

Are there Obstacles after the Administrative Court Absolute Competence Extension of Indonesia?

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DOI: <https://doi.org/10.31603/variajusticia.v16i2.3590>

Submitted: May 2020

Revised: November 2020

Accepted: November 2020

ABSTRACT

Keywords:

Administrative Court Law; Government Administration Law; Norms and Theoretical Obstacles; Practical Obstacles

The enactment of Law Number 30 the Year 2014 regarding Government Administration with the expansion of Administrative Court competence stimulates confusion and obstacles in norms and theoretical and practical obstacles for the justice enforcers, especially Administrative Court Judges. On the other hand, this law is contrary and potentially conflicts with Government Administration Law. To resolve this legal problem, the Indonesia Supreme Court issued several Supreme Court regulations and Circular Letter of Supreme Court for each expansion of Administrative Court competence; otherwise, the confusion and obstacle in theoretical and practical spheres still conducted the justice problem enforces. This study has aimed to analyze and discuss concerning confusion and obstacles faced by enforcers, especially Administrative Court Judges, and the attitude or solution towards those obstacles. This study is using the normative and empirical method with qualitative types as a descriptive analysis article.

1. INTRODUCTION

The judiciary bodies exist that examine the government action's validity and the government decision with sound governance principles by an administrative court as a practice by any Civil Law System countries, like Germany, France, Netherlands, and Indonesia.¹ In Indonesia, this authority is related to the checks and balances system in Indonesia Constitutional system within the 1945 Indonesia Constitution to defend and protect civil society needs towards government action/decision as a representation of the welfare state's primary goal.² Philosophically, the rule of law principle in Indonesia determines Indonesia has the dynamic rule of law or welfare state principles, focusing on the state's role with the government action towards the prosperity of public society with

¹Putera Astomo, "Eksistensi Peradilan Administrasi dalam Sistem Negara Hukum Indonesia", *Jurnal Masalah-masalah Hukum* 43, no. 3 (2014): 369, DOI: 10.14710/mmh.43.3.2014.363-371.

²I Gede Yusa and Bagus Hermanto, "Gagasan Rancangan Undang-undang Lembaga Kepresidenan: Cerminan Penegasan dan Penguatan Sistem Presidensiil Indonesia", *Jurnal Legislasi Indonesia* 14, no. 3 (2017): 315.

the several government action and decision.³ In this concern, the results of validity or invalidity of the government action and government decision are judged by the Administrative Court decision to achieve the transparency and guarantee of access to justice for the justice seekers.⁴

The Administrative Court's existence has an essential role in examining government action's validity with the administrative decision.⁵ The administrative decision that giving negative effect for society or the private bodies as the object of the application on the administrative disputes as to the absolute competence of Administrative Court, and it potentially as preventive action towards the government actions that potential improperly with the statutory law and the sound governance principles.⁶ On the other hand, this means that the state's role in protecting and guaranteeing public society—Article 47 the Law Number 5, the Year 1986 jo. Law Number 9 the Year 2004 jo. Law Number 51, the Year 2009 concerning Administrative Court regulates the absolute competence in examining, judging, and resolving the administrative disputes.⁷

In the Administrative Court Law, the absolute competence of the Administrative Court is the administrative disputes related with a dispute that appears in the administrative sphere between society or private bodies with administrative bodies or officials, as the cause by the issuing of an administrative decision following statutory law that stipulates in Article 1 Paragraph (4) the Administrative Court Law. Also, the meaning of administrative decision in this law as written enactment that issuing from administrative bodies or officials that contains administrative, legal action based on statutory law with concrete, individual and final characters that are causing legal effect for individual society or private law bodies as regulates in Article 1 Paragraph (3) the Administrative Court Law.

After enacting Law Number 30, the Year 2014 concerning Government Administration made fundamental changes towards material law and ceremonial law in

³ Philipus M Hadjon, "Peradilan Tata Usaha Negara Dalam Konteks Undang-Undang No. 30 Th. 2014 Tentang Administrasi Pemerintahan," *Jurnal Hukum Dan Peradilan* 4, no. 1 (2015): 51–64, <https://doi.org/10.25216/jhp.4.1.2015.51-64>.

⁴ Simon Butt, "Freedom of Information Law and Its Application in Indonesia: A Preliminary Assessment." *Asian Journal of Comparative Law* 8, no. 1 (2013): 22, DOI: <https://doi.org/10.1017/S2194607800000879>.

