

## **Juridical Consequences of Expansion of the Object of the State Administrative Court Towards the Application of the General Principles of Good Governance in Indonesia**



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**ABSTRACT:** After the emergence of Law Number 30 of 2014 concerning Government Administration, there has been an expansion of the meaning of State Administrative Decrees. The expansion of this understanding is very necessary because the object of the State Administrative Court is becoming increasingly broad. However, the widening of the object does not necessarily guarantee that the state administration will run in line with the General Principles of Good Governance. This research was made with the aim of knowing the expansion of the meaning of State Administrative Decisions after the emergence of the Government Administration Law and good governance after the emergence of the Government Administration Law. The research method used is normative juridical with a statutory approach. Sources of data used are primary legal materials, secondary. It was analyzed qualitatively, and the existing data was obtained through literature study data collection methods. In this study, the results were obtained that there was indeed an expansion of the meaning of State Administrative Decrees after the emergence of Law Number 14 of 2014 concerning Government Administration. As well as the expansion of the meaning of the State Administrative Decree has a very close relationship with the realization of the General Principles of Good Governance. This principle has been used as a basis for the government to carry out its duties and has become a judicial test tool when assessing government actions.

**KEYWORDS:** Expansion of Understanding, State Administrative Decisions, General Principles of Good Governance

### **I. BACKGROUND**

Indonesia is a country that pays attention to the welfare of its people, so in order to support the realization of the state's goal of making society prosperous, a state administration is needed. The purpose of the existence of state administration is to support the government in implementing policies for the welfare of its people. Based on the opinion of Leonard D. White stated that "*Public administration consists of... all those operations having for the purpose the fulfillment and enforcement of public policy.*" Which means that all state activities aimed at implementing state policy constitute state administration.<sup>1</sup>

In carrying out state administration, a rule is needed to regulate this matter. The rules governing state administration are called state administrative law. So far there have been experts who have defined state administrative law, the following is the definition:

- a. Oppen Hein defines that "State Administrative Law is a combination of provisions that bind high or low institutions or bodies if the institution uses the authority that has been given to it through State Administration Law."<sup>2</sup>
- b. Beltefroid defines "State administrative law as all the rules on how the apparatus of government or state institutions as well as the assembly of administrative courts will fulfill their duties"<sup>3</sup>
- c. Logeman defines it as "a set of norms that examine the special legal relationships that exist to enable public administration officials to carry out their special duties."<sup>4</sup>
- d. Schmidt Assman defines "Administrative law is law that has to do with the principles of government action, government organizations and government accountability"<sup>5</sup>

Based on the statements of the four experts, it can be seen that state administrative law is a law that regulates matters relating to the government. Matters relating to the government are about the position, duties, functions and authority as executors of state

<sup>1</sup>Yos Johan Utama, Module Understanding State Administration and Administrative Law, (Sang Media: 2014), page: 69.

<sup>2</sup>Hardi Fardiansyah, et al, Introduction to Law (Bali: 2023), p. 173.

<sup>3</sup> *ibid*

<sup>4</sup> *ibid*

<sup>5</sup> A'an Effendi, et al, Administrative Law, ( Jakarta : 2019), p : 70.

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administration. <sup>6</sup>The application of state administrative law often occurs in state administrative disputes. Disputes regarding state administration in question have something to do with decisions made by the government in the form of state administrative decisions or administrative decisions which will be terminated through an administrative court. state business. In the previous paragraph it was mentioned about State Administrative Decisions. Based on Law Number 30 of 2014 State Administrative Decisions are defined as: <sup>7</sup> "Written decisions issued by Government Agencies and/or Officials in the administration of government"

In this case the State Administrative Decision, hereinafter referred to as the KTUN, is a unilateral government legal action because it does not require approval from other people in its stipulation. <sup>8</sup>After the emergence of Law Number 30 of 2014 concerning Government Administration, there was an expansion in various matters relating to the scope of the absolute competency of PTUN, the understanding of State Administrative Decisions as objects of dispute in the State Administrative Court. The expansion of this understanding includes factual legal actions, decisions arising from civil law actions, as well as decisions from administrative officials. <sup>9</sup>The expansion of the meaning of KTUN contained in the Administrative Law is very necessary because the PTUN object is getting wider. <sup>10</sup>However, the breadth of these objects does not necessarily guarantee that state administration will run in line with the General Principles of Good Governance. This problem will be discussed in depth in this paper.

