

## AUTHORITY TO RESOLVE DISPUTES OF STATE ADMINISTRATION S AGAINST THE RESIGNATION DECISION WITHOUT RESPECT

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### Abstract

The dismissal of disrespectful public officials becomes a complex focus in state administration law, posing a major challenge in the settlement of disputes by the State Administration Court. (PTUN). Such cases involve complex and diverse legal considerations, requiring a careful and detailed approach from law enforcement. Therefore, an in-depth understanding of the authority and procedures of the PTUN in controversial dismissal cases is essential to ensure fairness and compliance with applicable law. The purpose of writing this article is to know the authority of the PTUN in the settlement of the dispute of the state Administration against the decision of discontinuation not with respect and efforts to resolve it as a State Administration dispute The method of research used is normative jurisprudence. The settlement of civil disputes is resolved through the State Administration Court, unless the civil dispute resulting from the violation of the disciplinary rules of the State Civil Appliance is settled through an administrative appeal to the Court of Justice.

**Keywords** *Dispute Resolution, Dishonorable Dismissal, Administrative Court.*

### INTRODUCTION

In the conception of the rule of law, the existence of law and the state are two inseparable components. This is because a state that cultivates its statehood system as a rule of law cannot be separated from the existence of law in the maintenance of the state and its governance. Over the decades, the concept of the rule of law has evolved. This is proved by the fact that there was a thought about the concept of the rule of law that existed and developed long before the concept that exists today was systematically structured and organized (Nuna & Roy, 2019).

Prosperity for all is the primary goal of the creation of a nation. According to the 1945 Unity State Act of the Republic of Indonesia, "after that, to form a government of the State of Indonesia that protects the whole of the Indonesian nation and the entire bloodshed of Indonesia and advances the common well-being, enlightens the life of the

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nation, and participates in the implementation of the world order based on freedom, lasting peace, and social justice." (Jupri & Roy, 2019)

Indonesia is a state of law with an independent judiciary responsible for the enforcement of law and justice. "The judicial authority is an independent authority for the organisation of justice for enforcing law and justice," says Article 24, paragraph (1) of the Republic of Indonesia State Act of 1945. Article 25 of the Judiciary Authority Act No. 48 of 2009 regulates the environmental responsibilities of the judicial body. 1) Examining, determining, and resolving criminal and civil matters is the responsibility of the general judiciary; (2) Religious justice is the process of examining, interrupting, and settling matters between persons of Islamic religion; (3) Military courts are responsible for investigating, deciding, and solving cases of military criminal acts; (4) State courts of administration are responsible for examining, establishing, and resolving disputes of state institutions. In the context of state corporate justice, which is part of the Indonesian judicial system, the Republic of Indonesia Law No. 5 of 1986 on State Corporate Justice, as last amended by the Law of Indonesia No. 51 of 2009 on the Second Amendment of the Law on State Administration Justice (Processional Act), Article 47 regulates the competence of the Court of State Administration. Jurisdiction is the ability of a court to accept, examine, and decide the settlement of matters referred to it (Yodi MArtono, 2016).

A state administration dispute is a dispute that arises in the field of state administration between an individual or a civil legal body and a state administration body or official, whether central or local, that leads to a decision of the state administration, including a civil dispute based on the rules of the applicable laws. Therefore, the decision of the state Administration is the subject of the dispute. A state Administration decision is a written decision issued by a state Administration body or office containing a legal act of the state Administration that is based on the rules of the applicable laws and is concrete, individual, and final and has legal consequences for a person or civil legal body. Taking into consideration the definition, a dispute between the state's institutions can only be resolved in a written ruling. There is no state administration dispute relating to actions taken by state administration bodies or officials in Indonesia without a state administration decision. Widespread interpretation of Article 1365 of the UNCITRAL (on *onrechtmatig daad*) suggests that, in the Indonesian legal system, the PTUN has no authority to judge the material acts of bodies or officials of the country's Administration. A reduction in Article 2, an addition to Article 3 (1), and a restriction on Article 49 restrict the decision of the state Administration. You can appeal the decision of the State Entrepreneurship Board to the Supreme Court, which is then decided by the State Administration Judge. These decisions are concrete, individual, and final (Abdul Khair, et al, 2016).

