The Urgency to Establish State Administrative Court to Actualize the Concept of State Law in Indonesia

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ABSTRACT
One characteristic of state law in Indonesia is the effectiveness of the administrative court, particularly the State Administrative Court (PTUN-Peradilan Tata Usaha Negara). However, the establishment, which was officially issued in Law number 5 of 1986, was brought about in 1991. It means that state administrative court was applied 46 years after Indonesia declared to be a state law. The research aims to know the urgency of State the establishment of State Administrative Law from the state law point of view. The studies applied the normative juridical method by analyzing the effective regulations to answer the research in question. The fact shows that it is an urge to establish state administrative court in Indonesia. It should have been carried out since the declaration of independence in 1945. The delay indicates that the government sees it as unnecessary to set up a state law. it is required to prevent the violation of the rights of Indonesian people by those holding the authority.
Keywords: *urgency, State Administrative Law, state law*

1. INTRODUCTION

One characteristic of the rule of law is the existence of administrative justice. In the development of the rule of law in Indonesia, the formation of administrative justice known as the Administrative Court (PTUN) can be said to be very slow. If referring to the constitution. The 1945 Constitution of the Republic of Indonesia which was ratified on August 18, 1945, clearly states that the state of Indonesia is a state of law, but in reality, a new administrative court was formed in 1986 with the birth of Law Number 5 of 1986 concerning State Administrative Court. The law was apparently not immediately enforceable because there were no implementing regulations. It was in 1991 or 6 years after the birth of Law Number 5 of 1986 that the government issued Government Regulation No. 7 of 1991 concerning the implementation of state administrative justice in Indonesia. In one perspective, this reality is a condition where formally and materially Indonesia has fulfilled the requirements as a rule of law [1] [1]. But in a different perspective, this reality is a proof of the slow development of the rule of law materially, because the element of the rule of law itself has not been fulfilled until 46 years after Indonesia declared itself a law state. In fact, the purpose of establishing a state administrative court in Indonesia is to protect individual rights from arbitrary actions committed by the authorities. Indirectly it can be said that during the 46 years that Indonesia was independent and declared itself as a state of law, there was no protection for individual rights in the country from the possibility of arbitrariness by the authorities in using their power. In addition, Indonesia also applies the principle of legality in the administration of government, with the slow setting of state administrative justice, meaning that the principle of legality cannot be applied because there are no laws and regulations governing the accountability mechanism of the authorities if they use excessive powers so as to harm or violate the rights individuals in the country. In the rule of law, every aspect of government action both in the field of regulation and in the field of public services must be based on statutory regulations or based on the principle of legality.

In Article 24 of the 1945 Constitution of the Republic of Indonesia NRI also expressly states that one of the judicial environments in Indonesia is the State Administrative Court, but if in reality, the formation of the State Administration Event is very slow, then it is very possible because of the failure of the authorities to formulate legal rules regarding PTUN . Therefore the purpose of this paper is to determine the urgency of establishing a State Administrative Court in realizing the concept of the rule of law in Indonesia.

2. METHODOLOGY

The method used in this paper is a normative juridical method, namely research that puts the law as a norm building system [2]. Normative juridical writing approaches that conceptualize the law as rules, norms, principles or dogmas [3]. This writing identifies and

analyzes the regulations relating to the establishment of the State Administrative Court and the regulations relating to the concept of the Indonesian rule of law, as well as the relationship between the concept of the rule of law in Indonesia and the development of the establishment of state administrative justice in Indonesia. Next is empirical juridical to see the impact of the birth of the state administrative court in Indonesia and the impact if the state administrative court is not formed in accordance with the law.

3. URGENCY OF ESTABLISHMENT OF COUNTRY COURT

Before discussing the formation of a State Administrative Court, it will first be discussed regarding the concept of the rule of law in Indonesia, because the existence of a State Administrative Court is one of the elements of a state based on law.

A. The Concept of the Ideal Rule of Law

In essence, the establishment of a state administrative court cannot be separated from the concept of the rule of law. In the conception of the rule of law, the power to run or administer a government must be based on the rule of law or the rule of law with the main objective being to realize the rule of law in the administration of government [4] [4]. Theoretically, there are several conceptions of the rule of law, namely: (1) State of law based on the Koran and sunnah, (2) Rechtsstaat (continental Europe), (3) Rule of Law (Anglo-Saxon); (4) the Pancasila State Law, and (5) Socialist Legality. From some of these concepts, each has a different history and characteristics in its implementation. But in general, the concept of the rule of law was born to create justice and order in society in achieving the prosperity that it aspires for through a government that acts fairly. In Indonesia, the concept of the rule of law is expressly stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that the state of Indonesia is a state of law. But the most important thing is how the concept of the rule of law is implemented in real governance. The characteristics of the rule of law in Indonesia are influenced by two ideas, namely rechststaat and rule of law. Although the history of the formation of these two concepts is different, the purpose of the rechtstaat law state and the rule of law both want to eliminate arbitrariness in the administration of state government. Both rechtstaat and rule of law both want to provide legal protection to citizens from arbitrary actions or deeds of authorities or government [4].