The formulation of the problems studied in this study are as follows; How is the expansion of the meaning of State Administrative Decisions after the emergence of the Government Administration Law? What is the form of good governance after the expansion of the meaning of State Administrative Decrees after the emergence of the Government Administration Law?

### II. RESEARCH METHODS

This study uses a normative juridical research method, with a statutory approach . The statutory approach is carried out by conducting a review of all laws or regulations related to the legal issues under study. <sup>11</sup>The source of this research data comes from primary legal materials in the form of the 1945 Constitution of the Republic of Indonesia, Law Number 5 of 1986 concerning State Administrative Court, Law Number 30 of 2014 concerning Government Administration and secondary legal materials in the form of books, journals, and literature in accordance with this research. Then this research was analyzed using qualitative methods and the existing data was collected using literature study data collection methods.

### III. RESULTS AND DISCUSSION

#### 1. Expansion of the object of the State Administrative Court

Prior to the emergence of Law Number 30 of 2014 concerning Government Administration, KTUN was regulated in Law Number 5 of 1986 concerning State Administrative Court, Article 1 paragraph (9) which reads,

*"State Administrative Decisions are a written determination issued by a state administrative body or official which contains state administrative legal actions based on applicable laws and regulations, are concrete, individual, and final, which give rise to legal consequences for a person or entity. civil law."*

In addition, regarding the Absolute Competence of PTUN, it is regulated in Article 47 of Law Number 5 of 1986 concerning State Administrative Court which states,

*"The court has the duty and authority to examine, decide and resolve State Administrative disputes."*

The meaning of "State Administrative disputes" here is regulated in Article 1 paragraph (4) namely *"disputes that arise in the field of state administration between civil law persons or entities and State Administrative bodies or officials, both at the central and regional levels, as a result of issuance of State Administrative Decisions, including employment disputes based on applicable laws and regulations."* From the statement of absolute competence in the previous law it was considered too narrow because it only related to state administrative decisions which were considered detrimental to the community, and for the current condition of the country it was considered no longer relevant. <sup>12</sup>After the emergence of the Government Administration Law, the definition of an expanded KTUN is regulated in Law Number 30 of 2014 concerning Government Administration Article 1 paragraph (7) which reads, "Government Administration Decisions, which are also called State Administrative Decisions

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<sup>6</sup> *Op Cit*, Hardi Fardiansyah , page: 173

<sup>7</sup> Law Number 30 of 2014 concerning Government Administration Article 1 paragraph (7).

<sup>8</sup> Syofyan Hadi, et al , " *The Principle of Legitimacy ( rechtmatigheid ) in Establishing State Administrative Decisions* ", Journal of Cita Hukum, Vol V, No. 2, Year 2017, page: 5.

<sup>9</sup> Pahlevy Azhari, " *Shifting Paradigm of State Administrative Court in Indonesia and the Netherlands* ", Journal of Legal Arena, Vol. 12, No. 3, 2019, page : 583.

<sup>10</sup> Dola Riza, " *The Nature of State Administrative Court Laws According to State Administrative Court Laws Vs Government Administration Laws.* ", Journal of Soumatara Law Review, Vol. 2, No. 2, 2019, page : 210.

<sup>11</sup> Marzuki Peter, Revised Edition of Legal Research (Jakarta: Kencana Prenada Media Group, 2005). page 133.

<sup>12</sup> Ridwan, et al , " *Expanding the Absolute Competence of State Administrative Courts in Government Administration Laws* ", Journal of Law IUS QUIA IUSTUM, Vol.25, No. 2, 2018, page: 342

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or State Administration Decisions, hereinafter referred to as Decisions are written decisions issued by Government Agencies and/or Officials in administering government. Then in Article 87 of Law Number 30 of 2014 concerning Government Administration it also defines KTUN as: "(a) a written determination which also includes factual actions; (b) decisions of State Administrative Agencies and/or Officials within the executive, legislative, judiciary and other state administrators; (c) based on statutory provisions and AUPB; (d) is final in a broader sense; (e) decisions that have the potential to cause legal consequences; and/or (f) decisions that apply to community members.

