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LEGAL PROBLEMS IN RESOLUTION OF GOVERNMENT ADMINISTRATIVE DISPUTES REGARDING RAPID EXAMINATION IN THE PERSPECTIVE OF LEGAL PROTECTION THEORY

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ABSTRACT

Problematic law to inspection in a manner fast in settlement dispute administration government need studied in perspective theory protection law . Method research used _ that is juridical normative . Results study show that there is problem to inspection fast in the judicial process system business country so that For protect interest inhabitant public need done protection through approach law .

Keywords : Inspection , Quickly , Administratively .

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INTRODUCTION

Since the enactment of Law Number 30 of 2014 concerning Government Administration (hereinafter referred to as UUAP) [1], one of them arrange _ regarding administrative efforts, namely the settlement of government administrative disputes through non-judicial channels in the internal government between community members and government administration officials. The procedures or stages of administrative efforts are a form of protection for every citizen's right to obtain justice for the actions of government administration officials. Wrong One means For give protection law of these human rights is to carry out supervision or *judicial control* over the government through administrative courts/courts system business country.[2]

[1] Law of the Republic of Indonesia Number 30 of 2014 concerning Government Administration.

[2] S.F. Marbun, *Peradilan Administrasi Negara dan Upaya Administratif di Indonesia*, Liberty, Yogyakarta, 1997, p. 184.

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With the birth of the UUAP, several new provisions and paradigms emerged in the field of government administration which of course will have implications for the practice of administrative justice which has been carried out by the State Administrative Court so far.

In terms of its substance (content material), Law Number 30 of 2014 concerning Government Administration is the material law of the State Administrative Court system. [3]While the formal law is contained in the Act Number 9 of 2004 Concerning Change On Constitution Number 5 of 1986 concerning the State Administrative Court (hereinafter referred to as the Administrative Court Law). [4]The opening of opportunities for testing against acts against government law (*onrechtmatigeoverheisdad*), including the birth of a new paradigm for administrative efforts whose initial concept has been regulated in the Administrative Court Law.[5]

One of the materials regulated in the UUAP is regarding administrative efforts as stipulated in Article 75 paragraph (1) which reads *" community members who are disadvantaged by decisions and/or actions can submit administrative efforts to government officials or superior officials who determine and/or make decisions and/or Actions",* means that all disputes or issues relating to decisions of Government Agencies or Officials Administratively , the agency or government official referred to here is an official who is authorized by law to carry out obligations executor order from Constitution especially in matter make policy decree written in organize administration government .

The administrative measures consist of objections and appeals. Effort administrative First stage (objection) , is filed objection or rejection of the issuance of a Government Administration Decree, which is also called a State Administration Decree or a State Administration Decision addressed to government administration [6]officials . The second stage is an appeal, namely in the event that members of the public do not accept the settlement of objections by the Agency and/or Government Officials who issue the object of dispute in the form of a State Administrative Decree , then the community members or civil legal entities can appeal to the superiors of Officials in a higher hierarchy. This is further regulated in Article 76 paragraph (2) UUAP.

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[3] SF Marbun, there are several other terms that can be used to refer to the term "administrative effort", including *guasi rechtspraak* or moot administrative justice. See S. F Marbun, *Peradilan Administrasi Negara dan Upaya Administratif di Indonesia*, Liberty, Yogyakarta, 1997, p. 65.

[4]Law of the Republic of Indonesia Number 5 of 1986 concerning the State Administrative Court.

[5] Irvan Mawardi, *Paradigma Baru PTUN, Respon Peradilan Administrasi terhadap demokrasi*, Thafa Media,Yogyakarta, 2016, p. 181.

[6]Article 1 number 7 of the Law of the Republic of Indonesia Number 30 of 2014 concerning Government Administration.

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METHOD

The methodology used that is juridical normative with approach regulation legislation . For study This use characteristic study prescriptive analytical that is with analyze it through theory law .[7]

DISCUSSION

Authority State Administrative Court Against Inspection kindly Fast

There are the difference beetween State Administrative Court Against Inspection kindly Fast" and Quick Event Check on PTUN. Authority is a very important part of the law Governance (Administrative Law), because the new government can carry out its functions on the basis of the authority obtained. Validity government action is measured based on the authority set out in statutory regulations, it can be interpreted that authority is the ability to act granted by applicable laws to carry out legal relations and actions.[8]

The authority of the state administrative court to conduct examinations with speedy events. Government officials or government organs are functionaries of government positions who act for and on behalf of the office or carry out the duties, functions and authorities attached to the office to carry out various governmental actions (*bastuur shandelingen*) and make decisions (*beschikkingen*). Government officials can only take public action on the basis of law, namely on the basis of authority originating in law which is obtained by attribution, delegation and mandate which is then used to take legal action (rechtshandeling *)* .[9]

