decision of Administrative Court and issue the new decision of Administrative Court; or require the defendant to issue the decision of Administrative Court.

The limited authority of the Administrative Court judge declares null and void the decision of Administrative Court as the object of the dispute, irrespective of the underlying supervision theory. According to Sujamto (1994), supervision is any effort or activity to know and assess the actual reality of the implementation of tasks or activities, whether in accordance with the appropriate or not. Based on this understanding, the supervisor only assess the implementation of tasks and activities are in accordance with the appropriate or not, in accordance with legislation or not. Supervision conducted by the Administrative Court shall, likewise, the Administrative Court judge only the acts of the official or Administrative Court board in issuing the decision of Administrative Court against the laws and regulations of General Principles of Good Governance or not, if the acts of the Administrative Court Official or the Administrative Court Board in issuing the decision of Administrative Court are contrary to the laws and General Principles of Good Governance, the judge will decide on the decision of Administrative Court of the disputed object to be declared null and void.

In certain cases such as Administrative Court cases whose objects are forest utilization permits, if resolved under the authority to test judges who are “*rechtmatige*,” which is only limited to declare null and void the decision of Administrative Court object disputes, less meet the sense of justice. In certain cases such as cases relating to forest use, in some cases will not solve the problem if prosecuted by the decision of Administrative Court declared valid or invalid (Lisdiyono, 2004). Based on the authority to test a judge who is *rechtmatigheidstoetsing*, the Court of Appeal has two alternatives. First, it is to grant the plaintiff's claim and declare a null or void of the defendant decision of Administrative Court. Second, to declare the lawsuit rejected or not accepted, which means winning the defendant and the decision of Administrative Court which is the object of the dispute remains valid. In certain cases such cases, the two alternative decisions are less provide a fair legal protection for the parties, especially seekers of justice. In a verdict that states to grant a lawsuit and declare decision of Administrative Court invalid, it only gives justice to the community as a plaintiff only, while the company loses because not all land is problematic but a small part of the land where the people live is problematic, so it is unfair when it is completely canceled. The decision to declare null and void the defendant decision of Administrative Court is less able to provide legal protection that balances the interests of the individual and the interests of the community as the soul of the 5th Pancasila precepts. Kaelan (1996); Wicaksono (2018); Lisdiyono and Suatmiati (2017) stated that

“The principle of social justice when it is returned to the spiritual base is the nature of the monodualist nature of humanity, namely the dynamic equilibrium; therefore the consequences of individual interests and the public interest must be in a dynamic equilibrium.”

Addition of Authority of Administrative Court Judge to Decision of Administrative Court

The nature of the decision of Administrative Court test through the rechargeable Administrative Court shall lead to the authority of the judge who is limited to declaring the validity of the decision of Administrative Court which is the object of the dispute. In Administrative Court cases where the object of forest use permits, it is often felt that they do not provide a sense of justice for individuals or individuals without neglecting the interests of the community or wider interests. In resolving the Administrative Court dispute whose object is a forest utilization permit requires the judge's creativity to provide a decision other than a decree stating whether or not the decision of Administrative Court is an object of dispute.

In this case the judge should be given to revise the defendant decision of Administrative Court and order the defendant to issue a new decision of Administrative Court in accordance with the revision given by the judge. The authority of such judges is not impossible to grant to the judges of the State Administrative Court in Indonesia. Such authority is granted to judges of administrative justice in other countries. With regard to the authority of the judge, Patrick Frydman (2008) stated that:

“As regards powers of the judge, litigation coming before the administrative courts may be basically divided into two categories : the “contentieux de l’excès de pouvoir” (or “ultra vires litigation”), where the complainant only seeks the annulment of some administrative act or decision on the ground of its illegality, and the “plein contentieux” (or “full litigation”), where the complaint goes beyond illegality and the function of the court is to determine a person’s rights or entitlement, which may not only result in quashing an administrative decision but also involves revising it or granting compensation for torts.”