### 2. Analysis of Juridical Consequences of Expansion of State Administrative Court Objects by applying the General Principles of Good Governance in Indonesia

Based on the description regarding the expansion of the definition of KTUN, it can be seen that Law Number 5 of 1986 concerning the State Administrative Court has the function of being a formal law, becoming a reference in government administration. Whereas Law Number 30 of 2014 is a material law that regulates government administration.<sup>13</sup> If examined by the principle of *lex posterior derogat legi priori*, which means that the new law makes the old law null and void.<sup>14</sup> So the validity of the meaning of KTUN based on the previous law was replaced by the new law. After experiencing an expansion of meaning, disputes that arise due to the issuance of a written determination or the existence of a factual action, a legal action taken by the government so that it can result in losses for the community, this action is carried out based on existing laws and regulations and AUPB, and is concrete, individual and final.<sup>15</sup>

#### 1) Good Governance Post Expansion of the Definition of State Administrative Decisions

The expansion of the meaning of KTUN actually has a very close relationship with the application of the General Principles of Good Governance (AUPB). In Law Number 30 of 2014, AUPB, Article 10 stipulates which reads:

1) "AUPB referred to in this Law covers the principles of:

- a. Legal certainty;
- b. Benefits;
- c. Impartiality;
- d. meticulousness;
- e. Do not abuse authority;
- f. openness ;
- g. Public interest; And
- h. Good service.

2) Other general principles outside the AUPB as referred to in paragraph (1) can be applied as long as they are used as the basis for the judge's assessment contained in a Court decision that has permanent legal force.

According to Prof. Stjipto Rahardjo argues that, "the principle of law is the heart of law. The meaning of the principle is the broadest basis for the birth of a legal regulation, which means that legal regulations can be returned to this principle or in other words the legal principle is referred to as the reason for the birth of legal regulations."<sup>16</sup> AUPB has been used as the government's foundation in carrying out its duties, besides that AUPB is also used as a judicial test tool when evaluating the behavior of the government when there is a lawsuit coming from another party that is detrimental.<sup>17</sup>

As previously explained, after the emergence of Law Number 30 of 2014 concerning Government Administration, there has been an expansion of the meaning of State Administrative Decrees. This actually does not guarantee the running of state administration in line with the General Principles of good governance, but if you look at Law Number 30 of 2014 concerning Government Administration, it has been regulated that the running of government must be in accordance with the General Principles of Good Governance. So that if there is a KTUN that is not in accordance with the General Principles of Good Governance, then the KTUN has violated Law Number 30 of 2014 concerning Government Administration.

## IV. CONCLUSION

Based on the previous explanation, it can be concluded that as a country that pays attention to the welfare of its people, Indonesia uses state administrative law to regulate it. However, in the application of state administrative law, state administrative disputes often occur, these disputes are related to State Administrative Decisions made by the government. In Law Number 30 of 2014 the

<sup>13</sup> *Op Cit*, Dola Riza, page: 95

<sup>14</sup> Nurfaqih Irfani, " *The Principles of Lex Superior, Lex Specialis, and Lex Posterior: Meaning, Problems, and Their Use in Legal Reasoning and Argumentation* ", Journal of Indonesian Legislation, Vol. 16, No. 3, 2020, p:17.

<sup>15</sup> *Op Cit*, Dola Riza, page: 97.

<sup>16</sup> satjipto Rahardjo, Law Studies, (Bandung: 2006)

<sup>17</sup> Muhamad Azhar, "The Relevance of the General Principles of Good Governance in the System of State Administration." Journal of Notary Vol. 8, No. 2, 2015.

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State Administrative Decree has expanded the meaning of Law number 5 of 1986 concerning State Administrative Court. In addition, there has also been an expansion of the absolute competence of the State Administrative Court. The expansion of the meaning of the State Administrative Decree has a very close relationship with the realization of the General Principles of Good Governance. This principle has been used as a basis for the government to carry out its duties and has become a judicial test tool when assessing government actions. Contributions of thought based on this study are as follows; because there has been an expansion of the meaning of State Administrative Decisions, it is advisable that when deciding State Administrative disputes one must continue to prioritize the General Principles of Good Governance, so that the outcome of the decision does not harm any party.

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