

The Role of Administrative Court in Reinforcing the Good Governance

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Abstract: Administrative court is specialized court under the Supreme Court and its absolute competence is to investigate, decide and settle the administrative disputes, included the staffing dispute. External control of government administration is carried out by the Administrative court to oversee good governance. The research question is how the role of the Administrative Court to oversee government administration and how the development of good governance in Indonesia. The method use is normative juridical, based on primary and secondary data base. The result is important to supervise the governance administration by increase the absolute competence of administrative court due to modernization and globalization. The principles good governance has influence to increase the government administration to serve the public. The novelty of this research is for the conceptualization of the Court to build good governance.

Keywords: administrative court, good governance, government administration.

I. Introduction

Indonesia as a state law follows the theory of division of powers into executive, legislative and judicative, while they also has to check and balance for other powers based on regulations. Supervision of implementation of governance can be done internally and externally. For external supervision done by the Administrative Court (hereinafter is the Court), one of the judiciary body under Supreme Court, besides General Court, Military Court and Religious Court.

Based on Act No. 5 of 1986 of the Court, stated the Court with absolute competence to investigate, decide and settle the administrative and staffing disputes, due to the amendment of Consitution 1945, the regulations about the Court also has twice amendment, but the role and competence remain no changes. The role of the Court as an external supervision of the implementation of governance

administration, which can cancel the government's decision and denial based on the regulations and principles of good governance. The Court will test and investigate the government's decisions on procedure, substance and authotity to issue the decree.

After Act No. 30 of 2014 of Governance Administration (hereinafter is Governance Administration Act) had been legalized, there are paradigm shift in administrative law, its implementation, the broaden competence and role of the Court (Permana, 2015; Bimasakti, 2019). Also regulates the procedure, authority, administration efforts, principles of good governance, abuse of power and relates administration activities of government.

Act No. 30 of 2014 of Governance Adminsitration gives a new paradigm of administrative law, and gives modern thingking which influenced the structure, substance of administrative law and

culture of government officer either the society, as an important stage to reform the bureaucratic (Wairocana et al., 2019). The arrangement of principles of good governance in this Governance Administration Act with aims to increase, develop the quality of public service, to emphasize and protect the civil rights.

The postmodern administrative law had been arouse considering the globalization, modernization, more open than the previous, develop the concept “steering” rather than ordering, has been come true to develop new public management, accountability, government, and public services (Cassese, 2012; Ariyanto et al. 2020; Waridin et al., 2020; Utami et al., 2018; Ristyawati&Saraswati, 2018). The changes, development in administrative law should be followed with exact regulations, substances and build mind set to serve, not to steer and increase the accountability of governance.

The principles of good governance used as guidance for government to govern the society, in the state of law based on the human and civil rights. The development of governance administration is influenced by globalization, modernization, thus it makes the quality of public service has to become better than before (Simanjuntak, 2018). In implementation of governance administration should be based on regulations and principles of good governance. This principles are universal, but each country has specified principles which come from the local wisdom and their own respect to the society.

The development of the regulations, society, politics, economy has influenced the role of the Court, and its implications has to changes the previous concept of the Court. The Court has a broaden absolute competence, and automatically it impact the role, not only to settle the administrative dispute but another goals in the field of administrative law, including law enforcement, development of administrative law, rights of society and build good governance.

The Court has role to control the government’s regulations, act which against the regulations and

the principles of good governance. Principles of good governance as a guidance for government to make regulations or decision, to implement the regulations and every government’s act in public services. There is tight relations between the Court and the principles of good governance, while these principles are used as basis for lawsuit as materiele requirement.

In the earlier concept and condition the Court was made to settle the administrative dispute with simple disputes and court system. The existing condition of the Court, there are development in administrative law, politic, society and the lack of regulations. The following article will analyze and evaluate the important to reconceptualize the role of the Court. The legal gap arise is to reconceptualize concept of the Court refer to development and shifting paradigm of administrative law and to build good governance, according the principles of good governance as a basis of government’s act and supervise the governments. The novelty of this research is to make a new concept of the Court and build good governance refer to development, paradigm shifting of administrative law.

