



The Expansion of Administrative Decision Meaning Based on Government Administration Law: a Dispute Submission Process Approach

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Abstract

The establishment of Government Administration Law brings significant change to the competence of the previously restricted Administrative Court to become expanded. This study aims to find the philosophical considerations from the extension of Administrative Decision meaning on Government Administration Law, to classify the legal implication arising from the regulation of the expansion of administrative decision meaning towards dispute submission process in Administrative Court and to formulate ideal attitude of the State Administrative Judge in resolving State Administrative Disputes. This is a combination of normative and empirical legal research. The study indicated that the legislator main consideration in regulating the expansion of administrative decision meaning on Government Administration Law is to expand the absolute competence of Indonesian Administrative Court which previously felt very narrow. The implication arises after new regulation consists of: the expansion of Administrative Court adjudicate authority for factual actions, subject expansion that have the authority to issue Administrative Decision, the expansion of the Administrative Court adjudicate authority over Administrative Decision which has a legal consequences although still need the approval from above instance, the regulation that Administrative Decision can be sued through the Administrative Court of any potential loss that may arise by the issuance of its Administrative Decision and the expansion towards the parties who have a chance to field a State Administrative accusation. The ideal attitude of State Administrative Judge is the judge should remain based on the strong theoretical concepts of the law so can create understanding and attitude in handling a case in Indonesian Administrative Court.

1. Introduction

Indonesia is a State Law that based on Pancasila and the 1945 Constitution of Republic Indonesia. A State Law, a society equality standing is guaranteed before the law. Every State Law also willed all the Government actions must have a clear legal basis, either by written or unwritten Law. In the other hand, a State Law stated that the Law becomes the decisive factor to all dynamics of social life, economics and politics in a State.¹ Indonesia's position as a rule of law affirmed in Article 1 paragraph (3) of the 1945 Constitution of Republic Indonesia that stipulates Indonesia is a State Law (*rechtstaat*). As a democratic country, Indonesia prioritizes legal justice concept in administering legality which gives fairness to every citizen therein with regulations that are orderly in its enforcement, it shall produce proper and quality law to achieve the goals of justice and prosperity for the Indonesian people as the holder of power and the holder of state sovereignty.²

Every State Law that follows Anglo Saxon and European Continental always has a free and independent judicial power as a means of legal protection for its citizen.³ In order to enforce Indonesian State Law, it takes the powers that squire its State Law to proceed on a predetermined line established by the judiciary. This becomes important to a developing country such as Indonesia because the development process raises vulnerable changes that prone to the intersection between different interests, especially between Government interest and Social interest.

Those realities will increasingly appear in a developing country. In that situation, the role of the State will become more active therefore the possibility of a dispute arising from Government Decisions, that come up between The Government (represented by Institution or Administrative Functionary) and The Society cannot be avoided.⁴

Therefore, by considering the conflict that occurs between The Government and The Society (a group or individual) will keep ensuing in addition to the mandate of The People's Consultative Assembly Provision Number IV/MPR/1978 associated with People's Consultative Assembly Provision Number II/MPR/1983 concerning State Policy Guidelines then The Administrative Court established. The establishment of Act. Number 5 of 1986 concerning Administrative Court, this act has been changed with The Act. Number 9 of 2004 jo Act. Number 51 of 2009 about the Second Amendment of The Act. Number 5 of 1986 concerning Administrative Court (Administrative Court Law) is a step in fostering, perfecting and disciplining the Government Apparatus.

Beyond the significance, as explained in Administrative Court Law, Ridwan Tjandra stated that Administrative Court created to solve the dispute between the Government and their Citizens, which is the disputes arising from the action of Government that are

¹ Jimmly Assiddiqie. (2004). *Mahkamah Konstitusi dan Cita Negara Hukum Indonesia. Scientific Oration Dies Natalis Faculty of Law Andalas University.*

² Hayat, H. (2015). *Keadilan sebagai Prinsip Negara Hukum: Tinjauan Teoritis dalam Konsep Demokrasi. Padjadjaran Journal of Law, 2(2), p.1.*

³ Yuslim. (2015). *Hukum Acara Peradilan Tata Usaha Negara.* Jakarta: Sinar Grafika. p. 9.

⁴ O.C Kaligis. (2002). *Praktek-Praktek Peradilan Tata Usaha Negara Di Indonesia.* Bandung: PT.Alumni. p. 35.

considered to violate the Citizen rights.⁵ Besides that, the urgency to organize Administrative Court not only intended as internal control over the implementation of State Administration Law in accordance with the applicable principle of State Law. However, functionate as a judicial body which is freely and objectively authorize to judge and prosecute the implementation of State Administration Law.

In the course of the journey of the Administrative Court as one of the organizers of the Judicial Power of Indonesia seemed to experience the ups and downs, especially related to public trust in the effectiveness and independence of the Administrative Court in settling disputes through the Administrative Court. Amid various disputes that occur, the existence of Administrative Court as if to be tested and awaited their work as a clean and independent judicial institution. In running its authority, Institution or State Administrative Officer is always reminded to not easily take a pragmatic decision by just looking at the benefit and potentially violate their Citizens rights. As is known the object of the dispute is an Administrative Decision issued by Institution or State Administrative Officers.

The big changed happened after the establishment of Act. Number 30 of 2014 concerning Government Administration (Government Administration Law) that also become the source material law in Administrative Court. There are several additional authorities of The Administrative Court after the enactment of Government Administration Law. Substantially the expansion of these powers is only partially pinned by State Administrative Law and does not change the entire practice of The Administrative Court.⁶ The Government Administration Law is intended as an important instrument of a democratic State Law, where the decision and or actions established and or performed by the Institution or Government Apparatus or other state organizers which include institutions outside the executive, judicative and legislative branches that carry out government functions that allow being examined through the courts. Therefore the main purpose of this Law is to make that society will not easily become the object of state power. Government Administration Law is regarded as a form of transformation of the Good Governance Principles that have been practiced for decades in the administration of the government and concretized into binding legal norms.⁷

The establishment of Government Administration Law that issued on October 17th, 2014 brings a significant change to the competence of the previously restricted Administrative Court to become expanded. In particular, there are substantial changes one of them related to "Administrative Decision understanding" and the scope of Administrative Decision in the Administrative Law of the Decision as to the object of the dispute over the Administrative Court under the Administrative Court Law.