When Plato wrote Nomoi as his third writing after Politeia and Politicos, the term "rule of law" had emerged. In Nomoi Plato stated that the implementation of a good state is based on good legal regulation [5] [5]. Aristotle as Plato's student then emphasized the idea of the rule of law by stating that a good state is a state ruled by the constitution and rule of law. Then in the 19th century came the concept of rechtsstaat which was conceived by Freidrich Julius Stahl who put forward four elements in a rule of law, namely Protection of Human Rights, Separation and distribution of powers to guarantee those rights, government based on statutory regulations, and justice administration in dispute. The existence of elements of judicial administration in disputes over the rechtsstaat concept not found in the rule of law concept shows the historical relationship between the concept of continental European rule of law with the Roman legal system and the emergence of State Administrative Law. [6].

Indonesia itself has the concept of the Pancasila rule of law, which is defined as a rule of law based on the values of the Pancasila in every regulation or policy produced. As a basic norm in the state, Pancasila not only functions as a guideline in the formation of laws and regulations but also functions as a guideline for the behavior of the state apparatus in exercising its power. In practice the Pancasila rule of law state is a combination of the concept of rechtsstaat and rule of law, although the definition of the rule of law Pancasila itself has its own characteristics and characteristics that are not contained in the rechtstaat concept or rule of law. One of the characteristics of the rule of law in Indonesia is that one of them is the application of the concept of a welfare state, in which the division of power in the executive, legislative and judiciary areas can be said to be not absolute. The executive institution not only functions to implement the laws made by the legislative body as in the concept of a liberal rule of law known as the night watch state, but the executive agency also has an important role in drafting regulations together with the legislative body in administering the state. As a consequence of the large executive role in administering the country, the control mechanism must be carried out effectively so as not to cause abuse of power. One of the pillars in implementing the control mechanism on executive performance is the existence of a State Administrative Court institution because the State Administrative Court has an important role in the enforcement of administrative law.

If traced, as a democratic country, Indonesia has a constitutional system consisting of executives, legislative and judiciary institutions. Of the three institutions, the executive has a dominant role in terms of the role and authority in government. Compared to other institutions. Therefore a Check and Balances mechanism is needed in the administration of government. One form of checks and balances mechanism in judicial control is the establishment of a State Administrative Court. Fundamental change [7].

For Indonesia, the results of the study show that the justice system in Indonesia is very unique, when viewed from the structure of the judicial organization, it is closer to the unity of jurisdiction system, whereas when viewed from the principles of the court or the procedure for dispute resolution, it is closer to the duality of jurisdiction system.

so it can be concluded that the Indonesian justice system is a mixed system [8]. In the practice of the history of state administration, the fostering of State Administrative Court has been carried out by the executive, namely by the Directorate General of General Justice and State Administrative Court of the Ministry of Justice and Human Rights, then from March 31, 2004, after the entry into force of Law Number 4 of 2004 concerning Power Judiciary, there will be a change in the transfer of organizational, administrative and financial justice bodies under the Supreme Court. This situation is a phenomenon of the unclear concept of the rule of law in Indonesia, where judicial power is for a long time under the executive body and does not have independence as a judicial institution as the principle of procedural law for State Administrative Court, one of which is the principle of free and free justice independent from the intervention of the power of other state institutions.

B. The Urgency of Establishing a State Administrative Court in an Effort to Realize a Rule of Law

Since it began to effectively operationalize the state administration court on January 14, 1991 Based on Government Regulation No. 7 of 1991, which was previously marked by the inauguration of three State Administrative High Courts (PTTUN) in Jakarta, Medan and Ujungpandang, and five State Administrative Courts (PTUN)) in Jakarta, Medan, Palembang, Surabaya and Ujungpandang [7]. Until now the existence of a state administrative court as a judicial institution that has the functions, duties, and authority to examine, decide upon and adjudicate a state administration dispute between a person or a legal entity with the government, in this case, is a state administration agency or official, indeed has provided contribution in providing legal protection to the public and creating apparatus that is clean and law-abiding. However, these contributions have several weaknesses, including weaknesses in the execution of decisions that have permanent legal force. As a law that functions to uphold State Administrative Law, the procedural law of state administrative justice has a vital role in creating a harmonious relationship between the government and citizens, namely when the government acts in its capacity as a state official. Therefore the law must provide legal protection for citizens, as FH Van Der Burg states that the possibility to provide legal protection is important when the government intends to commit or not take a particular action against something because the act or omission violates (the right) other people. [9]

Judicial power in Indonesia has powers that are separate from political institutions such as the Parliament and the President, as in the 1945 Constitution of the Republic of Indonesia, is one of the important principles of the rule of law, which carries the consequences of guaranteeing the implementation of an independent, free judicial authority from the influence of other powers to administer justice in order to uphold law and justice (Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia).

