



JURIDICAL STUDY OF THE IMPLEMENTATION OF ADMINISTRATIVE MEASURES TO RESOLVE STATE ADMINISTRATIVE DISPUTES

Bambang Harianto¹, Abdul Rahman Maulana Siregar², Fauzan³

Master of Law Student at Universitas Pembangunan Panca Budi, Medan

Lecturer at Master of Law, Universitas Pembangunan Panca Budi, Medan

Email Correspondence: bambanghaza@gmail.com, abdulrahmanms@dosen.pabcabudi.ac.id

Abstract

The implementation of the Regulation of the Supreme Court of the Republic of Indonesia (PERMA) Number: 6 of 2018, dated 4 December 2018 concerning Guidelines for Settlement of Government Administrative Disputes after taking administrative measures, which is a further regulation of the provisions in Articles 75, 76 and Article 77 of Law Number 30 of the Year 2014 concerning Government Administration, bringing changes to the State Administrative Justice system in Indonesia, namely related to Administrative Efforts. This then gives rise to several problems, namely first, whether administrative measures are an obligation that must be taken first before filing a state administrative dispute lawsuit with the State Administrative Court (PTUN); secondly, what is the procedure for making objections to State Civil Service (ASN) employment disputes? The aim of this research is to analyze and describe the application of administrative efforts to state administration disputes. Normative juridical research methods are used to answer this problem. The results of the research show that administrative efforts must be carried out as legal protection for the people in State Administration disputes, and the legal procedure is to carry out objection efforts in ASN disputes as regulated in Article 129 of Law Number 5 of 2014 concerning State Civil Apparatus, and the Judge will reject the party If the plaintiff has not taken the available administrative measures.

Keywords: *Administrative Efforts, TUN Disputes*

A. INTRODUCTION

State Administrative Disputes are disputes that arise in the field of State Administration between individuals or Perdita Legal Entities and State Administrative Bodies or Officials, both at the central and regional levels. Legal protection for the resolution of problems related to state administrative disputes as a result of the issuance of state administrative decisions (beschikking) according to FH van der Burg can be achieved through two possibilities, first through the State Administrative Court/Administrative Court (administratief rechtspraak) and secondly through an Administrative Appeal (administratief beroep). Administrative efforts are a dispute resolution process carried out within the government administrative environment as a result of decisions and/or actions that are detrimental to citizens. Based on Law Number 30 of 2014 concerning Government Administration, Administrative Efforts are the process of resolving disputes carried out within the Government Administration environment as a result of the issuance of detrimental Decisions and/or Actions. Indonesia as a rule of law state is based on the philosophy of the Pancasila State, Philipus M. Hadjon formulated the elements of the Pancasila rule of law as follows:

1. Harmonious relations between the government and the people based on the principle of harmony;
2. Proportional functional relationship between state powers;
3. The principle of deliberative and judicial dispute resolution is the last means;
4. Balance between rights and obligations.

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It is hoped that the existence of a balance between rights and obligations in the Indonesian Legal State will give birth to the principle of harmony. The principle of harmony will create harmonious relations between the government and the people. In the Pancasila legal state, the main principle put forward in resolving disputes between the government and the community is the principle of resolving disputes through deliberation, including through administrative means, so that it is hoped that harmony and harmony can be restored in the relationship between the government and the community. If through Administrative Efforts, the community is not satisfied with the decision, then the final means and effort to resolve the dispute between the community and the government is through the State Administrative Court.

In accordance with the provisions of Article 48 of Law Number 5 of 1986 concerning the State Administrative Court which states that not every State Administrative Decision (*beschikking*) as the object of a State Administrative dispute can be directly sued through the State Administrative Court, because if administrative measures are available, then the state administrative dispute must be resolved first through administrative efforts before being resolved through the State Administrative Court. The State Administrative Court is a court that has the authority to examine, adjudicate and decide state administrative disputes. The Elucidation to Article 48 of Law Number 5 of 1986 concerning State Administrative Courts states that administrative measures are a procedure that can be taken by a person or civil legal entity if they are not satisfied with a State Administrative Decision. This procedure is carried out within the government itself and consists of two forms, namely objections submitted to the State Administrative Official who made the decision, then there is an Administrative Appeal in which case the resolution must be carried out by a superior agency or another agency than the one that issued the decision in question.