In State Administrative Law especially Article 1 Number 9 Act. Number 51 of 2009 concerning the second amendment over Act. Number 5 of 1986 concerning

⁵ W.Riawan Tjandra. (2005). *Hukum Acara Peradilan Tata Usaha Negara*. Yogyakarta: Universitas Atmajaya. p.1

⁶ Maulana Shika Arjuna. *Perbedaan antara Undang-Undang No.51 Tahun 2009 dengan Undang-Undang No.30 Tahun 2014*. Retrieved from <https://maulanarjuna.wordpress.com/2016/02/21/perbedaan-antara-undang-undang-no-51-tahun-2009-tentang-peradilan-tata-usaha-negara-uu-ptun-dengan-undang-undang-no-30-tahun-2014-tentang-administrasi-negara-uu-ap/>

⁷ *Ibid.*

Administrative Court provides the meaning of Administrative Decision as a written stipulation issued by a state administrative Institution or officer which contains State Administrative Law actions that are in accordance with the applicable, concrete, individual and final legal regulations that causing legal consequences for a person or a Civil Legal Entity.

The existence of Government Administration Law then provides an expansion of Administrative Decision Meaning. This is regulated in Transitional Provisions CHAPTER XIII Article 87 of the Government Administration Law, which determines the Administrative Decision in the Administrative Court Law shall be interpreted as:

- a. The written arrangement which includes factual actions;
- b. Institution Decision or Executive, Legislative, Judicative Officers and other state offenses;
- c. Based on the Legislation Provision and The General Principles of Good Governance;
- d. Final in a broad meaning;
- e. Decisions that have potential legal consequences;
- f. Decisions that applicable to the citizens.

This extension meaning had been causing a dilemma for the parties and potentially cause conflict due to the different interpretation of various related elements in the implementation. Confusion is mainly experienced by a law enforcer, especially judges in resolving problems where there is an expansion of the meaning of an Administrative Decision in Act 30 of 2014 On Government Administration. The meaning of Administrative Decision actually becomes a strategic point of differing in Administrative Court. Administrative Decision is an important legal product for Government Organizer, both for decision-making and community since the Administrative Decision is the legal basis for the government to act, on the other side Administrative Decision is the basis for society to sue the Government. Therefore, a normative concept of Administrative Decision is necessary to ensure legal certainty. With the enactment of Government Administration Law, there is a theoretical problem of Law because this Law extends the meaning of Administrative Decision as regulating in Administrative Court Law which is the formal law of State Administration Law. The consideration of absolute competence of Administrative Court in Judge's decision, from several cases, also did not express the unity of interpretation, therefore the decision was difficult to predict. Those differences in interpretation create legal uncertainty and can destabilize the consistency of the Court's decision. In the end, it confuses justice seekers to select the appropriate forum in legal protection measures from Government actions, and bring doubt to the Government in implementing the decision.⁸

Based on those backgrounds, became the basis for the author to conduct legal research by specifically analyze one of the strategic issues after the enactment of the State Administration Law that is: The Expansion of Administrative Decision Meaning Based on Government Administration Law: A Dispute Submission Process Approach.

⁸ Effendi, M. (2018). Peradilan Tata Usaha Negara Indonesia Suatu Pemikiran Ke Arah Perluasan Kompetensi Pasca Amandemen Kedua Undang-Undang Peradilan Tata Usaha Negara. *Jurnal Hukum dan Peradilan*, 3(1), p.25.

There are several problems which are specifically discussed in this legal research such as why the legislator extending the scope of the meaning in Administrative Decision?, How is the legal implication of the regulation in the expansion of the meaning of the Administrative Decision on the Administrative Law in the process of dispute submission in the Administrative Court? And How is the ideal attitude that should take by the Judge of Administrative Court in resolving State Administrative Dispute related to the Expansion Meaning of the Administrative Decision after the enactment of Government Administration Law?

The purpose of this research is, to find the philosophical considerations from the extension of Administrative Decision meaning on Government Administration Law, to classify and formulating the legal implication arising from the regulation of the expansion of KTUN meaning towards dispute submission process in Administrative Court and to formulate the ideal attitude of the State Administrative Judge in resolving State Administrative Disputes after the arrangement of the expansion of KTUN meaning in Government Administration Law.

2. Research Method

This research is a combination of normative and empirical legal research. Data analysis is done by grouping data obtained either from library research or field research. All the data collected are then analyzed using qualitative methods. The results of this study are presented in a descriptive analysis.

3. Result and Discussion

3.1. Legislator Consideration Extending the Scope of the meaning in Administrative Decision

As a State Law that based on the 1945 Constitution of The Republic Indonesia requires various regulations to carry out the duties and functions of the Government. One of the required legislation is the Government Administration Law that aimed to provide the legal basis for all actions, behavior, authority, rights, and obligations of each state administrator in carrying out his daily duties to serve the society.⁹

The Government Administration Law is one of the regulations that its establishment is motivated by the existence of basic philosophy in order to give a maximum legal benefit for society. The Government Administration Law shifts the old paradigm to the new paradigm of the public service paradigm in the administration of governance that continues to grow as the openness of access to public information is increasingly widespread. The Government Administration Law is deemed to further emphasize the responsibility of governance that is oriented towards fast, convenient and cheap public services. On that basis, the Government Administration Law is placed as one of the pillars of bureaucratic reform and Good Governance.¹⁰

⁹ *The Explanation of Academic Analysis Report of Draft Government Administration Law, Ministry of Administrative and Bureaucracy Reform.*

¹⁰ Hamzah, M Guntur. (2016). Paradigma Baru Penyelenggaraan Pemerintahan Berdasarkan Undang-Undang Administrasi Pemerintahan (Kaitannya dengan Perkembangan Hukum Acara Peratun). *Makalah in Seminar: Sehari HUT Peradilan Tata Usaha Negara Ke 26*. Jakarta.

