



Status of Dispute Resolution of Village Head Decision Based on Commercial Administrative Decision Law

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Abstract

In the scope of the smallest area, the village is led by a village head. Of course, the village head also has the authority to provide policies in the form of decisions on several things that occur within his coverage area. This type of research is normative legal research with a statutory approach and a conceptual approach. From this research, it can be concluded that the village head is not a state agency/official, even though the village is given authority by law that the village head as the village leader is given free authority. In the event that the village head's regulation that results in a decision is considered contrary to the public interest or contrary to other laws and regulations above it, then it can be canceled by the Regent / mayor instead of being carried out by the village head, so the village head's decision cannot be said to be KTUN. The author suggests that regulations relating to village heads should be reviewed, so that village heads can obtain legal certainty regarding their authority in decision making.

Keywords: decision; KTUN; village head

Introduction

Managing the welfare of citizens (bestuurzorg) is one of the duties of the state. This can be interpreted that the state has entered the private sphere of its citizens, therefore when talking about the people, it is inseparable from state administrative law. State law and administration should be 2 (two) camps, each of which has meaning, which is the law according to J.C.T Simorangkir and Woerjono Sastropranoto as quoted by Yon Johan Utama as follows:

“Laws are coercive regulations, which affect human behavior related to the community environment and are made by official bodies, which those who violate will receive certain punishments.”

State administration is a discussion of social sciences which studies 3 (three) important elements related to state life, including legislative institutions, judicial institutions, and executive institutions as well as matters related to the public such as public policy, public manage-

ment, and state objectives (Munaf, 2015).

Prayudi Atmosudirjo defines state administration as a function of administrative assistance from the government, which means that the government implements and implements the will (strategy, policy) and real government decisions (implementation and implementation of laws according to its articles) in accordance with established implementing regulations (Asyiah, 2018). There are 2 (two) functions of State Administration, namely (Gede, 2017):

- a. Public administration is a public institution within a country as an organization, the President as the government and as the state administrator to lead the Indonesian state.
- b. State administration is an administration that pursues the achievement of state goals, in this case state officials who carry it out.

The definition of State Administration Law that may be understood more specifically is quoted from CJN's opinion. Vesterden said: Tot het

bestuursrecht kunnen we ook rekenen de regels met betrekking to the toezicht van hogere op lagere bestuursorganen, hoewel di took bij de behandeling van het staatsrecht een plaats moet hebben." (With the administrative law of the country we can take into account the regulations on supervision from the higher organs of government to the lower organs of government, although this also speaks of the place where the constitutional law should be placed) (Tjandra, 2018).

In everyday life we often encounter the terms government and governance, therefore if we discuss related to government organs, it means also inseparable from governance, the two words at first glance are the same but there are significant differences in meaning. The government is a party that is very much needed, because not only in a concrete sense but also in the feelings of the people, for example, there is someone walking in the middle of the night in a quiet and quiet situation but someone who feels comfortable even indicates the government is present in the region. However, it is different if someone is in an urban area where there is a lot of crime, without anyone obstructing it, in that case the government becomes non-existent. Therefore, governance is not only a form but contains values that will be upheld by every party concerned, both those who are given orders and those who receive orders (Tharir, 2019). The establishment of a government should aim to provide security to its people, so that governance and governance exist not only for themselves, more than that must be concerned with what is needed by the people, then the service function for the government can be fulfilled, empowerment and development, these three functions have placed the position of the people as those who are served, empowered and built.

The broad definition of governance, according to Van Poelje is a function that includes all actions, deeds, decisions by government instruments to achieve governance goals (administration) while in a narrow sense governance is an organ / body / state equipment handed over by the government or the tasks of governing. Based on Law Number 32 of 2004 concerning Regional Government (hereinafter referred to as Law 32/2004), the definition of Governance and Government is distinguished, namely:

1. Local Government is the administration of government affairs by local

governments and DPRD.

2. Regional Government is the Head of the Region and Regional Apparatus as an element of local government administration.