The opinion shows that the demands of the aggrieved party are of two kinds: demands on the cancellation of an act or an administrative decision based on its invalidity, and demands on matters beyond the question of invalidity. In this case the function of the courts is to establish individual rights, which not only annul the administrative decision but also include revisions of administrative decisions or granting compensation against unlawful acts. In this case the judge's authority is broader, not limited to cancellation of the decision of Administrative Court but may also revise the sued decision of Administrative Court.

With regard to the jurisdiction of the administrative court, Schouten (2011) stated that:

“More and more it is important that a judge in administrative disputes gives a final judgment to avoid that one procedure follows suit.”

Article 8:72 of the General Administrative Act gives some possibilities as:

1. The district court may direct that the legal effects of the annulled decision shall be allowed to stand in full or in part.
2. The district court may rule that the judgment will replace the annulled decision or the annulled part of the decision.

Since January 2010 there is also a new possibility, article 8:51 of the General Administrative Act. The district court may offer an administrative authority the possibility to repair an ascertained shortage in the disputed decision, for example to repair a lack in the reasoning that is underpinning the decision or to complete an investigation in case of an omission.

Based on the above description it can be seen that the court offers administrative officials to correct disputed decisions. In the event that the administrative official does not accept such an offer, the court may decide that the court's decision to replace the decision of the canceled administration official. Under this authority, the judge shall not only have the authority to declare the offense or disqualification of the disputed decision of Administrative Court but also to determine the content of the decision which will replace the aborted decision.

The authority of a judge who is "*rechtmatigheid*" is merely declaring null or not, and the decision being sued is not effective in providing optimal legal protection for justice seekers (Prayogo, 2018). A judge only has the authority to cancel or declare an invalid decision, ineffective in solving the problem. Some claimants have repeatedly filed against the similar decision of Administrative Court, usually the decision mistakes in the wrong manufacturing procedure, then made again with the correct procedure, but the substance is the same, so the plaintiff is still harmed. Now the judge can give instructions of the postponement of the implementation of the State Administrative Decree. The judge can provide an opportunity to correct the decision as directed by the judge. Based on such opinion in order to resolve the dispute through the Administrative Court more thoroughly and provide legal protection, the authority of the judge is not limited to stating whether or not a decision is sued. The judge should be given wider authority than that. In the sense that judges are also given the authority to judge the decision being sued from its substance aspect and provide guidance to correct it. In other words, a judge may revise a defendant's decision with a substance that provides more justice for the seeker of justice. Many did not agree with the judge's authority to revise the sued decision of Administrative Court.

According to Basah (2014), the authority of the Administrative Court judge to revise the sued decision of Administrative Court is a form of judicial interference against the executive, so that such authority is not justified by the Court of Justice. According to the author, it is not a form of judicial interference with the executive. In the event that a conflict between the people and the Administrative Court official is requested and submitted to the Administrative Court, it should be the full authority of the Administrative Court judge to resolve it thoroughly. It is precisely with the juridical judicial authority's limited authority and not reaching the substance, the judge of Administrative Court will not be able to resolve the dispute thoroughly, because the real dispute in certain cases concerns the substance. In the event that the settlement is only related to its sole validity, the dispute cannot be resolved thoroughly.

Limited authority stating the validity of the sued decision of Administrative Court (juridical/*rechtmatigheid* control) is more widely embraced by the countries of the world. In connection with the British legal system, Thompson and Jones (2002) stated that:

"The protection afforded by judicial review to substantive expectations is somewhat more limited than that provided for procedural expectations."

Based on that opinion shows that judge testing is focused on procedural aspects, although from the aspect of the substance is still possible in certain very limited cases. Furthermore Thompson and Jones (2002) stated that:

“The difficulty that some judge’s find with protecting substantive legitimate expectations is that it sits awkwardly with the rule that a decision maker should not fetter the exercise of his or her discretion and that decision-makers should not, by such substantive protection be prevented from changing their policies where the public interest may so require.”