In the Academic Analysis Report draft of the Government, Administration Law describes that Government Administration Law is needed by Indonesia at this time on the basis of considerations include: philosophically.¹¹ The requirement is part of a system that places the administration of the state as the right of the society as stated in Article 41 of the Charter of Fundamental Rights of the Union which includes the right to the impartial, fair and reasonable pursuit of its affairs; on access to obtaining personal property files while maintaining a legitimate interest in confidentiality and to professional confidentiality; the obligations of the state administration parties to provide the reasons for their decisions; and to obtain compensation incurred by the agency or government apparatus in performing its duties.

In the practical level is often found a problem where the Judge has difficulty in facing cases of material law that is not regulated in the Administrative Court Law. Responding those matters is to ensure the legal certainty of the Government Administration Law that should be regulated specific provision which not regulated in the Administrative Court Law.

Meanwhile the sociological aspect¹² that encourage the establishment of Government Administration Law including the awareness that in the life of the nation, the system of governance is a decisive factor, the prolonged crisis that once hit Indonesia is an indication of weaknesses in the administrative system of Government, especially the bureaucracy that does not heed the principles of Good Governance. Corruption, Collusion, and Nepotism (KKN) are caused by the vulnerability of bureaucracy as an element of a public servant. In order to suppress KKN, Governance practices should be based on the principles of Good Governance. This requires a governance administration arrangement that can include the development of togetherness to unite the rhythm and steps for the creation of a reliable and professional State Apparatus.

In the juridical aspect¹³ to improve the function of Government administration, the Government has issued some regulations which are actually not enough to be the legal basis for the implementation of effective and efficient, accountable and transparent Government functions. Currently, the Administrative Court Law and Act. Number 28 of 1999 concerning the Implementation of Government that is free and clean from KKN has spawned various Government regulations and Ministers to complete the guidelines of Government administration services. Nevertheless, these regulations are not sufficient as the basis for the establishment of a government that reflects the principles of good governance.

Studies relating to the condition of the nation and the needs of this philosophical, sociological and juridical aspect later became the basis for the enactment of the Government Administration Law. In accordance with the provisions of The 1945 Constitution of the Republic of Indonesia, it is affirmed that Indonesia is a sovereign state and based on the law (state law). This means that the Indonesian Government System should be based on the principle of people sovereignty and the rule of law. Based on these principles all forms of decisions and acts of the Government Apparatus shall be based on the sovereignty of the people and the law and not based on the

¹¹ *Philosophical Consideration on Academic Analysis Report of Government Administration Law*

¹² *Sociological Considerations on Academic Analysis Report of Government Administration Law*

¹³ *Juridical Considerations on Academic Analysis Report of Government Administration Law*

powers attached to the position of the government apparatus itself.¹⁴ The use of state power against individuals and citizens is not without conditions. Individuals and citizens cannot be treated arbitrarily as objects. The actions of the Government Apparatus must be in accordance with the provisions of the legislation. Supervision of government administrative decisions is an examination of whether individuals and citizens have been treated in accordance with the law. The Government Administrative Law guarantee the basic rights of the citizens in accordance with Article 27 paragraph (1), Article 28D paragraph (3), Article 28 F, and Article 28 I Paragraph (2) of the 1945 Constitution of The Republic Indonesia. Under the provisions of those Articles, the citizens not become an object but become a subject that actively involved in the Government Administration.¹⁵

Several considerations and good intentions underlying the establishment of the State Administration Law mentioned above, does not necessarily make the establishment of the State Administration Law accepted directly by the society and the related parties. Various responses later emerged at the time of the enactment of the Government Administration Law on 17 October 2014. Some are in a position to support the enactment of the Government Administration Law because it is seen as a progressive step in reforming Government Administration. On the other hand, the enactment of Government Administration Law also caused confusion and overlapping arrangements, especially related to the Procedural Law which must be applied and used as the Judge's guidance in examining the State Administration dispute in the Administrative Court. The Government administration Law is considered to contain more internal guidance for Government Administrators. This is in line with Philipus M. Hadjon contention which states that this Government Administration Law is not an Act. On Administrative Law, where the administrative concept in Article 1.1 of the Government Administration Law is the management of decision-making and/or action by the Institution and/or Government Officers. When compared with Algemene web Bestuursrecht (AWB) Netherlands looks clear differences because of AWB move from the concept of Administrative Law (berstuursrecht).¹⁶ The comparison then illustrates the difference in the starting point of AWB is the Government Administration Law while the starting point of the Government Administration Law is the Administration of Government. Whereas in the Government Administration Law contained the aspects of Administrative Law but the concept of Administrative Law is confusing.¹⁷

An in-depth review of the Government Administration Law shows that the Government Administration Law is not a formal law that governing how to enforce Material Law (Administrative Law). The Government Administration Law is a material law containing the subject matter of state administrative law, such as the source of authority, orders, and restrictions in exercising authority and witness against administrative violations which will directly guide the administrative law enforcement.¹⁸ The differences interpretation related to the position of Government

¹⁴ *General Explanation on the draft of Government Administration Law*

¹⁵ *Ibid.*

¹⁶ Hadjon, P. M. (2015). Peradilan Tata Usaha Negara dalam Konteks Undang-Undang No. 30 Th. 2014 tentang Administrasi Pemerintahan. *Jurnal Hukum dan Peradilan*, 4(1), 51-64.

¹⁷ *Ibid.* p.3

¹⁸ Enrico Simanjuntak. (2014). "Beberapa Anotasi Terhadap Pergeseran Kompetensi Absolut Peradilan Umum kepada Peradilan Administrasi Pasca Pengesahan UU No.30 Tahun 2014".

Administration Law as the material and formal laws related to the Government Administration is then the cause of new problems in the scope of the study of Administrative Law and Procedural Law in particular. One of the provisions of the regulation in the State Administration Law that creates unclear norms and confusion on the level of its implementation is related to the provisions of the Transitional Provisions Article 87 of Law concerning the absolute competence of the Administrative Court.