Procedures are part of the supervisory activities carried out on government administration agencies/officials or state administrative bodies/officials. Administrative efforts proposed by a party regarding problems arising from government administration/state administration actions are generally part of repressive supervisory activities. [10]In submitting an administrative effort, there is an advantageous aspect for the party using the administrative effort because the evaluation carried out on the actions of the government administration/state administration for which the administrative effort is being applied for is not only assessed from the perspective of application of law (rechmatigheid) but also from the point of view of wisdom (doelmatigheid *)* , *as* well allows other decisions (

[7] Eka NAM Sihombing, Cynthia Hadita, *Penelitian Hukum* (Malang: Setara Press, 2022).

[8] SF. Marbun, *Peradilan Administrasi Negara dan Upaya Administrasi di Indonesia*, Liberty, Yogyakarta, 1997, p. 154

[9] Desi Wulandary, *Pengujian Keputusan Fiktif Positif Di Pengadilan Tata Usaha Negara*, Lex Renaissance Journal No. 1 Vol. January 5, 2020: 32-56, p. 8

[10] HM Laika Marzuki, Penggunaan Upaya Administratif Dalam Sengketa Tata Usaha Negara, Presented at the Seminar "Memantapkan Fungsi Peradilan Tara Usaba Negara Dalam Rangka Lebih Mewujudkan Kedudukan Maasyarakat Menurut Hukum", at the AI-libra Auditorium, Campus IIU. M.lm Ujung Pandang, 19 February 1992, p. 4. Accessed at http://jhp.ui.ac.id/index.php/home/article/download/373/308 , April 10, 2022, 21.30.

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beschikking) to be made that replace previous government administration/state administration decisions.[11]

Efforts carried out according to the objection procedure (*bezwaarh*) and administrative appeal (*administratief beroep*) are also called by the name *adminislratief beoep procedure* , because in general the procedure for administrative efforts almost always begins with filing an objection (*bezwaar*) to a government administration agency/official or agency/ the relevant state administration official and after that if it is not successful then the problem is brought to the superior body/officer of the said government administration/state administration agency/official.

These principles stem from legal and jurisprudential theories as well as living norms in society. For this reason, the application of these principles in Indonesia must be adjusted to the philosophy of Pancasila and the 1945 Constitution, and it also seems that the Administrative Court Law has acknowledged it by including it in the formulation of the provisions of article 53 paragraph 2 of the Administrative Court Law along with its explanation regarding the reasons for filing a lawsuit with the State Administrative Court which is also used as a basis for testing by judges to decide state administrative disputes with community members or civil legal entities.[12]

According to FH van der Burg, the settlement of government administration disputes or state administration disputes as a result of the issuance of government administration decisions/state administrative decisions (beschikking) can be pursued through two possibilities, first through *state administrative* justice/administrative justice (*administratief rechtspraak*) and *second* through bading administration (*administratief beroep*) [13].

Article 48 of the Republic of Indonesia Law Number 5 of 1986 (UU 5/1986) states that not every state administrative decision (*beschikking*) as the object of a state administration dispute can be directly sued through the State Administrative Court, because if administrative measures are available, then the dispute the state administration must be completed first through administrative efforts before being resolved through the State Administrative Court.

The elucidation of article 48 of Law 5/1986 states that administrative measures are a procedure that can be taken by a person or civil legal entity if he is dissatisfied with a State Administrative Decision (KTUN). This procedure is carried

[11]Ibid

[12] Eny Kusdarini , *Gugatan Pelanggaran Asas-Asas Umum Pemerintahan yang Baik Setelah Berlakunya UU Administrasi Pemerintahan melalui PTUN Yogyakarta,* Journal of Civics, *Volume 14, Number 1, May 2017*

[13]Erna Dwi Safitri and Nabitatus Sa'adah, *Penerapan Upaya Administratif Dalam Sengketa Tata Usaha Negara,* Indonesian Journal of Legal Development Volume 3, Number 1, Year 2021, p. 2

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out within the self-government environment and takes two forms. In the event that the settlement must be carried out by a superior agency or other agency from which issued the decision concerned, then the procedure is called "administrative appeal".