In this sense, what is meant by local government is the Governor, Regent or Mayor. Which functions to run, regulate and organize local government based on the principle of autonomy and assistance duties. The government as a person who is given power must have authority, and the authority of the government is divided into 2 (two), namely the authority given by law and free authority (*freies emmersion*) where the authority can be used by the government if there are conditions or situations that require quick decisions from the government, while there are no rules governing it.

In the scope of the smallest area, the village is led by a village head. Of course, the village head also has the authority to provide policies in the form of decisions on several things that occur within his coverage area. However, when the decision is considered detrimental to the people, can the decision be challenged to the PTUN as the overseeing institution related to the rights of the people who are harmed due to the decision of the TUN body or official, and in this case whether the village head can be said to be a State Administration official or not. For example, the village head's decision in the case of the village head agreeing to illegal mining, namely mineral and coal mining (*minerba*) in one area of Central Java. The conflicts described above will be a study that the author will later examine more deeply, both based on laws and doctrines that are experts in their fields.

Materials and Method

The author uses normative research, which is one method that functions to find a solution to legal problems that occur which later the results of the research can be used as a reference to problems that should be resolved. Normative Legal Research is research that focuses on the process of searching and finding legal rules, principles and doctrines that exist in law, functioning so that legal problems can be found a solution (Marzuki, 2005). There are several approaches used in a study, according to Peter Mahmud Marzuki there are four, There are various approaches such as the law (rules), case, historical or historical approach and also conceptual approaches. So based on

these various approaches, researchers are more focused on using the law and conceptual approaches.

Research using the rule of law approach is a method that conducts a review of all types of laws and regulations that will later be adjusted to the problems or legal issues being studied (Marzuki, 2008). The conceptual approach is a type of approach that is carried out by maximizing the use of views related to law and its concepts taken from several experts in accordance with their fields and doctrines related to legal science as a basis or basis for making legal arguments to solve the problems or issues being studied.

Results and Discussion

The Position of the village head in the realm of bodies or officials TUN

The state is one of the organizations in which a community lives to carry out all their activities. Of course, in order for the system in the state to run properly, organs are needed that can maintain the form and function of the state itself, both executive, legislative and judicial functions. The state in its level of sustainability cannot be separated from the role of government. The definition of government is stated in Article 1 number 8 of Law Number 9 of 2010 concerning Protocol that "Government Officials are officials who occupy certain positions in the government, both at the center and in the regions." In addition to the understanding already mentioned, the notion of government can be explained broadly or narrowly.

Government in a broad sense (*regering*), that all affairs related to the state aim for the welfare of its people and the interests of the state itself, so the government is not only interpreted as a government that only carries out executive functions, but also carries out other duties that are in the legislative and judicial realms (Kusnardi, 1983). Government in the narrow sense (*bestuur*) only includes organizations that carry out government tasks limited to executive functions that can be carried out by the cabinet and its ranks from the central level to the regions (Mahfud, 2001). The government that carries out executive functions has 2 (two) characters, namely as a completeness of the state and as state administration.

The government in carrying out its functions is given free authority (*Freies Ermessen*), which can be interpreted as the authority given

by law to the government as a space for officials or areas of state administration to take actions without having to be fully bound by the law (Lukman, 1996). Bachsan Mustafa also gave an explanation related to the understanding of *Freies Ermessen*, namely free authority given to the government because considering the function of the government or state administration, namely carrying out general welfare, which function is different from the judicial function as an executive which aims to resolve disputes between communities (Suryana, 2018). So it can be interpreted that government decisions prioritize the achievement of a goal or target (*doelmatigheid*) rather than prioritizing applicable laws (*rechtmatigheid*) (Jeddawi, 2017).

These decisions are the object at the administrative level. When the person who has the office is given free authority (*Freies Ermessen*). Then he uses this right without basis or only because of his own political interests, so that the people as implementers of the decision are harmed. Then the community can fight for its rights. Our rules provide rights and also means to accommodate the aspirations of the people in conditions aggrieved by the decision through administrative efforts and filing a lawsuit with the State Administrative Court (PTUN).