As is known, the provision of Article 1 point 9 of Act. Number 51 of 2009 concerning the Second Amendment to Act. Number 5 of 1986 concerning Administrative Court gives the meaning of Administrative Decision as a written stipulation issued by the State Administration institution or officers containing the act of law state enterprises that are in accordance with applicable, concrete, individual and final legal regulations that have a legal effect on a person or a civil legal entity. The expansion related to the meaning of Administrative Decision then occurs after the issuance of the Government Administration Law, which in the Transitional Provisions Chapter CHAPTER XIII Article 87 of the Administrative Law stipulates that the Administrative Decision in the Administrative Court Law must be interpreted as:

- a. A written determination that also includes factual acts;
- b. Decisions of bodies or officers in the executive, legislative, judicial and other administrative spheres of the state;
- c. Under the terms of legislation and the general principles of good governance;
- d. Final in a broad sense;
- e. Decisions that have the potential to cause legal consequences;
- f. Decisions are applicable to citizens.

Through the above meanings, it is seen that the competence of the Administrative Court under the Administrative Court Law is narrower than the competence of the Administrative Court under the Government Administration Law. The expansion of the meaning of Administrative Decision is certainly raised in the Government Administration Law based on various considerations. The Academic Analysis Report draft of Government Administration Law indicates that the primary consideration in setting the expansion of Administrative Decision meaning in Administration Act is included:

- a. to expand the scope of disputes that will be judged at the Administrative Court,
- b. to provide the widest possible access for citizens in achieving justice, in which individuals or communities who feel disadvantaged and potentially harmed the actions and the Administrative Decision issued by the Government Administrators can file a lawsuit at the Administrative Court,
- c. to strengthen the functions of external judicial control of the public against Government Apparatuses that are not easily become an abuse of power object by the Government Apparatus, and
- d. to strengthen the precautionary principle on the same side of the Government Apparatus responsiveness to do with the issuance of an Administrative Decision in the implementation of public administration functions.

On Subur MS (ed). *Bunga Rampai Peradilan Administrasi Negara Kontemporer*. Yogyakarta: Genta Press. p. 57.

- e. to strengthen the principle of prudence as well as the responsive side of the Government Apparatus related to the issuance of an Administrative Decision in the implementation of the functions of Government Administration.

The expansion of the meaning of Administrative Decision in Government Administration Law certainly gave rise to new changes and concepts in the Procedural Law system at the Administrative Court. This potential to cause confusion at the implementation level considering that Administrative Decision is the legal basis for the government to act, and vice versa Administrative Decision is the basis for the community to sue. The Academic Analysis Report and the draft of Government Administration Law indicates that the concept of expanding the meaning of Administrative Decision in the Government Administration Law is imbued with the spirit to give the benefit of the society (public interest), as well as the protection of the own Government Apparatus in carrying out Government Administration duties. It appears that this law on the one hand provides autonomy and flexibility to government agencies and institutions in administering the Government Administration to determine for themselves the quality standards, quantities and prerequisites that should be provided in government administration, and on the other hand the law also provides space to the government in responding to the changes that occur in the community. This law is fundamentally aimed at protecting individuals and communities from the practice of maladministration and abuse of power by bureaucratic apparatus in their efforts to obtain the right of Government Administration.¹⁹

3.2. Legal Implication of the regulation in the expansion of the meaning of the Administrative Decision on the Administrative Law in the process of dispute submission in the Administrative Court

The expansion of the meaning of Administrative Decision post-establishment of the Government Administration Law is one of the sensitive issues as well as very interesting to be studied in depth because it is considered still leaves a variety of theoretical problems that cause confusion in the technical implementation. This condition becomes quite ironic considering administrative justice is actually a genus of justice. Administrative justice should be a pillar in building a healthy state life. In order to uphold its role as a free and objective judicial body in assessing and adjudicating the implementation of the Law of State Administration, administrative courts are required to have a strong and clear system of events so as to provide legal certainty for their people in accessing justice and fighting for their rights.

The establishment of Government Administration Law then presents various legal theoretical debates among academics and practitioners especially regarding the scope of material and formal functions regulated in the Government Administration Law. Various views later emerged and colored academic and practical discourses concerning the establishment of the Government Administration Law. Some views assume that the current Government Administration Law as a turning point of the limitations of the

¹⁹ *The fundamental purpose of the Government Administration Law is described in depth in the introductory section regarding the scope of the Government Administration Law on the Academic Analysis Report in the draft of Government Administration Law*

role of the Administrative Court in enforcing Administrative Law. This view is based on the assumption that the Expansion of the meaning of Administrative Decision in the Government Administration Law brings significant change to the competence (absolute authority) of the previously restricted Administrative Court to become expanded. On the other side, the difference of view then occurs when various questions related to the implications caused by the expansion of meaning of Administrative Decision in Government Administration Law then emerged because it contained various unclearness in arrangement which resulted in confusion from the side of implementation, especially for parties who involved in the Procedural Law system.

At the practical level in the process of lawfulness in the Administrative Court is really needed an understanding of Administrative Decision that gives clarity and legal certainty that is expected to be a technical guideline in the Administrative Court. The affirmation of the scope of the Administrative Decision is indispensable since Administrative Decision is a form of state administrative action containing the rights and obligations gained by individuals or other members of the public in a single Government Administration. Any decision or action was taken by the public service office having formal authority to regulate one individual concrete matter within the public jurisdiction and binding is referred to as Administrative Decision.

The paradigm of Administrative Decision in the provision of Article 1 point 9 of the Administrative Court Law has been shifted with the provisions of Article 87 of the State Administrative Law.

In particular, the Administrative Court Law also appears to define Administrative Decision from several categories which in principle include:

- a. In terms of its actions: issued by the State Administration agency or officer in order to execute the executive activity,
- b. Judging from the material aspect: it contains the act of state administrative law that is the legal action of the state administration which carries out the functions to carry out the government affairs both at the center and in the region;
- c. Viewed in terms of its nature: loud, individual and final; and
- d. Viewed in terms of legal consequences: raises legal consequences for a person or a civil legal entity.

