



| RESEARCH ARTICLE

EXPANSION OF THE ABSOLUTE AUTHORITY OF STATE ADMINISTRATIVE COURTS IN ADJUDICATING PUBLIC INFORMATION DISCLOSURE DISPUTES AND LAND ACQUISITION

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| ABSTRACT

As a state of law, Indonesia cannot be separated from the existence of the state administrative court or Peradilan Tata Usaha Negara (PTUN). The purpose of this research is first to conceptually analyze the expansion of the absolute authority of the PTUN in adjudicating disputes over public information disclosure and land acquisition. Second, to analyze the characteristics of public information disclosure and land acquisition disputes. This research is normative legal science research with its leading characteristic in the use of data using legal materials rather than data or social facts. The results revealed that the expansion of the absolute authority of PTUN had begun before the issuance of Law Number 30 of 2014 concerning Government Administration. Several laws and regulations before 2014 have provided for the expansion of the absolute authority of the PTUN. On the other hand, there are different characteristics between public information disclosure disputes and land acquisition. These differences include the legal basis, method, subject and object of the dispute, the grace period for filing an objection or lawsuit, the examination procedure in court, the grace period for decisions by PTUN, the grace period for decisions by the Supreme Court, and the content of the PTUN's decision.

| KEYWORDS

Expansion of absolute authority 1; PTUN 2; PID dispute 3; land acquisition 4

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I. INTRODUCTION

The existence of a state administrative court (PTUN) shows that Indonesia is a state of law. There are four characteristics of a *rechtstaat* state of law with Frederich Julius Stahl as its figure: human rights are recognized or respected; there is a separation or division of state power; government is based on legislation; there is a state administrative court.[1] The state administrative court's task is to resolve disputes between the government and its citizens. In a statement given by the government before the plenary session of the House of Representatives regarding the State Administrative Court Bill on April 29, 1986, it was stated that the purpose of establishing a state administrative court was to protect the rights of the people based on the common interests of individuals living in society.[2].

Further regulation of PTUN is regulated through Law Number 5 of 1986 concerning PTUN Law Number 9 of 2004 on Amendments to Law Number 5 of 1986 on State Administrative Courts and Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts. The law on PTUN regulates several things, including the competence or authority of the State Administrative Court and the subject and object of state administrative disputes. The authority or competence of the PTUN consists of absolute/absolute competence and relative/bi competence.

The absolute competence or authority of PTUN is regulated in Article 47 to Article 52 of Law Number 5 Year 1986 on State Administrative Court. Article 47 regulates absolute competence, which concerns dividing powers between judicial bodies. In simple terms, absolute competence answers which court is authorized to hear the dispute/case, whether the general court, state administrative court, religious court, or military court. It states that the State Administrative Court is authorized to examine, decide and resolve state administrative disputes. Relative competence, or the distribution of judicial power, regulates the division

of judicial power between similar courts. In this context, it means to answer the question of which state administrative court is authorized to hear the state administrative dispute, whether the Jakarta, Bandung, or Semarang State Administrative Court.

The subjects of a state administrative dispute are the plaintiff and the defendant. The plaintiff is always a person or civil legal entity, while the defendant is a state administrative body or official. The definition of plaintiff is not found in Law Number 5 Year 1986 and its amendments. However, implicitly, or not clearly stated, it is found in the provisions of Article 1, paragraph 11 of Law Number 51/2009, which states that a lawsuit is a request containing a claim against a state administrative body or official and is submitted to the court for a decision. Meanwhile, the definition of defendant is explicitly or clearly stated in the provisions of Article 1 number 12 of Law Number 51 of 2009, which states that the defendant is a state administrative body or official who issues a decision based on the authority vested in him or delegated to him which is sued by a person or civil legal entity. Thus, those who can file a lawsuit to the Administrative Court are only persons or civil legal entities who feel that their interests have been harmed by the issuance of a state administrative decision or Keputusan Tata Usaha Negara (KTUN) [3].