In the case of Article 1 number 9 of Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning the State Administrative Court (hereinafter referred to as the PTUN Law), the State Administrative Decree (KTUN) is a written determination that has been issued by a state administrative agency or official containing state administrative law actions based on applicable laws and regulations, is concrete, individual, and final, which has legal consequences for a person or civil law entity. In addition to the PTUN Law, Law Number 30 of 2014 concerning Government Administration (hereinafter referred to as Law 30/2014), which is one of the material laws in the Indonesian HAN, also defines State Administrative Decisions. Article 1 number 7 of Law 30/2014 stipulates that, "Government Administration Decrees which are also called State Administrative Decisions or State Administration Decisions hereinafter referred to as Decrees are written provisions issued by Government Agencies and/or Officials in the administration of government".

Furthermore, it should also be noted that according to Law 30/2014, the meaning of the State Administrative Decree (KTUN) is expanded not only to written decisions as mentioned in

the PTUN Law, But in the Article 87 of Law 30/2014 it has been stipulated that KTUN must be interpreted as follows:

- a. Factual actions must be included in the written stipulation;
- b. Decisions of State Administrative Agencies and/or Officials within the executive, legislative, judicial, and other state administrators;
- c. In accordance with the provisions and AUPB;
- d. Final in a broader sense;
- e. Decisions that have potential legal consequences; and/or
- f. Applies to citizens of the community in terms of decisions.

Normatively as stated in Article 1 point 8 of the TUN Court Law, the TUN Agency / Official is a Body or Official who carries out government affairs based on applicable laws and regulations. As for the TUN Agency or Officials themselves, sometimes they still cause confusion due to the understanding in the PTUN Law does not explain in detail, giving rise to multiple interpretations. This results in that any Agency or Official who conducts government affairs (executive) can be said to be a Agency or Official TUN. Therefore, the Research and Development Agency for Legal and Judicial Training of the Supreme Court of the Republic of Indonesia has conducted a study related to the meaning of TUN Officials and reached several points of conclusion:

1. Normatively, TUN Agency or Officer is an Agency or Official that implements government affairs based on applicable laws and regulations.
2. The benchmark for determining the TUN Agency or Officer is on the function carried out, and not from the name of the department or its structural position; and
3. TUN officials must be interpreted as anyone who carries out government functions, So it must comply with applicable laws and regulations.

Riawan Tjandra in his book Procedural Law of the State Administrative Court states that the determination of officials who carry out government affairs functionally categorized, so it is not limited to official state officials, but it can also be other parties who based on laws and regulations are assigned tasks to carry out a task / function of government affairs. Not only that, besides based on the authority vested in

him, it can also be due to the existence of authority that bestowed upon him.

Based on the explanation above, many TUN Bodies or Officials at first glance in their names do not contain elements of terms that indicate them as Agencies or Officials who carry out government affairs, but if examined their functions are actually TUN Bodies or Officials and their decisions can cause disputes that are examined at the PTUN. Most people understand TUN Agencies or Officials such as the Director General of the Ministry and the Head of the Land Office. However, there are also other entities such as State-Owned Enterprises (SOEs) because the founder is a Minister. The Agencies or Officials included in the category of TUN Agencies or Officials as described by H. Ujang Abdullah, SH., MSi, including:

1. Agencies or officials of official Government agencies such as the Central Government, Regional Government, Regency / City Government, and official Government agencies within the executive environment;
2. Semi-Government Agencies or Officials such as SOEs, BUMDs, and others including those that are also Government and private cooperation; and
3. Private bodies or officials who carry out government affairs such as foundations engaged in fields that should be the obligation of the Government but are carried out by the private sector, such as universities, hospitals, etc.