Before there was confirmation with the issuance of Regulation of the Supreme Court of the Republic of Indonesia (PERMA) Number 6 of 2018, dated 4 December 2018 concerning Guidelines for Resolving Government Administrative Disputes After Taking Administrative Efforts, previously there were two paths or two streams of litigation in the State Administrative Court. For State Administrative Decisions which do not recognize the existence of Administrative Efforts, the lawsuit is addressed to the State Administrative Court as the court of first instance, while for State Administrative Decisions which recognize the existence of Administrative Efforts, the lawsuit is directly addressed to the High State Administrative Court.

The State Administrative Court and its procedural law as contained in Law Number 5 of 1986 (and its amendments), are currently facing a number of dynamics in its implementation in connection with the enactment of Law Number 30 of 2014 concerning Government Administration. The presence of Law Number 30 of 2014 concerning Government Administration (hereinafter abbreviated as UUAP) is material law in the State Administrative Court system and has provided quite significant changes in the procedural process at the State Administrative Court. These changes include, among other things, the revitalization of the meaning of state administrative decisions, the existence of testing regarding abuse of authority which is tangential to criminal law, the opening of opportunities for testing of acts against government law (*onrechtmatige overheidsdad*), including the birth of a new paradigm for Administrative Efforts whose initial concept has been regulated in State Administrative Court Law. In Law Number 5 of 1986, Administrative Efforts only apply to certain State Administration (TUN) disputes for which administrative measures are provided for by statutory regulations. Meanwhile, apart from that, namely State Administrative Disputes (TUN) for which administrative measures are not available, can be directly submitted to the State Administrative Court (PTUN).

The advantages of dispute resolution through Administrative Efforts in Indonesia are;

- (1) Administrative Effort Assessment is carried out in full on a State Administrative Decision both in terms of Legality (*Rechtmatigheid*) and Opportunity aspects (*Doelmatigheid*)



- (2) The parties are not faced with a decision to win or lose (Win or Lose) as is the case in judicial institutions,
- (3) The dispute resolution approach is carried out by deliberation;
- (4) Simple and fast trials without formalities like in the PTUN;
- (5) No need to pay court fees;
- (6) Completed internally at the relevant institution;
- (7) Filing an administrative appeal is not bound by procedural procedures such as in the Administrative Court;
- (8) No need for a lawyer;
- (9) The decision is according to the applicant's wishes
- (10) Can be executed immediately (strong executorial).

The weaknesses of resolving disputes through Administrative Efforts are as follows:

- (1) At the level of objectivity of assessment, because the State Administrative Agency/Official that issues the Decree sometimes relates to its interests directly or indirectly, thereby reducing the maximum assessment that should be taken;
- (2) There are no definite rules, especially when the assessment expires.
- (3) There is a chance of ignoring a person's administrative report or appeal.

Resolving objections is the completion of administrative efforts carried out by the State Administrative Body or Official that issued the Decision. Meanwhile, an Administrative Appeal is the completion of administrative efforts carried out by a superior agency or agency other than the one that issued the decision in question. Administrative efforts in Law Number 30 of 2014 concerning Government Administration are mandatory and apply to all State Administration disputes. This means that the resolution of every State Administration dispute must first be sought through Administrative Efforts consisting of Administrative Objection and Appeal efforts. After all administrative efforts have been exhausted but there is no resolution, then a lawsuit can be filed in court.