The Expansion of the meaning of the Administrative Decision as regulated in the provisions of Article 87 of the Transition of the Government Administration Law is then that raises a new perspective on the Procedural Law of Administrative Court and causes some confusion in its implementation.²⁰ The regulation of the expansion of the meaning of Administrative Decision in Government Administration Law raises various legal implications which subsequently occurred and changed the system of the Proceedings of the State Administrative Judicature Law especially in relation to the authority of the Administrative Court in the examination and dispute which is the scope of the authority of the Administrative Court.

²⁰ Eko Yulianto. (2017). *DIY Administrative Court Judge, Hukum Acara dan Praktek Peradilan Tata Usaha Negara, Disampaikan pada Pendidikan Khusus Profesi Advokat*. Gadjah Mada University.

The analysis of the implementation of the Government Administration Law, especially the Transitional Provisions of Article 87 related to the expansion of the meaning of Administrative Court then presents various perspectives related to the implications which then arise when the enforcement of this provision at the level of implementation which is as follows:²¹

a. Written Prescribing Arrangements that also include Factual Actions

The Expansion appears from the scope setting of the Administrative Decision form that can be submitted as a disputed object in the Administrative Court. Administrative Decision previously identical to written stipulation is then expanded by covering the factual actions undertaken by the Board or the State Administration Officer. There are various overlapping views on what is meant by factual action as the scope of expansion of the competence of the Administrative Court. Theoretically, the factual acts so far are often understood as not part of government legal action but are factual acts committed without or having a legal basis.²²

However, the limitation of the concept of factual action is then apparent when looking back at the draft Administrative Court Law which was then ratified into Act. Number 5 of 1986 concerning Administrative Court. The Administrative Court draft Law classifies three kinds of deeds categorized as acts of state administration which include: 1. State Administration Act in issuing Administrative Decision, 2. State Administration Act in making and issuing Regulations and 3. State Material Handling Act. From the three kinds of classification of the act of State Administration, the State Administration Act in issuing the Administrative Decision is then the competence of the Administrative Court. The Administrative Court Law restricts the object of State Administration dispute with limited to the form of written decision as to the object of the State Administration dispute.

Government Administration Law then comes and gives new color by changing the scope of competence of State Administration Judicature Court. Written Terms of State Administration Decision originally stipulated in the Administrative Court Law, where it is determined that the Administrative Court shall only have authority over the conduct of the State Administration in issuing the Decree / State Administration Decision then expanded to include also the State Material Materiil Act.

By regulating this factual action, the competence of the Administrative Court becomes expanded, where the process of filing a lawsuit against the factual act that once entered into the domain of the District Court through a lawsuit against the law can today become an object tried by the Administrative Court. Prior to the enactment of the Government Administration Law, the factual act of Government Administration is to be the absolute competency of general courts, namely in the form of a lawsuit against the law (onrechmatige overhaidtaad). After the enactment of Government

²¹ The Description above is author's reasearch summary towards several respondents in Administrative Court Makassar dan Administrative Court Denpasar which is author's research location.

²² Ministry of Law and Human Rights. "Undang-Undang Administrasi Pemerintahan Terhadap Peradilan Tata Usaha Negara". Retrieved from <http://djpp.kemenkumham.go.id/hukum-adm-negara/2942-undang-undang-administrasi-pemerintahan-terhadap-peradilan-tata-usaha-negara.html>.

Administrative Law, the Administrative Judicial Court then expanded its competence that is not only authorized to judge the legal action but also including factual action.

This is also confirmed in the Supreme Court Circular Number 4 of 2016 on the Implementation of the Result of the Plenary Meeting of the Supreme Court Room of 2016 as the Guideline for the Implementation of Duties for Courts (SE No.4 of 2016) in the State Administration Plenary Formula which states the change of paradigm of the law in the Administrative Court post the enactment of Government Administration Law that is related to the competence of the Administrative Court which is also authorized to adjudicate unlawful acts by the government, namely unlawful acts committed by the government authority (Institution and or Government Officers) commonly referred to as *onrechtmatige overheidsdaad* (OOD).

b. Institution Decision within the executive, legislative, judicial and other State Organizers

The Administrative Court Law defines the Administrative Decision as a written stipulation issued by the State Administration Officer. In terms of its actions, Administrative Decision is a legal product issued by a State Administration Officer in the course of executing executive activities. From the definition, it is seen that the Administrative Court Law limits the scope of the State Administrative Agency that is authorized to issue Administrative Decision is limited to the Administrative Decision issued by the Agency in the executive environment.

The expansion then occurred after the Government Administration Law. The decision of the Board or the State Administrative Officer in the executive, legislative, judicial and other state administrations shall enter as an element of the Administrative Decision maker which may become the object of dispute in the Administrative Court. The Government Administration Law has regretted the expansion of Administrative Decision as to the object of dispute in the Administrative Court. The legal implications of extending the scope of any institution or officer that authorized to issue an Administrative Decision may provide two different conditions and consequences. On the one hand, this Expansion will obscure the concept of Administrative Decision in the administrative law that should only be directed to an executive body or officer. This expansion can cause uncertainty and confusion on the implementation level as it targets all segments can enter as the object of State Administration disputes. In addition, this expansion is also considered to be contradictory to a conceptual approach whereby the concept of state administrative bodies or law officials in the Administrative Court Law should be appropriate because it shows the realm of administrative law.²³ However, the Expansion of the scope of the authorized institution to issue this Administrative Decision may open the exclusivity curtain at some institutions which formerly issued Administrative Decision untouched and excluding the scope of Administrative Court competence.

c. Under the terms of legislation and the general principles of good governance

From these arrangements, at a glance, there is no difference in the arrangement that classified in the Administrative Decision element of the Administrative Court Law in connection with this provision. Article 1 number 9 of the Administrative Court Law states the phrase of the applicable legislation. Meanwhile, in the provision of Article 87

²³ Philipus M. Hadjon. *Op.cit.*

of the State Administrative Law of the Republic of Indonesia, one of the elements mentioned in accordance with the laws and regulations of the general principles of good governance. From these two provisions, it appears that the Government Administration Law adds the general principles of good governance. It is intended as a basis or reference used by the State administrative agency or officer in issuing the Administrative Decision in carrying out its government duties. The purpose of this arrangement is to ensure that the Administrative Decision issued by the relevant State Administration body or officer is in conformity with the provisions of the legislation and the general principles of good governance. The emerging critique of this arrangement is that the addition of the phrase to the general principles of good governance is a provision that is substantially substantial.

d. Final in a broad sense

The Explanation Provisions of Government Administration Law Article 87 point d gives the termination of the meaning of the final in a broad sense is to include Decisions taken over by the Authorized Officer. Administrative Decision and or Action which is final in the broad sense is also regulated in SE No.4 Year 2016 in the Plenary of State Administration Plenary Section Division as a Administrative Decision that has caused legal consequences even though still require approval from the institution of superiors or other agencies (eg Licensing of investment facilities by the Capital Investment Coordinating Board, Environmental Permit).