The object of state administrative disputes before the issuance of Law Number 30 of 2014 concerning Government Administration was KTUN, which harmed the interests of persons or civil legal entities.[4] The state administrative decision that harms the interests is mentioned in Article 53 of Law Number 9 Year 2004. Therefore, persons or civil legal entities whose interests are harmed may file a lawsuit to the state administrative court. It should be explained here that the definition of interest refers to the value that must be protected by the law and the interest of the process. The meaning of process interest is what is to be achieved by conducting a lawsuit process. There are two reasons that can be used in a lawsuit. The first is that the challenged K.T.U.N. contradicts the applicable laws and regulations. Second, the challenged K.T.U.N. contradicts the general principles of good governance. Meanwhile, the main claim that can be filed is that the K.T.U.N. detrimental to the plaintiff's interests be declared null or invalid. Additional claims that are allowed are claims for compensation and claims for rehabilitation in employment disputes.

State administrative disputes are broadly divided into general state administrative disputes and special state administrative disputes. General state administrative disputes are divided into 2, first, the object of the dispute is K.T.U.N. Second, the object of the dispute is unlawful acts by government agencies and/or officials (*onrechtsmatige overheidsdaad*). Meanwhile, special state administrative disputes that bring the expansion of the authority of the State Administrative Court include disputes over public information disclosure, land acquisition, positive fictitious K.T.U.N., abuse of authority, regional elections, and elections.

This research will analyze two problem identifications: how is the expansion of the absolute authority of the State Administrative Court to adjudicate disputes over public information disclosure (PID) and land acquisition? What are the characteristics of public information disclosure and land acquisition disputes?.

II. METHODOLOGY

This research is normative legal science research with its main characteristics in the use of data using legal materials rather than data or social facts. The legal material studied is legal material that contains normative rules [5]. The legal materials consist of primary legal materials, namely Law Number 5 of 1986 concerning PTUN and its amendments and Law Number 30 of 2014 concerning Government Administration. Secondary legal materials used are legal science books and legal journals. The approach used is normative juridical, namely, activities to explain the law do not require data or social facts. Because normative legal science does not have data or social facts, what is known is only legal material. So, to explain the law or to find meaning and give legal value, only legal concepts are used, and the steps taken are normative. [5].

III. RESULTS AND DISCUSSION

Public Information Disclosure (PID) Dispute

The expansion of the absolute authority of the State Administrative Court (PTUN) began before the issuance of Law Number 30 of 2014 concerning Government Administration. Several laws and regulations before 2014 expanded the absolute authority of PTUN. For example, in 2008, PTUN received additional authority from Law Number 14/2008 on Public Information Disclosure. [6]. This law provides additional authority to the PTUN to examine public information disclosure cases where the public information respondent is a state public body, as specified in Article 47 paragraph (1). On the other hand, this law further regulates transparent state administration and information that is open to the public. Open government is the basis of good governance. There are 5 conditions for the government to be called open, namely: the right to see how public officials perform their duties, the right to obtain information, the right to participate in public policy formulation procedures, the right to free speech, the right to object to the denial of these rights [7]. It should also be noted that some information is exempt, and therefore, the applicant for public information is not entitled to obtain it. Some of the underlying reasons include that public information, if disclosed and provided to the applicant, may hinder the process of law enforcement; may interfere with the interests of protection of intellectual property rights and protection from unfair business competition; may endanger the defense and security of the state; may reveal Indonesia's natural resources; may harm national economic resilience; may harm the interests of foreign relations; may reveal the contents of authentic deeds that are private and the last will or testament of a person. [8].

In addition to the provisions on exempted information, the law also provides criminal provisions for any person who intentionally uses public information unlawfully; public bodies who intentionally do not offer, do not provide, and/or do not publish public information in the form of periodic public information, public information that must always be available, and/or public information that must be provided upon request by this law. The law also provides criminal provisions for any person who intentionally and unlawfully destroys, damages, and/or removes public information documents in any form of media that are protected by the state and/or related to the public interest. Further provisions are found in Article 54, Article 55, Article 56, Article 57 [8].