Furthermore, related to personnel disputes, in accordance with applicable laws and regulations, a State Administrative Decree refers to a written decision issued by an entity or official that is included in the state administration. This decision contains legal steps related to state administration equivalent to existing and applicable laws and regulations. These decisions are specific, specific to certain individuals, and final in nature, resulting in legal consequences for individuals or civil legal entities. In the context of disciplinary regulations, Government Regulation Number 53 of 2010 concerning Disciplinary Regulations for Civil Servants is an implementation of legal principles that regulate personnel discipline procedures, especially for Civil Servants (PNS). And if there is a dispute with the State Civil Apparatus (ASN), there are also rules governing how the Administrative Efforts are carried out by the ASN based on the Government Regulation of the Republic of Indonesia Number 79 of 2021 concerning Administrative Efforts and the Advisory Body for the State Civil Apparatus contained in Article 1 Paragraph 3 namely "Administrative Efforts are a dispute resolution process undertaken by ASN Employees who are dissatisfied with PPK Decisions or Official Decisions." Then paragraph 4 explains that "Objections are Administrative Measures taken by ASN Employees who are dissatisfied with the PPK Decision other than dismissal as a Civil Servant or other than terminating their employment agreement as PPPK and Administrative Measures taken by ASN Employees who are dissatisfied with the Official's Decision." Departing from this, the Administrative Efforts that have been regulated in the Government Regulation of the Republic of Indonesia Number 79 of 2021 concerning Administrative Efforts and the State Civil Apparatus Advisory Body should be the concern of every State Administrative Official, where the process of resolving State Administrative disputes through Administrative Efforts is a priority option rather than having to resolve disputes in court.

B. Formulation of the problem

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1. How are Administrative Efforts Implemented in Resolving State Administrative Disputes?
2. What is the legal procedure for making objections to civil servant (ASN) disputes?

C. Research methods

1. **Nature of Research**The nature of the research is descriptive research, namely the aim of describing or analyzing research results. This research describes about **JURIDICAL STUDY OF THE IMPLEMENTATION OF ADMINISTRATIVE MEASURES TO RESOLVE STATE ADMINISTRATIVE DISPUTES**.
2. **Types of research**This type of research is normative juridical research, namely research that refers to previous research and originates from several other studies.
3. **Method of collecting data**Because this research is empirical juridical research, the data collection method used is Library Research. Where the data is collected in accordance with this research.
4. **Data Type**
 - a. **Primary Legal Materials**

Law of the Republic of Indonesia Number 30 of 2014 concerning Government Administration.
Law Number 5 of 1986 concerning State Administrative Courts.
Law Number 5 of 2014 concerning State Civil Apparatus.
Republic of Indonesia Supreme Court Regulation (PERMA RI) Number 6 of 2018 concerning Guidelines for Settlement of Administrative Disputes. And data obtained from books, documents, legal scientific writings and the internet.
 - b. **Tertiary Legal Materials** Data whose legal materials provide explanatory information regarding primary legal materials and secondary legal materials.
5. **Data analysis**After the data has been collected, both primary and secondary, it is then analyzed again using qualitative analysis methods as data analysis based on quality, quantity and real characteristics that apply in society. How to analyze data sourced from legal materials based on concepts, theories, statutory regulations, doctrine, legal principles, expert opinions or researchers' own views, which are related to **JURIDICAL STUDY OF THE IMPLEMENTATION OF ADMINISTRATIVE MEASURES TO RESOLVE STATE ADMINISTRATIVE DISPUTES**.

D. DISCUSSION

1. Implementation of Administrative Efforts Against Settlement of State Administrative Disputes

In Law Number 30 of 2014 concerning Government Administration regulates administrative efforts in a separate chapter, namely Chapter X starting from Article 75 to Article 78. Article 75 explains about initiating an explanation of Administrative Efforts, including:

- (1) Community members who are disadvantaged by decisions and/or actions can submit administrative measures to government officials or superiors of officials who determine and/or carry out decisions and/or actions.
- (2) Administrative efforts as intended in paragraph (1) consist of:
 - (1) Objection and
 - (2) Appeal
- (3) Administrative efforts as intended in paragraph (2) do not delay the implementation of decisions and/or actions, except:
 - (1) otherwise specified in the law; And
 - (2) cause greater losses.
- (4) Government agencies and/or officials are required to immediately complete administrative efforts that have the potential to burden state finances.



- (5) Submission of Administrative Efforts is free of charge.