The legal implication of this provision is that the Administrative Court shall have the authority to examine and decide upon a State Administrative dispute whose object of disputes is an unfinished Administrative Decision (still in process or taken over by an authorized supervisor). Although it is still in the initial stage (the lowest official), if the Administrative Decision is considered to be detrimental, then any aggrieved party may file a lawsuit to the Administrative Court even though the decision is not final. This includes, as is often found in the practical level of the existence of a chain decision where a decision is still followed up and become a condition for other published decisions.

e. The Decisions that have potential legal consequences

The Government Administration Law stipulates that decisions that have the potential to rise the legal consequences form the expansion of the meaning of the Administrative Decision that may become the object of a dispute over the Administrative Court system. The purpose of this provision is that the public may file a State Administration lawsuit against any potential loss that may arise from the issuance of an Administrative Decision by a State Administration agency or official. This arrangement is more visible as a visionary provision aimed at providing protection and opening up the widest possible space for citizens or the public to control and take legal action against any potential losses that may arise from the issuance of an Administrative Decision in the implementation of government functions.

With the enforcement of this provision, any Administrative Decision issued by a State Administration agency or officer deemed to be detrimental (though not directly) in the future may be filed as the object of the State Administration Dispute in the Administrative Court. For example, for example, A issued a Decision concerning City Governance, and B who feels that in the next few years will be harmed by the regulation may file a State Administration lawsuit in the Administrative Court with the

object of dispute in the form of Decision A which has the potential to cause legal consequences (although B not directly affected by the newly born Decision A).

f. The decision applicable to the citizens

The applicable provisions to citizens as one element of the meaning of the Administrative Decision in the perspective of the Government Administration Act has indirectly presented a new legal implication to the process of dispute submission in the State Administrative Judicature system. One of the legal consequences is the Expansion of a party who is likely to file a State Administration lawsuit, which is not only limited to individual individuals but also to citizens or the public at large or who have suffered losses due to the issuance of the Administrative Decision. The loss of individual phrases in the Government Administration Law indirectly is interpreted as a form of Expansion to the legal standing of the Administrative Court, in which citizens or communities can file cases to the Administrative Court.²⁴

3.3. Attitudes of the Administrative Court Judges in Resolving State Administrative Dispute related to the Expansion of the Meaning of Administrative Decision after the enactment of the Government Administration Law.

The judiciary is the most important instrument in the state administration system. As in the Constitution, Indonesia is declared a legal state deserves to have a judicial institution as an institution for upholding the pillars of law.²⁵ In every judicial administration at the judiciary, the position of the judge always plays a very important role as the guard and regulator of the rhythm of the examination process and as the breaker of the settlement of a legal dispute. The position of judges as the main actors of the judiciary becomes so vital since through its role judges can change, transfer or withdraw the rights and citizenship of the citizens.²⁶ The provision of Article 24 paragraph (1) of the 1945 Constitution of the Republic Indonesia stated that: The judicial power is an independent power to conduct the judiciary in order to enforce the law and justice. The regulation related to the judicial authority as independent state power is also regulated specifically in the provisions of Article 1 number 1 of Law Number 48 the Year 2009 regarding Judicial Power.²⁷

In the middle of the desire and support to create an independent judiciary power as mandated by legislation, the judicial power must have a set of laws in carrying out its functions, in terms of material law and formal law, both of which are the legal principles on which all legal action. In judicial practice, when there is a material legal provision that is violated, the judge in any judicial institution should base all procedures on handling cases in the procedural law system stipulated in the prevailing laws and regulations. The procedural law is the whole instrument used to enforce

²⁴ Fajrurrahman, Febby. *Arah Perkembangan Peradilan Tata Usaha Negara Pasca Undang-Undang No.30 Tahun 2014 Tentang Administrasi Pemerintahan*. Academia. Retrieved from https://www.academia.edu/23792881/ARAH_PERKEMBANGAN_PERADILAN_TATA_USAHA_NEGARA_Pasca_Undang-Undang_Nomor_30_Tahun_2014_Tentang_Administrasi_Pemerintahan.

²⁵ Indrayati, R. (2016). Revitalisasi Peran Hakim Sebagai Pelaku Kekuasaan Kehakiman Dalam Sistem Ketatanegaraan Indonesia. *Kertha Patrika*, 38(2). p. 118.

²⁶ *Ibid.*

²⁷ Article 1 point 1 Act. Number 48 of 2009 Concerning Judicial Power.

material law. For law enforcement, especially material law, formal law is required. In law enforcement within the context of the judiciary, a strong and clear instrument of procedural law is needed to guide judges in accepting, examining and deciding on disputes that fall within the jurisdiction of a judicial body. The development of the law itself, in truth, is not only in the hands of legislators, but the Judge also has a big role in the development of law. At the level of implementation, there are many laws created by judges. For the judges of procedural law is a basic rule or rule of the everyday game in examining the case. The procedural law is not only important in the practice of justice, but also has an influence in practice outside the court.²⁸ In the context of the Administrative Court, the formal law is the Administrative Court Procedural Law. The State Administrative Procedural Law is generally interpreted as a formal law which provides guidance to the public about the procedure of making a dispute submitted to the Government who carries out the administrative affairs in case the Government violates the principles of state law and human rights that harm the people. The provisions concerning the Procedural Law of Administrative Court are specifically regulated in Law No. 5 of 1986 which was later amended by Law No.9 Year 2009 and revamped with Law No.51 Year 2009 on Administrative Court.