Dalam Article 200 of Law Number 32 of 2004 concerning Regional Government states: "in the regency/city local government, a village government is formed consisting of the village government and the village consultative body." Thus, the village becomes part of the constitutional aspect because the village is an autonomous unit of government. Villages are not administrative units of government that can be dissolved or reconstituted at any time if necessary. And evidence that village government led by the Village Head depends on the Regency / City is also seen from the authority of the Village Article 19 letter c of Law Number 6 of 2014 concerning Villages (hereinafter referred to as Law 6/2014), namely: ".....Authority assigned by the Government, Provincial Regional Government, or Regency / City Regional Government....." is emphasized in Article 21 of the Law on Villages, namely "The exercise of assigned authority and the exercise of authority of other duties of the Govern-

ment, Provincial Regional Government, or Regency/City Regional Government as referred to in Article 19. Although the Law on Villages also provides *Freies Emerssen* for village heads to make and establish regulations. But this does not necessarily make the village head a state agency or official. Where his authority in managing the village is accountable to the Regent / mayor. The responsibility of the authority of the village head to the regent/mayor has been mentioned in Article 27 of Law 6/2014, namely:

In carrying out the duties, authorities, rights, and obligations as referred to in Article 26, the Village Head shall:

- a. The report on the implementation of Village Government must be reported at the end of each fiscal year to the Regent/Mayor;
- b. The report on the implementation of Village Government at the end of the term of office to the Regent/Mayor must also be reported;
- c. A written report on the administration must be submitted to the Village Consultative Body at the end of each fiscal year; and
- d. Information on government administration must be provided and/or submitted in writing to the village community at the end of each fiscal year.

The village is not an autonomous region, although in the next legislation it is stated that the village has the right to regulate the original authority. Village management is left to the district, because the village is a sub-system of local government. Thus, the village becomes part of the constitutional aspect because the village is an autonomous unit of government. Villages are not administrative units of government that can be dissolved or reconstituted at any time if necessary.

The Decision Of The Village Head in PTUN

Indonesia has judicial power that is separate from political institutions such as the House of Representatives and the President as explained in the Constitution of the Republic of Indonesia Year 1945, which as an important principle that Indonesia as a state of law, which guarantees the implementation of independent judicial power and is free from the influence of other powers. Basically, judicial power in Indonesia is exercised by the Supreme Court and judicial bodies under the general court, religious court, state administrative court, military court,

and is exercised by the Constitutional Court. The Supreme Court and its subordinate judicial bodies are the executors of the judicial power that has administered justice. The judiciary is a process for adjudicating, while the court is an institution tasked with adjudicating, which means that treatment and action are given fairly. While the final result of the trial is a court decision or what we often hear the judge's decision (Abdullah, 2008).

In judicial power, one of the implementations is state administration and written decrees that will harm the community a lot, so that judicial power is exercised by the administrative court, which has the same role as other courts. The administrative court not only maintains order, but also as a stabilizer of the law that runs as law enforcers (Basah, 1985). The administrative court or what we often hear with the State Administrative Court must produce decisions that are resolving in nature so that they can provide legal certainty and protect the law, not only for the community but also for state administrative bodies or officials, so that there will be a balance between individual interests and community interests.

The special characteristics possessed by PTUN are compared to decisions in other courts, in PTUN there is no wide space with disparities in justice (Utama, 2010). In the TUN Court, the judge is given a limitation that he can only choose the first, the cancellation of the object of the lawsuit, in this case the KTUN or the second to declare the validity of the object of the dispute that has been sued. In Article 53 paragraph (2) letter a and letter b of the PTUN Law, it has been regulated regarding the reasons that can be used for a lawsuit, namely:

- a. The KTUN that is sued is contrary to an applicable law and regulation;
- b. The KTUN being sued is contrary to the general principles of good government.

Based on article 1 point 9 of the PTUN Law, it states that a TUN decision is a written determination issued by a state administrative agency or official containing state administrative law actions based on applicable laws and regulations, which are concrete, individual, and final, which cause legal consequences for a person or civil law entity. While decisions in general are an important element related to one's leadership which is seen from making the right decisions, the right decisions are acceptable and weighty decisions (Machali, 2016). In the event that decision making is the result of problem solving, answers to the results of questions, and the selection

of alternatives or even as the end of the problems that have been faced (Hidayat, 2021), then the result of decision making is a decision.