Then Article 76 explains the dispute resolution process through Administrative Efforts including:

- a. Government bodies and/or officials have the authority to resolve objections to decisions and/or actions determined and/or carried out submitted by community members.
- b. In the event that Community Citizens do not accept the resolution of objections by the Agency and/or Government Officials as intended in paragraph (1), Community Citizens can submit an appeal to their Superior Officials.
- c. In the event that the Community Member does not accept the resolution of the appeal by the Superior Officer, the Community Member can file a lawsuit with the Court.
- d. Completion of Administrative Efforts as intended in Article 75 paragraph (2) relates to the annulment or invalidity of Decisions with or without accompanying claims for compensation and administrative claims.

Furthermore, the terms and conditions for completing Administrative Efforts are regulated as follows:

- (1) An objection can be made to the decision within a maximum of 21 (twenty one) working days from the announcement of the decision by the Government Agency and/or Official.
- (2) Objections as referred to in paragraph (1) are submitted in writing to the Agency and/or Government Official that makes the Decision.
- (3) In the event that the objection as intended in paragraph (1) is received, the Agency and/or Government Official is obliged to issue a Decision in accordance with the objection request.
- (4) Government agencies and/or officials resolve objections no later than 10 (ten) working days.
- (5) In the event that the Agency and/or Government Officials do not resolve the objection within the time period as intended in paragraph (4), the objection is considered granted.
- (6) Objections that are deemed to have been granted are followed up with a Decision in accordance with the objection request by the Agency and/or Government Official.
- (7) Government agencies and/or officials are required to issue a decision in accordance with the request no later than 5 (five) working days after the end of the grace period as intended in paragraph (4).

Meanwhile, Administrative Appeal Efforts are regulated in Article 78 of Law Number 30 of 2014 concerning Government Administration including:

- (1) The decision can be appealed within a maximum of 10 (ten) working days after the decision to appeal is received.
- (2) The appeal as intended in paragraph (1) is submitted in writing to the superior official who determined the decision.
- (3) In the event that the appeal as intended in paragraph (1) is granted, the Agency and/or Government Officials are obliged to make a Decision in accordance with the appeal request.
- (4) Government agencies and/or officials resolve appeals no later than 10 (ten) working days.
- (5) In the event that the Agency and/or Government Official does not complete the appeal within the time period as intended in paragraph (4), the objection is considered granted.
- (6) Government agencies and/or officials are required to issue a decision in accordance with the request no later than 5 (five) working days after the end of the grace period as intended in paragraph (4).

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In the Government Administration Law, there are a number of fundamental changes related to the administrative effort process in the Government Administration Law, namely first, there is a desire to unify the Administrative Justice system with administrative efforts, with the requirement that the final process for Administrative Efforts be a lawsuit to the Administrative Court. . This means that the administrative process, namely both objection procedures and administrative appeals, is a premium remedy (primary option) as implied in Article 75 of the Government Administration Law. This is a different paradigm from the PTUN Law which requires that administrative efforts towards State Administrative Decisions whose resolution processes are regulated by certain laws through internal mechanisms. Second, there is a requirement that all cases that question state administration decisions issued by state administration officials must go through an administrative objection and appeal procedure mechanism or in short through an internal mechanism, thereby encouraging efforts to resolve disputes through non-judicial mechanisms. However, not all state administrative officials or state administrative bodies have internal administrative objection and appeal mechanisms. Whereas the existence of Article 2 paragraphs (1) and (2) in the Republic of Indonesia Supreme Court Regulation (PERMA RI) Number 6 of 2018 concerning Guidelines for Resolving Administrative Disputes After Taking the Administrative Efforts mentioned above is mandatory and applies to all State Administrative disputes . This means that resolving State Administration disputes must first take administrative measures consisting of objections and administrative appeals. That after taking administrative efforts but there is no resolution, then the dispute can be submitted to the State Administrative Court.

The State Administrative Court, in accordance with the purpose of its formation, functions to resolve disputes between the government and citizens or legal entities, namely in the form of disputes arising from the consequences of government actions as State Administrative Officials which are deemed to violate the rights and interests of citizens or legal entities themselves. This is part of the formal requirements that must be met to file a lawsuit at the State Administrative Court before testing the main substance of the dispute. Then, according to observations made regarding State Administrative disputes, Administrative Efforts have not been the best choice for State Administrative Officials in resolving disputes. This can be seen from the number of State Administrative lawsuits that have gone to the State Administrative Court. This proves that dispute resolution through Administrative Efforts is only a formality carried out as an administrative requirement and not as a form of dispute resolution outside of court (non-litigation) such as Mediation and Deliberation between the Government and the community.