Substantive protection is difficult for judges to do. Decision-makers should not be shackled by the policies they make, and for the protection of substantive decision-makers should not be prevented from changing their policies in which public interest may necessitate such thing (Wirawan, 2018). Thompson and Jones (2002) stated that *“not all claims to protection of substantive expectations are unsuccessful.”* In the substantive protection provided, it is not uncommon in judicial review. Judicial reviews in the United Kingdom are limited to examination of its legal aspects, in practice still open to examination of the substance aspect, as the seeker of justice expects protection in terms of substance. This shows that in certain cases it is necessary to examine both the juridical and the substance, thus providing more protection. Similarly, in the settlement of the Administrative Court dispute whose object is a forest utilization permit, it is necessary to examine both the juridical and the substance so as to resolve the dispute thoroughly, and can accommodate various interests such as the interests of the people around the forest, and the interests of forest sustainability. With such an examination is open space for the judge to be given the authority to revise the sued decision of Administrative Court.

With the broader judiciary authority including the authority to revise the defendant decision of Administrative Court, the judge shall conduct a thorough assessment of the dispute he is examining, not only with respect to the formal procedural aspects of the decision of Administrative Court, but also concerning the substance of the case in greater depth. Without doing so the judge will not be able to revise the sued decision of Administrative Court. If the judge will be able to impose a more creative and innovative decision that can provide legal protection against individuals or individuals by balancing with wider interests, judges are more able to innovate in resolving Administrative Court disputes, thus providing legal protection for justice seekers while still accommodating various interests.

RESULT & CONCLUSION

The authority of the judge to revise the defendant decision of Administrative Court does not mean the court's decision to replace the decision of Administrative Court which is the object of the dispute. The judge's authority to revise the sued decision of Administrative Court is also not a form of judicial interference with the executive. With the addition of the judge's authority to revise the sued decision of Administrative Court, there will be two matters decided by the judge:

1. To declare the unauthorized decision of Administrative Court disputed or issued by the OFFICIAL or Administrative Court Board.

2. Require the defendant to issue a new decision of Administrative Court whose content is based on the revision/direction of the judge.

Based on the foregoing, it does not mean the court's decision to replace the defendant decision of Administrative Court, but in the verdict requires the defendant in this case the official or Administrative Court board to issue a decision of Administrative Court whose content is based on the directives of the judge. In such a case the Administrative Court does not imply any interference with the executive power, on the grounds that a decision of Administrative Court being the object of the dispute and solicited for settlement through the Administrative Court shall be the sole jurisdiction of the court/judge to resolve it. The judge will be able to carry out his duties in resolving the Administrative Court dispute well if the judge has the authority to resolve the dispute thoroughly both from the formal aspects of the procedural and the substance.

The weakness of the judge's disability to revise the decision of government officials is that the judge cannot make corrections and revisions to the Decision of Administrative Court maximally. Judge to the extent only states decision of Administrative Court is contrary to laws or General Principles of Good Governance or not, so that decision of Administrative Court is declared null and void. The judge cannot provide direction to provide a concept of decision of Administrative Court as to what gives more justice for society. Judges tend to accommodate certain individual interests, and ignore other interests that should be deemed necessary.

Judges may be given the authority to revise the decisions of government officials, in that the theory of separation of powers is not rigidly translated. So far, the authority of the judges does not include the authority to revise the decision of Administrative Court, as such authority is considered to be crashing into the principle of separation of powers. The judge's authority to revise the decision of Administrative Court is considered a form of judicial interference with the executive. Based on the author's opinion, the judge's authority to revise decision of Administrative Court is not a judicial interference with the executive, but is part of the judge's authority to resolve the dispute in the Administrative Court. In resolving the dispute, the Court shall examine, settle and resolve the dispute fairly and thoroughly. This can only be achieved if the judge of the Administrative Court is given the authority to revise the decision of Administrative Court.

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