One of the most crucial tasks of the village head is to make a decision, which decision can have a positive or negative impact on the community, therefore the village head must study problems and anticipate related to all possibilities that will occur after the decision. There are problems that in decision making require a fast time, slow or even a long time because of the many considerations. There are basically 3 (three) categories of decisions, the first of which is a decision in a state of certainty; the second is a decision with a state of uncertainty or a situation with risk; The third is a decision with a state of conflict.

In the realm of the village head, the problem or dispute that often occurs in the PTUN is the dismissal of the village head. However, it must still be considered in advance regarding all aspects of an applicable law and regulation, not only focusing on the authority of dismissal or appointment possessed by the Regent, but must consider other grounds to be the reason for the plaintiff, after which it must also consider the general principles of good governance. However, if the plaintiff in the lawsuit uses reasons contrary to the applicable laws and regulations and has reached appropriate conclusions, then there is no need to consider the general principles of good governance. The term principle in the General Principle of Good Government (AUPB) according to Bachsan Mustafa is as a legal principle is a principle that is the basis of legal rules, then the word general means that is comprehensive and includes things with a nature that can be accepted by the principles of society in general, while the word government or in other words the State Administrative Agency or Officer which has been formulated in Article 1 number 8 of the PTUN Law that the body or official who carries out government affairs in accordance with the applicable laws and regulations. Then the word good means generally accepted principles based on things that are worthy or good to be used as guidelines for the implementation of clean and good government. That way, AUPB is a legal norm (written) and / or ethical norm (unwritten) that specifically applies in the state administration environment, and as an important principle because it serves as a guideline for TUN officials in exercising their authority.

Based on Law 6/2014 that villages have the authority in terms of providing opportunities for regions to form a village government based on

customs, besides that villages also have authority from the right of origin, namely the village government gets authority from the Regency / City government with delegation of delegation. There are several things that can be delegated to the village, including the implementation of village government, village community development, village development and village community empowerment. With this regulation, it will become the legal basis for the Regency / City Regional Government in terms of establishing a village government system to carry out village interests related to village regulations (Nosi, 2020). That way it can be concluded that village regulations are a matter of laws and regulations that have been determined by the village head after discussion and agreement with the Village Consultative Body (BPD). Then the village head's decision is a decision that has been determined by the village head which is decisive in terms of implementing village regulations and village head regulations.

In the event that the village head's regulation is considered contrary to the public interest or contrary to other laws and regulations above it, the village regulation may be canceled. However, the cancellation is not carried out by the village head, but is carried out by the regent/mayor, based on Article 87 of Government Regulation Number 43 of 2014 concerning the Implementation of Law Number 6 of 2014 concerning Villages (hereinafter referred to as Village PP) that Village Regulations and Village head regulations that are contrary to the public interest and/or the provisions of higher laws and regulations are canceled by the regent/mayor. That way, the mechanism for canceling village head regulations is carried out by the regent/mayor. However, the Village PP has not explained further regarding the specific mechanism for canceling the village head regulation by the regent / mayor in question. If we look at the provisions in Article 87 of the Village PP above, according to the author, legal steps that can be taken related to objections to the existence of a village head regulation are to submit their objections to the local government, namely the regent / mayor. With the Village PP, it can be said that the decision of the village head is not included in the PTUN case.

Conclusion

Based on the discussion above, it can be concluded that in this case the village is given authority by law that the village head as the village leader is given free authority (freis emersseon), this does not necessarily mean the village head includes state agencies / officials. Because the authority granted by law to the Village Head is required to be reported to the Regent/Mayor. So that the village is an autonomous region sub of the working area of the Regent / mayor.

In the event that the village head's regulation that results in a decision is considered contrary to the public interest or contrary to other laws and regulations above it, then it can be canceled by the Regent / mayor instead of being carried out by the village head, so the village head's decision cannot be said to be KTUN.

Suggestion

From the discussion above, the author suggests that regulations related to the village head should be reviewed, so that the village head gets legal certainty related to his authority in decision making, because in the event that the village head's decision is not in accordance with the AUPB, those who cancel must go through the Regent / mayor so that those who feel aggrieved cannot go directly to the PTUN.

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