⁵ Adriaan Bedner, "Indonesian Legal Scholarship and Jurisprudence as an Obstacle for Transplanting Legal Institutions," *Hague Journal on the Rule of Law* 5, no. 2 (2013): 261-262, DOI: <https://doi.org/10.1017/s1876404512001145>.

⁶ Soehartono, "Eksistensi Asas-Asas Umum Pemerintahan Yang Baik Sebagai Dasar Pengujian Keabsahan Keputusan Tata Usaha Negara Di Peradilan Tata Usaha Negara," *Yustisia Jurnal Hukum* 1, no. 2 (2012): 180–93, <https://doi.org/10.20961/yustisia.v1i2.10644>.

⁷ Kartika Widya Utama, "Quo Vadis Undang-Undang No. 5 Tahun 1986 Tentang Peradilan Tata Usaha Negara Jis. Undang-Undang No 51 Tahun 2009 Dan Kompetensi Peradilan Tata Usaha Negara Dalam Uu. No. 30 Tahun 2014 Tentang Administrasi Pemerintahan," *Masalah-Masalah Hukum*, no. 3 (2015): 356–63, <https://doi.org/10.14710/mmh.44.3.2015.356-363>.

Indonesia's administrative law.⁸ The Administrative Government Law provisions confused several parties (especially the judges) on the administrative law enforcement in Administrative Court. Some expansion forms of Administrative Court competencies as regulated in the Administrative Government Law, among other things meaning expansion of Administration Decision; regulation concerning administrative effort, specific unlimited amounts of a compensation claim, presence of elements of abuse of power or authority, and the competence of Administrative Court over the favorable fictional administrative decision.⁹

This problem leads to confusing, overlapping norms and theoretical legal problems, and practical problems that require the Administrative Court judges to interpret and use the statutory law of every administrative dispute in the Administrative Court. In this context, the Supreme Court of Indonesia, as the highest branch of judiciary power in Indonesia¹⁰, also enactment several regulations and circular letters related to that problem both in theoretical and empirical spheres. This study is focused on the discussion of the theoretical and empirical obstacles faced by the Administrative Court judges in the implementation of each part or form of expansion of Administrative Court competence as the implication the enactment and contradiction between the Administrative Court Law and the Government Administration Law.

2. RESEARCH METHOD

This study uses a combination of normative legal research and field research. Normative legal research is conducted by describing the law as a prescriptive discipline,¹¹ positioning law as a norm or system of norms or statutory law.¹² Field research was conducted through nonprobability sampling with a purposive technique. In addition, the results of this study are presented in a descriptive-analytical form.

⁸I Gusti Ngurah Wairocana, et. al. "The Expansion of Administrative Decision Meaning Based on Government Administration Law: a Dispute Submission Process Approach", *Jurnal Magister Hukum Udayana* 8, no. 1 (2019): 20-21. DOI: 10.24843/JMHU.2019.v08.i01.p02.

⁹Aju Putrijanti, "Kewenangan Serta Obyek Sengketa Di Peradilan Tata Usaha Negara Setelah Ada Uu No. 30 / 2014 Tentang Administrasi Pemerintahan," *Masalah-Masalah Hukum* 44, no. 4 (2015): 425, <https://doi.org/10.14710/mmh.44.4.2015.425-430>.

¹⁰Dudu Duswara Machmudin, "Modernization and Acceleration of Case Standard Handling and Reviewing on Indonesia Supreme Court," *Journal of Legal Ethical and Regulatory Issues*, 21, no. 3 (2018): 2.

¹¹Andri Gunawan Wibisana, "Menulis Di Jurnal Hukum: Gagasan, Struktur, Dan Gaya," *Jurnal Hukum & Pembangunan*, 2019, <https://doi.org/10.21143/jhp.vol49.no2.2014>.

¹²Karen Petroski, "Legal Fictions and the Limits of Legal Language." *International Journal of Law in Context* 9, no. 4 (2013): 488. DOI: <https://doi.org/10.1017/S174452313000268>.