2. Legal Procedures for Objecting to State Civil Service (ASN) Personnel Disputes

In the explanation of Article 129 of Law Number 5 of 2014 concerning State Civil Apparatus, it is also stated in paragraph (1) that what is meant by "ASN Employee Dispute" is a dispute submitted by an ASN Employee regarding a decision made by a Civil Service Guidance Officer against an employee. Historically, the issue of Employment Disputes before the new Law Number 5 of 2014 was regulated, the status quo of the provisions for employment disputes was regulated in Article 35 of Law Number 8 of 1974 concerning Personnel Principles which stated that dispute resolution in the field of personnel was carried out through court for this, as part of the State Administrative Court, Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts, Government Regulation Number 53 of 2010 concerning Civil Servant Discipline. Personnel disputes are one part of State Administrative Disputes (TUN) and decisions/determinations in the field of personnel are the object of the State Administrative Court (PERATUN). One of the concepts of dispute resolution through Administrative Efforts is resolving employment disputes. Personnel



Disputes are disputes/disputes that arise as a result of the enactment of State Administrative Decrees in the field of personnel by the competent Agency or Official regarding the position, obligations, rights and development of Civil Servants. In the Government Administration Law, by placing the State Administrative Court as a court that has the authority to hear Administrative Effort appeals, this is a strategic step in order to complement or fulfill the needs of justice seekers along with the requirement that all cases going to the PTUN must take Administrative Efforts first. formerly. The existence of Administrative Efforts today, whether in objection or in the field of juridical administration, has actually been regulated in several provisions of statutory regulations, the applicable provisions regarding the enforcement of discipline to Civil Servants are still found to have several obstacles and problems of their own, so that if these Administrative Efforts are carried out in an appropriate manner existing provisions, it is felt that the implementation of administrative efforts is not optimal, which is a procedure determined in a statutory regulation to resolve State Administration (TUN) disputes carried out within the government itself (not by an independent judiciary) which consists of objection procedures and administrative appeal procedures. In practice, on the other hand, juridically related Administrative Efforts have also been regulated based on Article 48 paragraph (1) of Law Number 5 of 1986 concerning State Administrative Courts which determines that: "in the event that a State Administrative Body or Official is given authority by or "based on statutory regulations to resolve administratively, State Administration disputes must be resolved through available administrative measures"; Whereas based on the provisions of Article 129 of Law Number 5 of 2014 concerning State Civil Apparatus determines:

- (1) ASN Employee Disputes are resolved through Administrative Efforts;
- (2) Administrative efforts as intended in paragraph (1) consist of administrative objections and appeals;
- (3) The objection as intended in paragraph (2) is submitted in writing to the superior of the official who has the authority to punish, including the reasons for the objection and a copy is submitted to the official who has the authority to punish;
- (4) Administrative Appeals as intended in paragraph (2) are submitted to the ASN Advisory Body;
- (5) Further provisions regarding administrative efforts and ASN consideration bodies as referred to in paragraph (2) and paragraph (4) are regulated by Government Regulations. Whereas based on the provisions mentioned above, especially in paragraph (3), it appears that there is a problem regarding the stages of dispute resolution, namely "objections are submitted to the superior official who has the authority to punish by including the reasons for the objection and a copy is sent to the official who has the authority to punish".

Whereas the provisions of the norms above are that although the provisions above require that there be an objection attempt as intended, the problem is "Who is the Defendant's superior as the authorized Personnel Development Officer?" everything is unclear. That if we examine it in more depth, the Elucidation of Article 129 paragraph (3) above states the sentence "quite clear" whereas in practice in the field there is absolutely no legal clarity that can explain with certainty who the Official who has the authority to punish is, so that even though it is forced to be carried out actions as mentioned above, then what will happen is confusion among the officials who will be addressed with these provisions because the duties and authorities of each position and institution have been regulated in such a way that if they assume they show or implement the provisions mentioned above, then what will be obtained is only legal uncertainty so that the author then sees that the Administrative Effort process in employment disputes is also still directed at resolving it in court. Apart from that, based on the Government Regulation of