Judicial power in Indonesia is exercised by a Supreme Court and the judiciary below it in the general court, religious court environment, military court environment and state administrative court environment, and by a Constitutional Court, along with its legal basis proving that Indonesia is trying to be consistent in applying principles as a rule of law. at least through the judicial bodies, the legal joints can be upheld, although in the process there will be many clashes because the movement to uphold the law (rule of law) must deal with political, social, economic aspects [9]

Based on Law Number 5 of 1986 which was later amended by Law Number 9 of 2004 concerning State Administrative Court, PTUN's position is in every regency or city, whereas for the State Administrative High Court (PTTUN) domiciled in every province. But in reality until now the number of PTUN has not increased; currently there are 4 State Administrative High Courts (PTTUN) and 28 State Administrative Courts (PTUN). Of this amount, of course it is still far from the ideal number expected in the law because in Indonesia there are 34 provinces, 415 regencies, and 93 cities. From comparative data on the number of PTUNs and PTTUNs against the number of provinces and districts or cities, it can be analyzed that the existence of PTUNs is not a focus of the government, whereas if it refers to the theory of the rule of law applicable in Indonesia, the existence of PTUNs is one of the protectors of individual rights from arbitrary acts. authority carried out in exercising his authority. Through several sources it can be traced that one of the factors causing the slow formation of PTUN is the lack of implementing rules of the State Administrative Court Law, so that it causes the development of PTUN to be hampered because there are no rules that detail governing the budget and mechanism of PTUN formation in each district of the city in accordance with the mandate of the PTUN Law.

The existence of state administrative courts (PTUN) in various modern countries, especially the states of understanding Welfare State (Welfare State) is a milestone on which the expectations of the public or citizens to defend their rights that are harmed by the public legal actions of state administrative officials because of the decision or policies issued [10].

Theoretically, a person in his position as a state official has three authority, namely first: issuing regulations; second: issuing decisions and third; commit material legal actions. In the case of the authority to issue this decision which is the object in the State Administration court where the State Administration body or official can issue a State Administration Decree. Another reason why the formation of a State Administrative Court is very necessary for a state of law is related to the principle of presumption that rechmatig applies in state administrative justice, the principle states that every decision issued by a state administrative agency or official must always be considered in accordance with the laws and regulations. invitation, until there is evidence to the contrary. So in the

State Administrative Court procedural law also does not recognize counter-claim because the defendant is considered to have a stronger position in a legally formal manner. From this statement it is clear that in order to be able to prove a decision issued by the state administrative body or official in violating the rights of individuals whose names are listed in the decree or not having to go through the TUN court mechanism, without the existence of the State Administration Court mechanism it is very likely a administrative decision Even though the state's business is issued by a state administrative agency or official even though it is in accordance with the laws and regulations, the contents of the substance contain violations of individual rights. Therefore, conceptually, the establishment of PTUN is to find truth that is material, in contrast to general justice which conceptually aims to find formal truth. Based on this, it is necessary to think further about the urgency of establishing a State Administrative Court in realizing a rule of law in Indonesia, bearing in mind that the formation of a state administrative court itself is very slow, if coupled with the slow establishment of a state administrative court in various regions, it will become an indicator of seriousness the government in protecting the rights of individuals in the country, and this can have a very broad impact on aspects of community life, especially public trust in the government, because the government is considered negligent in implementing the law on state administrative justice.

4. CONCLUSION

Based on the discussion above, it can be concluded that the establishment of a State Administrative Court in a state of law is a necessity in order to guarantee the rights of individual communities in a country. Without adequate administrative justice, it will be very difficult to control various decisions issued by TUN agencies or officials in various state administration matters. For this reason, the seriousness of the government as an executive organ is needed to continue to develop the existence of PTUN, although at a glance the formation of PTUN is formed by executive institutions for executive agencies and by effective institutions, but it is important to remember that in Indonesia there is a check and balance mechanism that allows the judiciary to exercise control over the performance of the executive body. Based on the discussion above it can also be said that there are several factors that influence the slow formation of a State Administrative Court in Indonesia, including the factor in the absence of independent judicial power. The judicial power, including state administration justice, is an independent power and is free from intervention from any party in carrying out the function of justice, but in reality the legal principle can never be applied and is only limited to theory. Without the development of the establishment of the State Administrative Court, it can be an indication that the concept of the rule of law in Indonesia has not developed, so that commitment and sincerity from the government is needed to carry out the mandate of Law Number 5 of 1986 which has been perfected to Law Number 9 of 2004 regarding State Administrative Courts, history shows that PTUN itself was formed very long after Indonesia declared itself a state of law. If this is not done immediately, then Indonesia will be very difficult to find the form of state law adopted, so that the existence of PTUN is nothing more than a symbol of a judiciary that has no existence in the administration of administrative law..

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