3. RESULTS AND DISCUSSION

3.1. The Obstacles faced by the Judges of Administrative Court in the Implementation of Each Form of Expansion of Administrative Court Competence after the Enactment of the Government Administration Law

The expansion of Administrative Court competence as stipulated in the Government Administration Law brings a fundamental change to the Administrative Procedural Law system that applies to the Administrative Court.¹³ There have been various confusions, overlapping arrangements, and theoretical legal problems that have led to the implementation of the competence expansion, leading to various pros and cons of every party involved in the Administrative Procedural Law system. Amid various polemics regarding the regulation and theoretical problem, the Administrative Court Judges are still required to be objective judges of every case in the Administrative Court. So it is interesting to be dissected the obstacles faced by the Judges of the Administrative Court in the implementation of each form of expansion of Administrative Court competence after the Government Administration Law enacted in the following theoretical and practical constraints below.

3.2. Law Theoretical and Norms Obstacles faced by the Judges of Administrative Court

3.2.1 Regulations on the Expansion of the Absolute Competence of Administrative Court in the Material Law

The Administrative Court Law is a special law that regulates the procedural law that regulates the procedural law that applies to the Administrative Court (ceremonial law). Simultaneously, the Government Administration Law substantially represents the material sources of government administration (material law). The regulation of various competence expansion of Government Administrative Law certainly raises its theoretical problems of law and can confuse its implementation level. Based on its novelty, the Government Administration Law does not automatically enable change and replace the special statutory law that previously governed the Administrative Procedural Law. Theoretically, the Administrative Court Law is *lexed specialize* while the Government Administration Law is *lexed generalis*, so both are not included in the same *genus*. Legislative actions by including various changes in Administrative Court competencies that affect the Administrative Procedural Law are a form of action that is not following the principles of legislation and has the potential to cause legal disharmony considering that there is 2 (two) statutory law that is equally still stated in effect regulating the competence of Administrative Court. For example, is in the regulation of expansion of the Administrative Court competence in the Government Administration Law, sharp

¹³ Ridwan HR, Despan Heryansyah, SHI., MH., and Dian Kus Pratiwi, SH., MH., "Perluasan Kompetensi Absolut Pengadilan Tata Usaha Negara Dalam Undang-Undang Administrasi Pemerintahan," *Jurnal Hukum Ius Quia Iustum*, 2018, <https://doi.org/10.20885/iustum.vol25.iss2.art7>.

criticism then arises considering that the competence expansion regulated in Article 87 of Transitional Provision on the Government Administration Law.¹⁴ It can be interpreted that the Administrative Court Law as a ceremonial law that applies to the Administrative Court then immediately can be replaced by regulating new provisions on the Transitional Provision on the Government Administration Law.

3.2.2 Issuance of the Supreme Court Regulation and Circular Letter of the Supreme Court as Implementing Rules for Expansion Administrative Court Competence in Government Administration Law

Theoretical weaknesses can be seen in the affirmation of the legal basis of change by referring to Circular Letter of the Supreme Court Number 4 the Year 2016 concerning the Formulation of Results of the 2016 Supreme Court Plenary Meeting as Implementation Guidelines for Courts, that are in the legal formulation of Administrative Court provisions that regulate the change in paradigm in the Administrative Court after the enactment of the Government Administrative Law which includes competence of Administrative Court, subjects of Lawsuits/Requests, objects of Lawsuits/Requests, Proofs, Decisions of Administrative Court and restrictions on Cassation Efforts. Meanwhile, both the Government Administrative Law and Circular Letter Number 4, the Year 2016 enactment, has aimed to create good governance and fulfill the welfare state idea. Those all focused on eradicating the corruption and abuse of power in Indonesia's executive, legislative, and judiciary branches power.¹⁵

The Circular Letter Number 4 Year 2016 states in detail that the object of the claim in the Administrative Court includes written and/or factual actions; issued by the Government Agency or Officer; published based on legislation and/or sound governance principles (administrative decisions and/or actions originating from bound or free authority); characteristic: individual (for example: decisions concerning to building permits), individual abstracts (decisions about the conditions for giving permits) and General Conclusions (decisions concerning establishing regional minimum wages); administrative Decisions and/or actions which are final in the broadest sense, namely Administrative Decision which have caused legal consequences even though they still require approval from superior agencies or other agencies (example: licensing concerning investment facilities by the Investment Coordinating Board and environmental permit); and Administrative Decisions and/or actions that potentially to result in legal consequences (example: Financial and Development Supervisory Agency report).