People who request information from a public authority and are not given the information or are given the information but do not meet their expectations can file a complaint with the Information Commission. The Information Commission will process the matter from mediation to adjudication. If the parties are not satisfied or disagree with the decision of the information commission, then they can file a legal action to the State Administrative Court. This provision is contained in Article 48, paragraph (1). In this case, the State Administrative Court acts as an appellate court. In deciding disputes over public information disclosure, the state administrative court can uphold the information commission's decision or annul the information commission's decision, as stipulated in the provisions of Article 49, paragraph (1) and paragraph (2). The importance of the judge's decision in this context for the parties to the dispute in the field of public information disclosure expects the judge's decision to contain justice, expediency, and legal certainty. Justice is an important value in law, in contrast to legal certainty, which is generalized. Meanwhile, justice is individualized, so in implementing and enforcing the law, the community is concerned that justice must be considered. On the other hand, the good and bad aspects of the law depend on the extent to which it is able to provide happiness for humans. Jeremy Bentham stated that the state and law exist solely for true benefit, namely the happiness of the majority of the people. [9].

Further regulations on the procedures for resolving public information disputes in court are set out in Supreme Court Regulation No. 02/2011. The significance of this regulation is that information disclosure is a means of optimizing public participation in the administration of the state and other public bodies and everything that affects the public interest. The provisions of Article 9 paragraph (1) of the Supreme Court Regulation authorize the State Administrative Court to adjudicate disputes filed by public bodies and/or information requesters who request information from public information bodies. The grace period for the Administrative Court to decide a case is 60 days, which shows that information is very important, so it must be decided quickly. A cassation can be filed with the Supreme Court in opposition to the decision of the PTUN. This shows that there is no appeal but direct cassation to the Supreme Court in public information disclosure disputes. The authority given at the cassation level to decide the case is 30 days. [10].

Land Acquisition Disputes

Land acquisition is any activity to acquire land by compensating those entitled [11]. The entitled party is the party that controls or owns the object of land acquisition. The land acquisition process must be based on applicable law, so it cannot be carried out arbitrarily. The geographical character of Indonesia as an agricultural country is very dependent on land, as stated in the provisions of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. In this context, it can be interpreted that the earth, water and natural resources, as well as the space within the unitary territory of the Indonesian state, are agrarian resources that belong to all Indonesian people and are considered national wealth. [12] Land acquisition is government action to acquire land for various development purposes, especially the public interest. [13].

Land acquisition for the public interest is based on the principles of humanity, justice, benefit, certainty, openness, agreement, participation, welfare, sustainability, and harmony. According to Big Indonesian Dictionary or Kamus Besar Bahasa Indonesia (KBBI) Online, the definition of principle is the basis (something that becomes the foundation of thinking or opinion), basic ideals (association or organization), and basic law. Referring to the definition of principle, the relevant definitions are the first and third definitions, namely, the principle is the basis on which to think, argue, and act. In this context, as mentioned in the previous paragraph, land acquisition must be based on applicable law. Syafrudin defines principles differently from norms. A principle is a general and abstract premise, an idea or concept; it has no sanction. While the norm is a concrete rule, a description of the idea has sanctions. [14] Thus, in the author's opinion, principles that have become norms will ultimately have consequences if they are not implemented.

In 2012, PTUN obtained an additional expansion of authority through Law No. 2/2012 on Land Acquisition for Development in the Public Interest. This additional authority is only specifically regarding location determination. Meanwhile, regarding compensation, consignment is the authority of the general court. Article 23, paragraphs (1) and (2), for parties affected by the location determination, can file a lawsuit with the State Administrative Court. The deadline for settlement by the State Administrative Court is 30 days; there is no appeal but direct cassation to the Supreme Court.

Supreme Court Regulation Number 2 of 2016 concerning Procedural Guidelines in Disputes over the Determination of Development Sites for the Public Interest in the State Administrative Court. The object of dispute in the land acquisition state administrative dispute is determining the development location for the public interest. The reasons for the lawsuit are the facts of the plaintiff's objection, which basically explains that the defendant's issuance of the location determination violates laws and regulations and general principles of good governance. Another thing that must be considered because it is often a problem is the land acquisition model that only stops at providing compensation or compensation by not paying attention to and considering the issues of rehabilitation, reconstruction, resettlement, and replacement for communities affected by development projects. [15]. Land acquisition for development purposes is generally identified as eminent domain, a complex and often controversial action in various parts of the world. [16].