Prior to the Republic of Indonesia Act No. 30 of 2014 on Government Administration, the system of liability claims against the government consisted of two

types of liabilities: liability Claims against KTUN that harm citizens and responsibility Claims for actions of the government that are categorised as violations of the law. The difference between these two types of government liability systems is the extent to which the courts are capable of examining and adjudicating lawsuits against the government. Where lawsuits against the government issued at the detriment of citizens are filed through the PTUN, lawsuits against government acts that harm citizens on the basis of the *Onrechmatige Overheidsdaad* are brought through the State Courts. The *Onrechmatige Overheidsdaad* dispute was transferred from the general court to the PTUN after the Republic of Indonesia Act No. 30 of 2014 on Government Administration was made. Article 85 of the UUAP stipulates that the filing of lawsuits for administrative disputes of government that have been registered in the general court but have not been examined, by virtue of which this law is transferred and settled by the court, and the submission of the lawsuits for administrative disputes of government that have been recorded in a common court but are not reviewed, with the effect of this law, remain settled and decided by the courts in their jurisdiction. The transitional provisions concerning the authority of the PTUN to resolve disputes *Onrechmatige Overheidsdaad* in the UPA, previously regulated in the provisions of Article 142 of the PTO Act as regulated also in the Ordinance of the Supreme Court No. 1 of 1991 On Instructions for the Implementation of the Provisions of the Law No. 5 of 1986, which states that the State Government dispute which at the time of the formation of the court under this law has not been dismissed by a court in a general court of law, remains examined and removed by a tribunal in a public court of justice and a dispute on the Administration established by the state at the moment of its establishment, but has not yet been submitted to the public court in this court of affairs (Bambang Arwanto, 2019). As to what is the problem in the writing of this article, it is how the authority of the PTUN in the settlement of the dispute of the state Administration and how the attempt to settle the disputes of the state Administration against the decision of termination is not with respect. However, the purpose of this research is to know the ability of the PTUN to resolve the state administration disputes regarding the decision to terminate with disrespect.

## **RESEARCH METHOD**

Normative jurisprudential law research employs library-based methodologies to address and resolve legal problems or issues under examination. Utilizing primary legal sources such as legislative regulations and supplemented by secondary legal materials including scholarly literature, this approach enables a comprehensive analysis of the legal landscape. By synthesizing these resources, researchers construct informed arguments and propose solutions grounded in legal theory and jurisprudence.

## RESULT AND DISCUSSION

### A. The authority of the PTUN in resolving state administration disputes

The State Administrative Court is established to resolve disputes between the government and citizens or legal bodies. This dispute may arise from the actions of the government as a state administration office, which are considered to violate the rights and interests of the citizen or the legal body itself. The State Administration Court System was established to protect the people. Therefore, the function and duty of the State Administration Court is to help those who seek justice in the field of state administration, especially in the case of government decisions that are illegal and harmful to the public. As stipulated in Article 1, Item 4, of the Law on State Administration Court, a person who is injured by the establishment of the Office of State Administration may seek legal protection through the institution of the National Administration Court. A state administration dispute is a dispute arising in the field of state administration between an individual or a civil legal body and a state administration body or official, both at the centre and in the district, as a result of a decision of the state administration, including a disputed jurisdiction, regulated by the rules of the applicable laws (Ahmad Dahlan, et al, 2013).

An attempt to change the legal concepts laid down in the Procedure Act to extend the powers of the PTUN. The decision on the state administration system is the most important change. The jurisdiction of the PTUN includes assessing the elements of abuse of authority (Article 21 of the UUAP) and examining the application for a fictitious positive decision (Art. 53 of the UUAP), as well as evaluating the decisions of officials or governmental bodies resulting from administrative efforts (Artikel 76 para. (3) of the UPA). The components of the State Administration Decision are different from those listed in Article 1, paragraph 9 of the Procedure Act and Article 1 of paragraph 7 of the UUAP. The state Administration decision consists of six elements, while the administrative decision is composed of three elements. Because of these differences, the competencies of the PTUN are very diverse. According to JJ.H., as the number of elements involved in a dispute increases, the scope of the jurisdiction of the court becomes more limited (Yodi Martono, 2016).

A state Administration decision is a written decision issued by a state Administration body or office that contains a state Administration legal act based on the rules of the applicable laws, which is concrete, individual, and final and has legal consequences for a person or body of civil law. Decisions of the state Administration in general consist of (Tri Cahya, 2015):

1. Revised from its author: issued by a body or official of the state Administration to perform executive duties (urusan pemerintahan).
2. Revised from the point of view of its substance: it covers the laws of the state administration system, that is, the law of the state administration that performs

the task of organising the affairs of government both in the centre and in the region.