¹⁴Firzhal Arzhi Jiwantara et al., "The Extension of Absolute Competence of State Administrative Court after the Enactment of Act Number 30 of 2014 on Government Administration in Indonesia," *Journal of Legal, Ethical and Regulatory Issues* 21, no. 2 (2018): 3-4.

¹⁵Simon Butt and Sofie Arjon Schütte, "Assessing Judicial Performance in Indonesia: The Court for Corruption Crimes," *Crime, Law and Social Change* 62, no. 5 (2014): 604. DOI: 10.1007/s10611-014-9547-1.

In Circular Letter Number, four the Year 2016 also regulated Administrative Decisions and positive fictional actions and decision of the Government Internal Supervisory Apparatus Institution (APIP), the request for the revision of abuse of power abuse of authority as claim/petition object. This arrangement then gave rise to criticism regarding the legally binding force of the Circular Letter when it was used as a basis for changing the provisions of the Administrative Procedural Law previously regulated in the Administrative Court Law. Moreover, the Circular Letter is not a source of law and is an internal instructional product of the Supreme Court towards the relevant judiciary.

3.2.3 *Dissemination of Regulations on the Administrative Procedural Law*

The conditions as stated above, where the Administrative Procedural Law related explicitly to various expansions of Administrative Court competencies regulated by Government Administration Law and subsequently regulated separately in the form of Regulation of Supreme Court and Circular Letter of Supreme Court as legal products from the Supreme Court make it difficult for law enforcers and the public society in understand and implement the provisions in the Administrative Procedural Law system.¹⁶ The public and law enforcers, especially judges in examining and adjudicating Administrative Disputes, must understand the various changes and new arrangements regulated in various legislative products regulating the Administrative Procedural Law. It is not easy, so it becomes essential to be immediately explicitly regulated in a legal codification or arranged comprehensively in the amendment to the Administrative Court Law, which applies to the Administrative Court's formal law in Indonesia.

3.2.4 *The Absence of a Firm and Comprehensive Explanation for each Expansion Meaning of Administrative Decision in the Government Administration Law*

If the provisions concerning the expansion of Administrative Court competence, in particular, the expansion meaning of Administrative Decision in the Government Administration Law shall be applied to the Administrative Court in Indonesia today (based on Circular Letter of Supreme Court),¹⁷ certainly one obstacle that needs to be resolved first is concerning the provision of explicit and comprehensive explanations for the purpose from each form of expansion meaning of Administrative Decision. It shall be strictly and comprehensively regulated so that it can provide legal certainty. The condition of each Administrative Court judges' different interpretations in interpreting each form of expansion of meaning stipulated in Article 87 of the Transitional Provisions

¹⁶ Tri Cahya Indra Permana, "Peradilan Tata Usaha Negara Pasca Undang-Undang Administrasi Pemerintahan Ditinjau Dari Segi Access To Justice," *Jurnal Hukum Dan Peradilan*, 2015.

¹⁷ Muhammad Adiguna Bimasakti, "Lawsuit in Administrative Court after Administrative Proceedings Based on Perma No. 6 Of 2018," *Jurnal Hukum Dan Peradilan*, 2019, <https://doi.org/10.25216/jhp.8.3.2019.458-480>.

on the Government Administrative Law shall be avoided. It can confuse and harm parties, especially justice seekers when litigating in the Administrative Court.¹⁸

3.2.5 *Overlap of Authority Potential between the Judiciary Bodies after the Regulation of the Authority of Administrative Court competence on the Examining of Presence or Absence Elements of Abuse of Authority in the Issuance of Administrative Decisions and Factual Actions*

The regulation of the expansion of the absolute competence of the Administrative Court in examining the presence or absence of an abuse of authority elements in the issuance of administrative decisions has the potential appears the overlap of authority among law enforcement institutions, especially concerning which courts have the authority to settle the administrative dispute because, until today, the problems concerning the existence or absence of an abuse of authority have become the realm of the General Justice (Criminal Court).¹⁹ These problems can cause overlap of authority between judiciary bodies, which consequently raises legal uncertainty related to the institution in charge of examining presence or absence elements of abuse of authority in the issuance of administrative decisions and concrete actions taken by government officials. Also, the problem then arises, especially concerning the limitation of Administrative Court Competence on examining the elements of abuse of authority before the criminal process considering that there are no guarantees or special regulations that regulatory provisions regarding the requirement for law enforcement officers to comply with Administrative Court decisions that state government officials have no abuse of authority not to proceed to criminal proceedings even though the Administrative Court ruling is erga omnes or publicly legally binding.