There are two channels or two streams of litigation before the State Administrative Court, namely for state administrative decisions that do not recognize administrative efforts, lawsuits are addressed to the State Administrative Court as the court of first instance, while for state administrative decisions that recognize administrative efforts, direct lawsuit addressed to the State Administrative High Court.[14]

Administrative effort is a procedure that can be taken in resolving a problem related to citizens or a civil legal entity, this is done if the person or individual feels less or dissatisfied with a decision of a government administration official or an existing state administration decision within the scope of existing administration or government itself. Settlement of government administrative disputes in UUAP is regulated in Chapter X, namely from Article 75 to Article 78, where in this article rights and obligations are given between every citizen and/or civil legal entity together with government officials. Based on Article 75 paragraph (1) UUAP, which states that members of the public who are harmed by decisions and/or actions can submit administrative efforts to government officials or superiors of officials who determine and/or carry out decisions and or actions.

The provisions of Article 75 paragraph (1) UUAP mean that the people who are harmed by a decision/action of the government are given the choice to submit an administrative effort or accept it, the consequence is that if the decision/action is accepted then everything contained in the decision is binding on the parties. However, if every member of the public and/or civil legal entity does not accept the decision/action of the government official, then they are given the right to file administrative measures before filing a lawsuit with the State Administrative Court.

So, even though the Act Number 9 of 2004 Concerning Change On Constitution Number 5 of 1986 concerning State Administrative Court has not been harmonized with UUAP and because administrative efforts have been regulated in UUAP as an *umbrella act* ,[15] *general rules*[16] also regulated in sectoral laws and regulations, the implementation of the provisions for administrative measures, based on the principle of *lex specialis derogat legi generali* , should apply the

[14]Philipus M. Hadjon, et.al., *Pengantar Hukum Administrasi di Indonesia*, Yogyakarta, Gadjah Mada University Press, 2002, p. 317

[15]Paulus E. Lotulung, *Kompetensi Peradilan Tata Usaha Negara Pasca Pengesahan R.U.U Administrasi Pemerintahan*, Paper presented in a Lecture at Judicial Technical Advanced Training in Surabaya, March 14, 2009, p.5.

[16]Philipus M. Hadjon, *(R)UU Administrasi Pemerintahan Sebagai Kodifikasi (Sebagian) Hukum Administrasi Umum (General Rules of Administratif Law) dan Peradilan Tata Usaha Negara,* Paper Presented in the Context of the Anniversary of Peratun XVIII, March 13-15 2009 in Surabaya, p. . 6

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provisions of administrative measures that have been regulated in sectoral laws, namely before the community files a lawsuit to the administrative court the state must make available administrative remedies (objections and or administrative appeals). In the event that a sectoral law does not stipulate administrative efforts, then the provisions of administrative measures regulated in the Government Administration Law shall be applied by the judge.

Every government administration decision or state administration decision is prone to causing disputes between government administration officials and every citizen or civil legal entity. In every dispute, it is necessary to have a settlement of the dispute in order to guarantee legal certainty and a sense of justice. In the case of dispute settlement of an administrative decision on a state administrative decision, it has been regulated through the provisions of the laws and regulations that apply both material provisions and formal provisions. Before a decision has absolute legal standing, an announcement must be made in advance, or the person concerned must be given the opportunity to defend or hear information first.[17]

In the UUAP which regulates administrative efforts in a separate chapter, namely Chapter X starting from article 75 to article 78. Article 75 paragraph (1) UUAP which states that community members who are disadvantaged by Decisions and/or Actions can submit Administrative Efforts to Government Officials or Superiors Officials who determine and/or carry out decisions and/or actions. Paragraph (2) states that the administrative efforts referred to in paragraph (1) consist of: a. object; and b. appeal. Based on the provisions contained in Article 75 paragraphs (1) and (2) of the UUAP, there is conformity with the provisions contained in Article 48 paragraph (1) and the elucidation of Article 48 of Law No. 5 of 1986 concerning State Administrative Court which states that administrative measures are a procedure that can be taken by a person or civil legal entity if he is dissatisfied with a State Administrative Decision. This procedure is carried out within the self-government environment and takes two forms. in the event that the settlement must be carried out by a superior agency or other agency than the one issuing the decision concerned, then the procedure is called an administrative appeal.[18]

After the issuance of the UUAP, it had an impact on the authority contained in the Administrative Court Law. The Administrative Court Law is a formal rule, while the UUAP is a material rule in the state administrative court (PTUN), but there is a difference in the authority that exists in the two rules. Whereas there are 2 (two) rules governing the authority of administrative efforts, causing inconsistencies that result in legal uncertainty for a person who resolves a problem

[17]R. Soegijatno Tjakranegara, *Hukum Acara Peradilan Tata Usaha Negara Di Indonesia*,, Sinar Graphic, 2002, p. 14

[18] Firzhal Arzhi Jiwantara, *Upaya Administratif Dan Penerapannya Dalam Penyelesaian Sengketa Administrasi*, Jatiswara Journal, Vol. 34 No. 2 July 2019, p. 4

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as a result of not accepting a government administration decision or a TUN decision that harms someone [19].