In the regulation of Administrative Court Procedural Law in the Indonesian legal system, the confusion occurred after the establishment of Government Administration Law. The Government Administration Law seeks to provide legal protection to individuals or the public against public administration actions containing provisions of dispute submission and some revised procedural in the handling of maladministration disputes and abuse of power by the Government Administrators. The Government Administration Law in addition to regulating the provisions of the administrative law material also regulates the provisions of formal law in the enforcement of the Government Administration Law. Whereas as known by the Procedural Law of Administrative Court, in particular, has been regulated in the provisions of Administrative Court Law which is still valid and has not been declared revoked or replaced by the provisions of other laws and regulations. In such a condition it is clear that the provisions of procedural law governing the related administrative government and then spread in two frames of the big legislation that is the Administrative Court Law and Government Administrative Law. Then its potentially presents the confusion of the parties at the level of implementation, especially in the process of filing a dispute over the Administrative Court. There are no clear guidelines for law enforcers (judges), which provisions that can be applied in handling and examining cases in the Administrative Court.

The inconsistency between the laws and regulations is then increasingly visible if we look specifically at the related arrangements of the Expansion of the Meaning of Administrative Decision on Article 87 Transitional Provisions of the Administrative Law. This arrangement opens a wide space for individuals or citizens to file a dispute submitted to the Administrative Court in connection with the expansion of the meaning of the Administrative Decision which is the object of the dispute in the Administrative Court. The regulation of the expansion of the meaning of the Administrative Decision that includes aspects of decision form, the scope of the institution and / or Authorized Officers, the meaning of the final word, the consequences of the law, to the extent to which subjects to the imposition of

²⁸ *Ibid.*

Administrative Decision shall potentially lead to ambiguity and confusion for the parties and the potential for conflict due to differences in interpretation of various related elements. The establishment of the Government Administration Law is then causing legal theoretical problems because this law extends the notion of Administrative Decision as stipulated in the Law of Administrative Court which is the formal law of the State Administration Law.

The judge is the person who understands the law, which is laid on his shoulders the obligations and responsibilities so that law and justice can be enforced.²⁹ The judge in settling a case, in general, must be able to judge by law and to obtain, find the right understanding or meaning of justice according to the law that must refer to the underlying principles.³⁰ In addition, in the face of different arrangements between the Law and regulations that occur, the principle of the law becomes one important element for judges in assessing considering the principle of law is the basis or direction in the formation of positive law. Understanding the principle of the law becomes so important because the principle of law is the heart of legal science, it is because the principle of law is the most important foundation for the establishment of rule of law.

The establishment of legislation is often found a regulation where there is lacuna of norms, vague norms or even conflicting norms with each other. This will certainly cause serious problems in the application level of the legislation. Legislation should be established on the basis of the establishment of good legislation. In case there is a conflict between legal norms or the regulation of similar norms in different legislation which then lead to conflict with one another, then known the type of settlement that can be used as a basis that is based on the principle of preference known in jurisprudence. The principle of preference is the principle used to determine the rules to be used if there are two different rules governing the same thing. There is the principle of preference in the science of law such as:

- a. *Lex superior derogat legi inferiori* (viewed on the basis of heirarchy), where the higher law overrides the low law.
- b. *Lex posterior derogate legi priori* (the new law overrule the old law), where the size of the year, when set and when to come into force.
- c. *Lex specialis derogat legi generalis* (a special law that rules out common law).

In general, related to the judge's attitude in responding to the expansion of the meaning of the Administrative Decision after the establishment of the Government Administration Law, it is seen that there are still a differences of views, the weakness of the theoretical side of the law among judges related to the provisions of legislation that should be used as a reference for implementation (especially related to the expansion of meaning of Administrative Decision changes incompetence) on Administrative Court Procedural Law. The assertion of the basic law of change with reference to SE Number 4 of 2017 also raises criticism regarding how strong the SE when used as a basis to change the provisions of procedural law previously set in Administrative Court Law. Moreover, SE is not a source of law and is an internal product of the Supreme Court which is instructive to the relevant judicial bodies under it.

²⁹ Rosita Indrawati. *Op.cit.* p. 126.

³⁰ Poesoko, H. (2015). Penemuan Hukum oleh Hakim dalam Penyelesaian Perkara Perdata. *Jurnal Hukum Acara Perdata ADHAPER*, 1(2), p. 221.

The analysis of the attitudes that should be taken by judges in responding to the expansion of the meaning of the Administrative Decision on the Transitional Provisions Article 87 of the Government Administration Law should be based on a clear theoretical legal context to not merely based on the purely greater purpose of exploitation for the society. So the theological interpretation outlook that should be used in view of these regulatory differences can not necessarily be enforced.

The overview if there are two norms that regulate the same thing, does not necessarily mean there is a conflict then should be further examined because its potential to cause confusion and legal uncertainty in the implementation. Bear in mind that Article 87 has created a new norm but the nature of reconstruction and interpreting is not a suspension of the provisions of Article 1 point 9, where the provisions of Article 87 only extend its usefulness can not necessarily be used as a basis to justify substantial changes regulated in the Transitional Provisions of this Administration Law. This is considering the provisions of Article 87 has not only expanded but has changed the meaning of the Administrative Decision in the Administrative Law which is formal law in the practice of the Administrative Court. Moreover, the Government Administration Law does not set a clear meaning of each expansion of the meaning. For example, until now has not been issued a special regulation that regulates the examination of the factual act as the object of the State Administration dispute in the Government Administration Law. This is certainly very potential to cause new problems in law enforcement of the Administrative Court, especially for judges who later as a court are required to apply the same provision as a way for the community in fighting for their rights to access justice in the system of the Administrative Court.

Seen from the theoretical side, the State Administrative Court Law is a *Lex Specialis* while the Government Administration Law is *Lex Generalist*. The law of the Administrative Court is a special law that regulates the procedural law applicable to the Administrative Court, whereas the Government Administration Law is substantially a legal source of governmental administration, although it also regulates the procedural law but can not necessarily be used to amend the laws and regulations which has previously regulate the procedural law of Administrative Court in detail and complete. Discussing specifically to the expansion of the meaning of Administrative Decision as stipulated in Transitional Provisions Article 87 of the Act is that relevant to amend legislation and then functioned to change the old legislation rules that have been set previously. Moreover, the Administrative Court Law until now is still valid and has not been revoked.