3.2.6 *Unclear Regulations of Application Submission Mechanisms and Absence of Standard Trial Forms for Requests with Positive Fictional Administrative Decision Objects*

A positive fictional Administrative Decisions is interpreted as a silent auction by a State Administrator, or Officials deemed to grant a request petitioned by the applicant legally. The phrase considered granted gives legal consequences in granting an application and is obliged to issue the Administrative Decision that the applicant requests.²⁰ The phrase "deemed granted" has automatic legal consequences. However, a mechanism for submitting requests to the Court is required to obtain the application's determination.

¹⁸ "Interview Results at The State Administrative Court," n.d.

¹⁹ Susila, Agna and Suharso, Suharso. "Eradication Development of Corruption and Neoliberalism in the Current Era." *Varia Justicia* 14, no. 2 (2018): 97. <https://doi.org/10.31603/variajusticia.v14i2.2418>.

²⁰ Budiamin Rodding, "Keputusan Fiktif Negatif dan Fiktif Positif dalam Peningkatan Kualitas Pelayanan Publik", *Tanjungpura Law Journal* 1, no. 1 (2017): 29. <http://dx.doi.org/10.26418/tlj.v1i1.18328>.

The submission of this application is necessary the favorable fictional Administrative Decision is abstract and cannot provide legal certainty for the parties, especially for the applicant. The abstract character from a favorable fictional administrative decision then needs to be clearly and explicitly requested for the issuance of the Administrative Decision submitted by the applicant as the aggrieved party. Before being regulating comprehensively, this provision becomes very doubtful to implement given the abstract character of the favorable fictional administrative decision could be a barrier to the applicant when entering the Administrative Court realm. The Government Administration Law and the Regulation of the Supreme Court also do not provide a standard format for the session's implementation and the trial schedule's determination to examine requests for favorable fictional Administrative Decision.²¹ Not being default regulated causes differences in the session's format in each Administrative Court in examining related cases. It is essential to respond immediately with the regulation of the implementation instructions related to the clarity of positive fictional administrative decision concept supported by the clarity of the submission procedures and trial mechanisms within the Administrative Court.

3.2.7 New Regulations on Administrative Efforts in the Government Administration Law tend to Limitation the Competences of Administrative Courts

As is known, the Government Administration Law regulates two fundamental changes concerning administrative efforts in the Administrative Court system where based on the Government Administration Law, and administrative efforts are mandatory and applicable to all State Administrative disputes.²² The consequential regulation for each Administrative Dispute that occurs first must be settled through an administrative effort institution consisting of administrative objections and administrative appeals.

It is also stipulated that each Administrative Dispute's settlement after administrative efforts is submitted to the Administrative Court is no longer the Administrative High Court as previously stipulated in the Administrative Court Law. The obstacles which then potentially arise related to these provisions are on the one side of the regulations is seen to expand the competence of Administrative Court but on the other hand, has the potential to cut down or narrow down the competence of Administrative Court in resolving administrative disputes. It refers to the condition that not all Administrative Bodies or Institutions included in the expansion of the meaning of Administrative Decision (executive, legislative, judicial, and other government

²¹Fransisca Romana Harjiyatni dan Suswoto, "Implikasi Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan terhadap Fungsi Peradilan Tata Usaha Negara" *Jurnal Hukum Ius Quia Iustum* 24, no. 4 (2017): 604-605. <https://doi.org/10.20885/iustum.vol24.iss4.art5>.

²²Yodi Martono Wahyunadi, "Kompetensi Absolut Pengadilan Tata Usaha Negara dalam Konteks Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan." *Jurnal Hukum dan Peradilan* 5, no. 1 (2016): 137. <http://dx.doi.org/10.25216/JHP.5.1.2016.135-154>.

administering institutions) in the statutory law have not regulated administrative efforts dispute resolution procedures that just passed through. It certainly has consequences for the potential for rejection of disputes that are not through administrative efforts (the necessary regulations have not been regulated) due to the limitation of the judge's views in interpreting fundamental changes related to administrative efforts set out in the Government Administration Law.