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the Republic of Indonesia Number 79 of 2021 concerning Administrative Efforts and State Civil Apparatus Advisory Bodies contained in Article 1 Paragraphs 3 and 4, namely:

Paragraph 3 "Administrative Efforts are a dispute resolution process undertaken by ASN Employees who are dissatisfied with PPK Decisions or Official Decisions." And Paragraph 4 "Objections are Administrative Measures taken by ASN Employees who are dissatisfied with the PPK Decision other than dismissal as a Civil Servant or other than terminating their employment agreement as PPPK and Administrative Measures taken by ASN Employees who are dissatisfied with the Official's Decision." In terms of Administrative Efforts for ASN as stated under PP Number 79 of 2021 concerning Administrative Efforts and ASN Advisory Bodies, in accordance with the provisions of Chapter II Administrative Efforts Article 2 to Article 20, from the beginning to the completion of administrative efforts for ASN. The author's analysis raises another problem, namely how the procedures that must be followed in carrying out Administrative Efforts should be regulated in more detail in each government agency. It could be possible to create a more technical mechanism for resolving state administrative disputes by each agency so that it is hoped that the resolution of Administrative Efforts, especially those related to personnel disputes, is of particular concern and can be resolved outside of court.

According to the author's observations regarding Administrative Efforts as an example seen in the North Sumatra Provincial Government, seen from the Administrative efforts submitted by ASN in personnel disputes, objections to decisions made by Civil Service Supervisory Officers regarding the imposition of punishments in Civil Service and the dismissal of Civil Servants, In general, resolving this administrative effort is not yet an option or initial step in resolving the problem. In addition, in the settlement of the Administrative Effort stage there is no mechanism, especially in terms of settlement through Administration, the Regional Government is more likely to choose settlement in the State Administrative Court. The government only responds to letters of objection as a formality, without taking clearer steps to resolve disputes outside of court. Based on this, administrative efforts have not yet become a priority step in resolving problems between State Administrative Officials and the Community, because they are merely fulfilling the requirements for submitting a lawsuit to the State Administrative Court.

E. CLOSING

a. Conclusion

- 1) As a Pancasila legal state that places Pancasila as an ideology and a way of thinking and behaving in all actions, Administrative Efforts should be the main choice taken as a form of legal protection for the people in State Administration disputes. Administrative efforts must be used as a form of resolving State Administration disputes outside of court as an effort to avoid disputes in court which tend to have unclear resolution periods and will only result in win-lose decisions.
- 2) Regarding State Administration disputes in the field of personnel, it can be seen in the provisions of Article 129 of Law Number 5 of 2014 concerning State Civil Apparatus. If a person or civil legal entity (Plaintiff) files a lawsuit at the State Administrative Court that has not taken the available administrative measures, the judge will declare the lawsuit not accepted. Regarding Administrative Efforts, according to the Author's observations, especially in the North Sumatra Provincial Government, if we look at the Administrative Efforts submitted by ASN, related to objections to decisions made by Civil Service Development Officers such as imposing penalties on Civil Service and dismissing Civil Servants, in general the completion of Administrative Efforts This is not yet an option and is just a formality in replying to letters of objection and not making special efforts to resolve employment disputes outside of court such as mediation and deliberation. The government prefers that all dispute resolutions



continue to be decided in the State Administrative Court so that the resolution of administrative efforts is only carried out to fulfill the requirements for submitting a lawsuit to the State Administrative Court.

b. SUGGESTION

- 1) So that every State Administrative Official creates a mechanism for resolving Administrative efforts so that Administrative Efforts can be an option for resolving State Administrative disputes without having to resolve them in the State Administrative Court. Administrative efforts can be a form of mediation as well as resolving civil disputes. This is also an effort to reduce/limit State Administrative lawsuits faced by the government at the State Administrative Court.
- 2) So that each Regional Government can make special rules for resolving State Administrative disputes in the field of civil service, so that Civil Service Management Officials continue to build good relationships with the State Civil Apparatus under them in an appropriate manner outside of court without having to resolve disputes through the State Administrative Court .

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