3. Reviewed by nature: concrete, individual, and final.
4. Reviewed on the basis of consequences: entails legal consequences for a person or civil legal body.

While Article 87 of the Government Administration Act extends the object of dispute in the State Administration Court to:

- 1) a written determination that also covers factual action,.
- 2) Decisions made by executive bodies and/or officials of state administration, legislative, judicial, and other state institutions.
- 3) Based on legal requirements and AUPB.
- 4) Last nature in a broader sense.
- 5) The legal consequence of a possible decision.
- 6) A decision that respects the community.

With the authorization given by the Government Administration Act to test the factual actions of government bodies or officials, the above jurisprudence is automatically no longer necessary. In addition, the judge of the State Administration Court must have sufficient knowledge of how to test and decide on the actual actions carried out by a governmental body or official. Point E is a decision that can have a legal effect. The phrase "potential" indicates that there are no possible legal consequences. Only a person or a civil legal body who feels that his or her interests are prejudiced can accept the legal status, in accordance with the provisions of Article 53(1) of Act No. 5 of 1986 on State Administration Justice. In some cases, certain laws extend their application to community groups representing communities or environments in basic budgets or households. Moreover, from a jurisprudential perspective, the term "potential" creates legal uncertainty because it makes proofing difficult for the judges and the parties. Furthermore, from a sociological point of view, there are concerns that the court will have too many cases because of the absence of a condition for the interests injured ( Tri Cahya, 2015).

The Ordinance of the Supreme Court of the Republic of Indonesia (PERMA) No. Legal Guidelines in the Assessment of Elements of Abuse of Authority 2015 stipulates that the party in the application, body, or government official who feels harmed by the results of the oversight of the internal surveillance apparatus of the government may apply to the competent court to demand that the decisions and/or actions of such government officials include elements of abuse of authority. It is the competence of the PTUN to check the legality of government action. According to UUAP, abuse of authority is a personal officer's fault. (maladministrasi). Thus, PTUN cannot be held liable for personal liability. Furthermore, Article 17, Paragraph 2, of the

UNCITRAL defines abuse of authority as follows (Yodi Martono, 2016): (a) prohibition of exceeding authority; (b) prohibited interference of power; and/or (c) provision of arbitrary action.

PTUN can assess whether there are elements of abuse of authority committed by government agencies or officials in accordance with the laws of government administration. Article 21 of the Government Administration Act contains such provisions. "An agency and/or government official may submit a request to the Court to assess whether or not there are elements of abuse of authority in a decision and/or action," says Article 21, paragraph (2) of Act No. 30 of 2014. The absence of a defence forum for institutions or government officials who are suspected of abusing authority other than within the domain of criminal law and who feel the victims of the criminalization of public officials' policies lead to this policy (Tri Cahya, 2015).

B. Attempt to settle the dispute of state Administration s against the decision of cessation with disrespect

According to paragraph (1) of the explanation of Article 129 of the Act No. 5 of 2014, "ASN Officer Dispute" is a dispute brought by an ASN official against a decision made by the Office of the Constructors of Companies against an official. The previous regulations on civil disputes were laid down in Article 35 of Act No. 8 of 1974 on Civil Dispute Trees. It was noted that, as part of the State Corporate Court, Act No. 51 of 2009 on the Second Amendment of Law No. 5 of 1986 on National Corporate Justice and Government Regulation No. 53 of 2010 on the Discipline of Civil Service Officers stipulated that disputes in the field of civil service must be resolved in court. The State Administration Court (PRATUN) is responsible for decisions in the field of public affairs. A civil dispute is part of a state entrepreneurship dispute. (TUN). According to Article 1, Paragraph 4, of Act No. 5 of 1986, a state entrepreneurship dispute is a dispute that arises in the field of state Administration s between an individual or a civil legal entity and a state Administration body or office, both at the centre and in the region, as a result of a decision of the state Administration . A state Administration decision is a written decision made by the state or authorised officials that includes legal action based on clear, individual, and final legislative regulations (Robinsar Marbun, 2017).

The civil apparatus of the state (ASN) who has committed a crime or a criminal act in the capacity of such an ASN shall be prosecuted by the responsible party and shall be temporarily dismissed from his office for the sake of justice. An ASN who is accused of committing a crime or a violation of office by the responsible party shall be temporarily detained by the appropriate party from the time of his detention. An ASN who is temporarily dismissed by this rule must be immediately removed and re-employed to his post after inspection by the competent authority. If the results of the investigation show that the ASN concerned is guilty, the ASD must be dismissed.