3.3. Practical Obstacles Faced by the Judges of Administrative Court

3.3.1 Position of the Supreme Court in the Arrangement of Judicial Power in Indonesia

The position of the Supreme Court as the highest authority holder as stipulated in Article 24 Paragraph (2) and Article 24A Paragraph (1) the 1945 Indonesia's Constitution provides a significant influence on the determination of the judge's attitude in implementing the statutory provisions that apply as a guiding procedure for the Administrative Court. Practically, this condition raises the accountability hierarchy and judges' supervision who remain in the Supreme Court's authority. Based on the interview result at The State Administrative Court, each judge must implement the provisions issued by the Supreme Court in the form of Regulation of Supreme Court and Circular Letter of Supreme Court concerning the expansion of Administrative Court competence even though it has a view in determining which regulation should be applied. Whereas in examining and deciding on a dispute, each judge has the independence to determine the law to decide every case that enters a settlement through a judicial body, including the administrative dispute through the Administrative Court.

3.3.2 Different Interpretations of each Administrative Court Judges in Implementing the Extension of Competence in the Government Administration Law

The different regulations concerning the expansion of Administrative Court competencies in the Administrative Court Law with the Government Administration Law certainly present error at the practical level of implementing the related parties, especially judges in the Administrative Court. Different interpretations of each judge over several regulatory provisions shall be immediately addressed by arranging an explanation for each provision that changes explicitly and comprehensively. There needs to be synchronization in the process of formulation of statutory law to be able to specifically regulate procedural law (including competencies) in the Administrative Court, considering that procedural law is a ceremonial law that serves as a guideline in material law enforcement in government administration sphere.

3.3.3 Level of Knowledge of the Public Society and the Law Enforcement concerning Expansion of Administrative Court in the Government Administration Law

The understanding related with the various expansion of Administration Court competencies after the enactment of the Government Administration Law is still not strong both in the field of law enforcement practitioners, including judges, and of course

among the broader society of justice seekers, even though the regulation regarding the expansion of competence is part of efforts to increase access to justice as widely as possible as the basic philosophy in the enactment of the Government Administration Law. One form of practical obstacles in regulating the expansion of Administrative Court competencies shall be immediately resolved considering that a comprehensive law enforcer (especially judges) must guide in handling, examining, and deciding disputes within the Administrative Court. The public society is also required to have a strong understanding so that the broad access as stipulated in Government Administration Law can be sufficient and maximized to the maximum extent to support justice seekers' interests in the Administrative Court.

3.3.4 Absence of Comprehensive Infrastructure in the Implementation of Administrative Efforts according to the Mandate of the Government Administration Law

The fundamental change regulation concerning administrative effort institutions in the Government Administration Law must support infrastructure implementation.²³ It is essential considering the absence of infrastructure facilities is the most important thing. Changes in regulating administrative efforts in the Government Administration Law cannot limit the Administrative Court's authority in adjudicating administrative disputes. It is essential to prepare in advance the supporting regulation for implementing the organization's administrative efforts in the Government Administration Law not to contradict the spirit of its regulation.

3.3.5 Weak Regulations on Execution of State Administrative Decisions

The compensation claim regulation with an unlimited character of the Government Administration Law is based on considering that the applicant who filed a claim for compensation is based on justice and feasibility. It must be proportional to the substantial losses felt by the applicant. Even though it is intended to facilitate or fulfill a sense of justice for justice seekers in Administrative Court, this regulation will continue to cause difficulties at the execution level if it is not reinforced by the regulation of the Administrative Court decision's execution. So far, at a practical level, the applicant that won in an administrative dispute still finds it difficult to demand compensation from the administrative bodies or officials when the administrative bodies or officials refuse to implement the decision. As it is known, the execution of a judge's decision is essentially a realization of the party's obligation to fulfill the performance stated in the decision. In Administrative Court, execution is a continuous action of the Administrative Court Procedure Law's entire process. Implementation of the decision is an integral part of implementing the procedural order as stipulated in the Administrative Court Law. The

²³Bagus Hermanto dan Kadek Agus Sudiarawan, "Rekonstruksi Pergeseran Paradigma Upaya Administratif dalam Penyelesaian Sengketa Pra Pemilihan Kepala Daerah", *Jurnal Legislasi Indonesia*, 16, no. 3 (2019): 331-332.

effort in the form of forced actions to realize the right to receive from the party burdened with the obligations is an execution. An Administrative Court's existence is essential in examining the validity of government actions in issuing administrative decisions. The legal certainty given through the Administrative Court is the result of court decisions. Suppose a court ruling grants the applicant the claim that sued administrative decision was declared null and void. In that case, the decision can be determined by the administrative bodies or officials in the form of relevant administrative decision revocation, relevant administrative decision revocation, issuing new administrative decisions, and issuing administrative decisions in the claim based on Article 3 of the Administrative Court Law.