Dispute Resolution Characteristics of Public Information Disclosure and Land Acquisition

The Dictionary of Indonesian Language defines a characteristic as a mark, characteristic, or feature that can be used for identification, distinctiveness or distinguishing quality.[17] In this context, the appropriate meaning is characteristic. Thus, public information disclosure dispute resolution and land acquisition have their characteristics. Dispute resolution on Public Information Disclosure (PID) provides an opportunity for people who submit a request for information to a public body and then are not given information or are given information but not as expected to question the Information Commission.[18] The following table explains the differences in public information disclosure dispute resolution and land acquisition characteristics.

TABLE 1.
Characteristics of PID and land acquisition dispute resolution at the PTUN

Aspects	Dispute settlement at the State Administrative Court (PTUN)	
	Public Information Disclosure	Land Acquisition
Legal basis	Supreme Court Regulation No. 02/2011 on the procedure for resolving public information disputes in court [10]	Supreme Court Regulation Number 2 Year 2016 on Procedural Guidelines in Disputes over the Determination of Development Sites in the Public Interest [19]
Methods	File an objection to the Administrative Court.	File a lawsuit with the Administrative Court.
Subject of dispute	Information requester: Indonesian citizens and legal entities. Information respondent: State public agency.	Plaintiff: the entitled party consists of individuals, legal entities, social bodies, religious bodies, and government agencies that own or control the object of land acquisition. Defendant: The Governor who issued the location determination or the Regent/Mayor who received delegation from the Governor to issue the location determination.
Object of dispute	Information Commission decision.	The location of development sites in the public interest is determined by a decision of the Governor or Regent/Mayor.
Grace period for filing an objection or lawsuit	It is filed within 14 days after the parties receive a copy of the Information Commission's decision based on proof of receipt.	The lawsuit must be filed no later than 30 days after the announcement of the location determination.
Court proceedings	Conducted simply without a mediation process.	<ul style="list-style-type: none"> Disputes over determining the location of development in the public interest are examined without going through the dismissal process. The panel conducts the hearing without a preparatory hearing. In the dispute over the determination of the development location for the public interest, it is impossible to request a postponement of the implementation of the object of dispute.
Grace period for decision by the Administrative	The Administrative Court must decide within 60 days of the appointment of the panel of judges.	The Administrative Court decides on the acceptance or rejection of the lawsuit within a maximum of 30 days from receipt.

Court		
Grace period for filing a cassation	No later than 14 days after the decision is pronounced in an open session for the public if the parties are present. Or Since the notice of decision was sent by post.	No later than 7 days after the PTUN decision is pronounced in a trial open to the public.
Grace period for decision by the Supreme Court	The Supreme Court must decide within 30 days of the appointment of the panel of judges.	The Supreme Court must decide on a cassation petition within 30 days of its registration. The cassation decision is a final decision not available for judicial review.
The content of the PTUN decision	Cancel or uphold the decision of the information commission.	<ul style="list-style-type: none"> ▪ Grant the plaintiff's claim in its entirety. ▪ Declare the challenged location determination void or invalid. ▪ Require the respondent to revoke the challenged location determination.

It appears in the table that there are differences in characteristics from the aspects of the legal basis, method, subject and object of dispute, the grace period for filing objections or lawsuits, court examination procedures, the grace period for decisions by the State Administrative Court, the grace period for filing cassations, the grace period for decisions by the Supreme Court, and the content of State Administrative Court (PTUN) decisions. This shows that the object of state administrative disputes is not only limited to concrete, individual, final state administrative decisions. However, the decision of the information commission and the location determination of the development site for the public interest determined by the governor or regent/mayor are also the absolute authority of the state administrative court.

IV. CONCLUSION

The study concludes that the development of the expansion of the absolute authority of the State Administrative Court began before the issuance of Law Number 30 of 2014 concerning Government Administration. Several laws and regulations before 2014 had provided for the expansion of the absolute authority of the PTUN.

- a. The Administrative Court gained additional authority from Law No. 14/2008 on Public Information Disclosure and Law No. 2/2012 on Land Acquisition for Development in the Public Interest. Meanwhile, dispute resolution is regulated through Supreme Court Regulation Number 02 of 2011 concerning procedures for resolving public information disputes in court and Supreme Court Regulation Number 2 of 2016 on Procedural Guidelines in Disputes over the Determination of Development Sites for the Public Interest.
- b. Public information disclosure and land acquisition disputes have their characteristics.

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