Under this rule, the dismissal of the ASN begins when the Court's decision on the matter becomes the fixed law. An ASN found guilty must be dismissed in accordance with the ASN Government Disciplinary Regulations. This is included in the severity of the disciplinary punishment, one of which is dismissal without respect as an ASN (Rusnin, 2019).

Authority means rights and obligations. The right is the freedom to do or not do certain things or to require others to do some things. The obligation includes the obligation to do something. State administrative law uses attribution, delegation, and mandate to obtain governmental authority derived from the rule of legislation. The principle of the rule of law states that any action must be based on the law, so that officials who are authorised to punish must obey the law when they perform their duties and functions. Consequently, if officials ignore sanctions imposed on violators of severe discipline of civil state officials, the sanctions will be legally acceptable (Fahrudin Rasyid, 2019).

Nevertheless, the Act No. 30 of 2014 on Government Administration gives the impression that there are differences in the rules regarding the authority to receive, terminate, examine, and resolve available administrative disputes, such as administrative appeals between the PTUN and the PT TUN. In this case, it will be a question of how to resolve such matters later, such as disputes that can be resolved through administrative effort, like competition disputes. Dispute settlement is one of the concepts of dispute resolution through administrative effort. If the decision of the State Administration concerning the position, obligations, rights, and formation of civil servants is determined by the body or official competent in the field of civil service, it is called a civil service dispute. The dispute settlement process was initially regulated in Article 35 of the Republic of Indonesia Act No. 43 of 1999 on Amendments to Law No. 8 of 1974 on Tree of Tree, which states as follows (Azzahrawi, et al, 2019):

State Administration Court is the place of settlement for civil disputes.  
2) An administrative appeal to the Court of Appeal is made to resolve a court dispute arising because of the violation of the disciplinary rules of the Civil State Officer.  
3) The organisation referred to in paragraph (2) is constituted by the law of the government.

Pursuant to the above provisions, except for civil disputes arising out of a violation of the disciplinary rules of the Civil State Officer, the dispute is settled through an administrative appeal to the Court of Justice. Government Ordinance No. 53 of 2010 on the Discipline of State Officers establishes provisions in this regard. Administrative action, according to Article 1 para. 6 of Government Regulations No. 53 of 2010 on Discipline of Civil Officials, is a measure that can be taken by an ASN who is not satisfied with the disciplinary punishment imposed on him, such as administrative objection or administrative appeal. An ASN who is not satisfied with

the disciplinary punishment imposed by the punishing authority may undertake this administrative effort. ASN that is dissatisfied with a disciplinarian punishment, such as a dismissal with respect without his own request or an unrespectful dismissal as a PNS, may file an administrative appeal to the Court of Jurisdiction. As a result of Act No. 5 of 2014 on State Civil Appliances, a new paradigm in the settlement of civil disputes through administrative effort was created. This Act stipulates that any civil dispute shall be resolved by means of an administrative effort, as provided for in Article 129, as follows (Azzahrawi, et al, 2019):

1. Administrative effort used to resolve an ASN official dispute.
2. Administrative objections and appeals are part of the administrative effort, as mentioned in paragraph (1).
3. The objection referred to in paragraph (2) shall be submitted in writing to the superior authority to punish, accompanied by the grounds for the objection.
4. The consideration of the ASN accepts the administrative bonds mentioned in the sentence. (2).
5. Government regulations regulate the administrative efforts and consideration bodies of the ASN, as mentioned in paragraphs (2) and (4).

Article 129 of the above-mentioned ASN Act explicitly states that the civil dispute referred to as the ASN official dispute is resolved through administrative effort in the form of administrative objection and administrative appeal, as stated in paragraph. (5). However, so far, there are no government regulations governing this matter. In order to fulfil the purposes of Article 129 of the ASN Act, the government must immediately pay attention to this issue in the settlement of civil disputes.

## **Conclusion**

From this discussion, it can be concluded that the State Business Court has the authority to resolve disputes between the government and citizens or legal entities. This conflict may arise as a result of the actions of the government as a state business office, which are considered to violate the rights and interests of the citizen or the legal body itself. Therefore, the State Business Court was established to provide protection to the people. The functions and duties of the State Business Court are to assist the public in seeking justice in the field of state business, especially with regard to government decisions that are illegal and harmful to the public. Furthermore, unless a civil dispute arising out of a violation of the disciplinary rules of a civil civil servant can be resolved through an administrative appeal to the Court of Justice, the dispute is resolved by the State Business Court.

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