These obligations accompany by compensation imposition or rehabilitation. Administrative Court decisions ideally should guarantee certain rights for parties, especially for the applicant. The rights granted by court decisions should be applicant enjoyed properly because the court decision is legally binding for the parties. In the Administrative Court, the court decision has legal binding force contains erga omnes character, which means that it applies to anyone and unlimited for parties. If the party cannot gain its rights properly arising from the Court's decisions, it means denial of justice, denial of legal certainty, and legal protection for the people ²⁴.

Administrative Court ruling gives rise to personal rights and creates an obligation for other parties to fulfill these subjective rights. These rights arise from/through an Administrative Court ruling that those entitled by the mechanism specified in the statutory law shall be enjoyed. The way to obtain subjective rights from a decision or in a condemnatory verdict is made by applying the execution of a verdict/ decision, in Administrative Court Law, to implement the Administrative Court decision outlined in Article 115 until Article 119.

There is an obligation from the administrative bodies or officials to obey and carry out the Court's decision by good faith and responsibility. Suppose the administrative bodies or officials do not carry out the Court's decision regarding the administrative bodies or officials' obligation to revoke the administrative decision that has been issued, then within 4 (four) months after the court decision has binding legal force. In that case, this disputed administrative decision is legally null and void. So that in this case, no more execution effort is needed. It is because automatically, with the passing of the 4 (four) months period, the disputed administrative decisions are legally null and void.

In the case of a court decision stipulating/requiring the administrative bodies or officials revoking the administrative decision (which was sued) and issuance of a new administrative decision, if within 3 (three) months the administrative bodies or officials

²⁴Nyoman A. Martana, Putu Ade Harriestha Martana, Kadek Agus Sudiarawan, dan Bagus Hermanto, "Discourses of Legal Certainty in Execution of Administrative Court Decision." *Substantive Justice International Journal of Law* 2, no. 2 (2019): 95-99, DOI: 10/33096/substantivejustice.v2i2.35.

did not implement it, the applicant applied the Chairperson of the Administrative Court to order the administrative bodies or officials for carrying out Court's decision. Regarding the applicant request or application, the Chief Judge will order the administrative bodies or officials to carry out the Court's decision. If this order does not carry out, the administrative body or official will be subject to coercion with the payment of forced money and administrative sanctions. If the administrative body or official does not make such coercive measures, the clerk shall willingly announce it in the local media. This condition fails to fulfill the obligations of the agency or administrative officer in issuing a decision. It also happens on the compensation and rehabilitation case. It also happens on the compensation and rehabilitation case. With the inability of a court decision that gives certain rights to the applicant, the applicant cannot enjoy their rights. Provisions on implementing the court decision allowing the administrative bodies or officers not to carry out the court decision implied that the court decision could not be enforced without legal certainty.

4. CONCLUSION

The norm and legal theoretical obstacles face by the judges of administrative Court after the enactment of Law Number 30 the Year 2014 regarding Government Administration consists of: regulations the expansion of the absolute competence in the material law; issuance of the Supreme Court Regulation and Circular Letter of the Supreme Court as implementing rules; dissemination of regulations on the Administrative Procedural Law; the absence of a firm and comprehensive explanation for each meaning expansion of Administrative Decision; overlap of authority potential between the judiciary bodies; unclear regulations of application submission mechanisms and absence of standard trial forms for requests with positive fictional Administrative Decision objects and new regulations on administrative efforts in the Government Administration Law tend to limitation the competences of Administrative Courts. The practical obstacles, among other things, the position of the Supreme Court in the arrangement of Judicial Power in Indonesia; different interpretations of each Administrative Court Judges in implementing the Government Administration Law; the level of knowledge of the public society and the law enforcement; absence of comprehensive infrastructure in the implementation of administrative efforts according to the mandate of the Government Administration Law and not strong regulations on Execution of State Administrative Decisions.

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