Inspection kindly Fast In Perspective Theory Protection Law

The most basic characteristic of legal action taken by the government is unilateral decisions. It is said to be unilateral because whether or not a government legal action is carried out depends on the unilateral will of the government. Decisions as government legal instruments in carrying out unilateral legal actions can be the cause of law violations for citizens, especially in a modern legal state that gives broad authority to government administration officials to interfere in the lives of citizens [20].

The most important basic value for the settlement of administrative efforts is focused on the constitution where in Article 1 Paragraph (3) it is stated that Indonesia is a constitutional state. Whatever settlement must be based on law, because law is the commander-in-chief in a country. So that in carrying out the law and to enforce the law, a judicial institution is needed.

Likewise with the settlement of administrative efforts carried out based on two forms, namely First, Objection: Settlement by the same agency as submitting an objection letter (*bezwaarschrift)* addressed to the Agency or Government Administration Officer or State Administrative Officer who issued the TUN decision. Second, Administrative Appeal: Settlement by the superior agency or other agency from which issued the TUN Decree. Procedure for filing through an administrative appeal letter *(administratiefberoep)* addressed to superiors of officials or agencies other than those issuing TUN decisions or other agencies that have the authority to re-examine disputed TUN decisions.[21]

Allots views that law as a system is a process of communication, therefore law is subject to the same problems in transferring and receiving messages, as other communication systems. The distinguishing feature of law is its existence as an autonomous function and distinguishes social groups or political communities. It is produced by those who have competence and legitimate power. A legal system does not consist of norms but also institutions including facilities and processes.[22]

The concept of the basic value of legal certainty is a matter (condition) that is certain, provisions or stipulations. The law essentially must be certain and fair,

[19] I Komang Kawi Arta , *Kepastian Hukum Ketentuan Upaya Administratif Pasca Di Keluarkan Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan*, Journal of Kerta Widya FH UNIPAS, *Volume 9, Number 2, April 2022*

[20]Ridwan, Despan Heryansyah, and Dian Kus Pratiwierkapalan, Absolute Competence of the State Administrative Court in Law on Government Administration. *Journal of Law Ius QuiaIustum No. 2 Vols. April 25, 2018*

[21] Ayu Putriyanti, *Kajian Undang-Undang Administrasi Pemerintahan dalam Kaitan dengan Pengadilan Tata Usaha Negara*, Pandecta, Volume 10. Number 2. June 2015

[22]Otje Salman and Anthon F. Susanto, *Teori Hukum, Mengingat, Mengumpulkan dan Membuka Kembali*,Refika Aditama, Bandung, 2005, p. 96.

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certain as a guideline for behavior and fair because the code of conduct must support an order that is considered reasonable. Only because it is fair and implemented with certainty the law can carry out its function. Legal certainty is a question that can only be answered normatively, not sociologically.[23]

The process of resolving administrative disputes with a Quick Examination process for objections is carried out by the administrative official who issues the decision. Submission of objections is submitted in writing and then the government administration official completes it with a Quick Examination within a maximum period of 10 (ten) working days as stipulated in Article 77 paragraph (4) of Law Number 30 of 2014 concerning Government Administration (UUAP). The settlement process is carried out by evaluating by correspondence, then consulting with superiors or related agencies to ask for opinions and input to resolve the objection efforts within 10 (ten) working days. The decision issued for the objection has legal consequences, that is, if it is accepted, it will be binding on the parties, and vice versa, if it is rejected, the community can submit an administrative appeal to the official's superior.

CONCLUSION

Legal protection for community members or civil legal entities for the issuance of government administrative decisions can be divided into 2 (two) namely through administrative efforts (objection and administrative appeal) and through the State Administrative Court. Protection through administrative efforts can be obtained from the process of resolving objections or through administrative appeals, namely by canceling the previous decision and issuing a new decision, the decision is final and binding on all parties. Meanwhile, protection through the State Administrative Court is by filing a written lawsuit containing demands that the administrative decision or TUN decision be declared null and void and requested for rehabilitation. So , check in a manner fast in 10 (ten) days sometimes _ in practice Can only 2 (two) days need given limit to give certainty law And protection law for seeker justice in court system business country .

[23] Rato, Dominic. *Filsafat Hukum Mencari: Memahami dan Memahami Hukum*, (Yogyakarta: Laksbang Pressindo, 2010), p. 54

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