In the overview of both laws, both Administrative Court Law and the Government Administration Law constitute a law of a different kind or not within the same group (genus) it is then irrelevant that different laws of this type replace the function and applicability of the legislation - old rules previously set. If it is based on the principle of legal preference in response to the laws and regulations that should be used by the judge when there is an expansion of the meaning of the Administrative Decision in the Government Administration Law it should be referenced and returned to theoretical concepts based on the appropriate legal principles. In such condition, the Administrative Court Law must be interpreted as a regulation that specifically regulates the procedural law of the Administrative Court, so that this provision must be able to override the provisions stipulated in the Government Administration Law as a general provision because it is not included in the type of legislation whose function

is the same. On that basis, the legal preferences principle of *Lex specialise derogat legi generalis* (a special law that excludes general law). Thus the provisions of the Government Administration Law cannot be applied directly as legislation governing the various changes in procedural law in the Administrative Court. Particularly related to the enactment of the regulation of the expansion of the meaning of Administrative Decision in the Government Administration Law which changed the competence and expanded the object of dispute in the Administrative Court.

Facing the different arrangements in these two applicable laws, the parties can not merely refer to which laws give greater benefit to the society, but must still be based on strong, clear theoretical legal concepts as the basis for enforcement. Therefore, any specific rules that governing procedural law will provide legal certainty. Legal certainty in the setting of procedural law is absolutely necessary considering the procedural law is a means of law enforcement. Similar to procedural law in the Administrative Court, is based on a strong and clear regulation, will undoubtedly be achieved through a clear procedure. This does not mean to close the access to justice as widely as it is attempting to be initiated by the Government Administration Law but rather aimed at developing a national legal system with a strong and clear procedural law. With the legal arrangement to providing legal certainty, undoubtedly there are no longer found dilemma at the level of the implementation which has been an obstacle in law enforcement of the Administrative Court Procedural Law. As it is known, the Administrative Court system aims to carry out the function of judicial oversight of state administrative legal actions whose implementation of the function is based, among others, on the principle of activeness of Judge and the principle of free evidence. The principle of activeness of Judge provides broad authority to Administrative Judge in the process of examining administrative dispute concerning the division of the burden of proof and determination of matters that must be proven.³¹ Therefore, imperative procedural law arrangement is needed which can be used as guidelines by the Judge in examining and settle the disputes before the Administrative Court.

4. Conclusion

Based on the description above, it can be drawn some conclusions which are:

The Establishment of Government Administration Law is imbued with the spirit to open up space for every individual and society in accessing justice, as a means of controlling the government as well as an instrument of protection for the government apparatus in performing the functions of government administration. The Analysis of the Academic Analysis Report and the draft of Government Administration Law shows that there are several main considerations of the legislators in regulating the expansion of the meaning of the Administrative Decision on Transitional Provisions Article 87 of the Government Administration Law which among others such as:

- a. to expand the dispute competence or scope that may be prosecuted in Indonesian Administrative Court;

³¹ Tjandra, W. R. (2013). *Perbandingan Sistem Peradilan Tata Usaha Negara dan Conseil D'etat sebagai Institusi Pengawas Tindakan Hukum Tata Usaha Negara. Ius Quia Iustum Law Journal*, 20(3),p. 425.

- b. to provide the widest access for citizens to achieve justice, wherever individuals or communities who feel disadvantaged and potentially disadvantaged overacts and Administrative Decision that issued by the Government Administrators may file a lawsuit in the Indonesian Administrative Court;
- c. to strengthen the function of external control of society against the Government Apparatus in avoiding the society to become the abuse of power object by the Government Apparatus, and
- d. to strengthen the principle of prudence as well as the responsive side of the Government Apparatus related to the issuance of an Administrative Decision in the implementation of the functions of the Government Administration.

The regulation of the Expansion of the meaning of Administrative Decision to the Transitional Provisions Article 87 of the Administrative Law has risen to various legal implications especially on the process of dispute submission to the Indonesian Administrative Court. The expansion of the meaning of Administrative Decision based on every element of the Administrative Decision on the Government Administration Law has indirectly expanded the competence or the scope of the case which became the object of dispute from the Indonesian Administrative Court.

The implications that arise after this expansion such as the Indonesian Administrative Court then has the authority to hear factual acts committed by the Government Apparatus which was formerly the authority of the District Court (Tort Lawsuit), Decision outside the executive competency issued by the official institution in the legislative, judicial and other State Institution then the other State Organizer shall become the object of the Indonesian State Administrative Dispute, the Administrative Decision of the superior agency or other agency may be filed as the object of the Indonesian State Administrative Dispute, a lawsuit to the Indonesian State Administrative Court may be filed for any potential loss arising from the issuance of a Administrative Decision and any party who is likely to file a State Administrative lawsuit then not limited to certain individuals but also to citizens or the public who have the potential or have suffered loss that affected by the issuing the Administrative Decision. In addition, at the practical level, the expansion meaning of Administrative Decision in the Government Administration Law also creates legal uncertainty, where the various interpretations occur that causing confusion of the parties at the level of their implementation.

The Administrative Court Law is a special law which regulates the procedural law that applies to the Administrative Court, while the Government Administration Law is substantially a legal source of governmental administration even though it also regulates some changes to the procedural law which is applied to the Administrative Court. The attitude that should be taken by the judges of Indonesian Administrative Court in responding to the confusion in the practical level due to the expansion of the meaning of the Administrative Decision in Government Administrative Law is, the Judge must be based on strong theoretical legal concept so as to create uniform understanding and attitude in handling the case in the Indonesian Administrative Court. The judge should be guided by the principle of preference in the law of *Lex specialis derogat legi generalis*, where the Law of the Indonesian Administrative Court becomes a special rule and valid as the basis of procedural law in Indonesian Administrative Court system.

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