II. RESEARCH METHOD

This research use normative juridical approach, by using the secondary data. The primary data are comes from regulations, legally binding of judge verdicts, and the secondary data uses journal, report from an experts. The regulations should collected and divided to find out the relevant with the issues, either the judge verdicts. The next steps are analyzed based on the primary data and secondary data, to answer the issues.

III. DISCUSSION

The role of The Court

The existence of the Court in Indonesia, follows the civil law system such as France, Dutch, Germany, which has an administrative court instead of general court, with different regulations. While in common law system, the administrative court has different

positions compare to civil law system. F.J. Sthal said in civil law system, the administrative court is one important factor, while in common law system, there is only court for protection of human rights, there is no special administrative court or tribunal.

As welfare state, the role of government in civil or society matter are more than as non welfare state. The exertion of society matters has to based on law, to keep the balance relationship between government and society, in order to reduce the disputes, and the activities of government as one form to keep the welfare of society. Refer to Hans Kelsen, that the activities shows the transformation from state law to administrative law, in the meaning the government has to be more active (Saputro, 2019). Government's involvement is important based on regulation or as discretion for some reasons or accidental occurrence, in order to harmonized the society.

Act No. 5 of 1986 of Administrative Court as legal basis for the Court to operate under the Supreme Court, with spesific competence. The absolute competence of the Court are to investigate, decide and settle the administrative dispute, include the staffing dispute. The development of role and competence of the Court are vary, follows the amendment of the Constitution. Based on Article Number 24 of Constitution, the judiciary system are held by Supreme Court and Constitutional Court. There are 4 (four) judiciary bodies under the Supreme Court, i.e: General Court, Miliary Court, Religion Court and Administrative Court.

As colonialized by Dutch, the system of administrative law was influenced for period of times. The development of Administrative Court in Dutch after GALA (General Administration of Law Act of Netherland) and the Court, both are leads to human rights protection, democracy based on individualism and liberalism (Phahlevy, 2019). Even though individualism and liberalism, they all are in the frame of Pancasila as nation ideology. The Court form based on Pancasila and the Constitution, which emphasized in the harmonization between rights and obligations,

mutual assistance and kinship, these are basic norms in Indonesia and differ from Dutch.

The aims of the Court are to protect the human rights on civil rights, to keep balance position between government and civil society, to enforce the administrative law and to settle the administrative disputes. The civil's awareness of importance of the Court and civil rights is arise, since we can see from the data of lawsuit in each Court.

Reconceptualization of the Court, can be analyzed into three section, namely substance, structure and culture, based on system of law by Lawrence Friedman. First, the substance of the act should be changed follows the recent development, there should be a new act of the Court, not only partial amendment. Second, the structure of the Court should appropriate to the judiciary system and law enforcement. Third, culture it has broad meaning, because it relates with the legal obedience for Defendant, every one to obey and respect the law.

In Administrative Court in Thailand, there is up and down cases based on political matter, the case is raise sharply and administrative court's changing structure, also the geographic position gives impact to rate of litigation. The type of cases such as resources and environment, building control, transportation, education, religion, etc. While in the Court, there are also vary of type in administration disputes, such as permission in environment matter (Munger, 2019).

In Germany procedural court it regulations that covers many different situation that might be appear with only differentiation as necessary. While the particular situation for Plaintiff to claim a sue, i.e if the administrative acts might be violate his rights, also has right to sue if there is a refusal to issue particular act, and based on Kramer & Hinrichsen (2015) research's said that the law is easy to understand but difficult to implement. As strengthened that German Administrative Procedure Act does not yet comprises the all administrative procedural (Pünder, 2013).

The Principles of good governance and government

Commission de Monchy, in Netherland, was made to examine about the protection for the citizen from the government's deviate action, and reported the result in the name "Algemene Beginselen van Behoorlijk Bestuur" or the principles of good governance, but the government did not want to approved the report. Nor the second commission, van de Greenten had not been approved, and the commission demolished without any result. Although the result did not approved, the legal scholarship has developed and the judge used as consideration and become jurisprudence (Zamroni, 2019).

International organizations such as World Bank and United Nations Development Programme (UNDP) have defined principles of good governance in order to know how the government used their funding and to strengthen the financial institutions, and also to define the implementation of politics, economic and administrative (Pratiwi & Sari 2017). The development of principles of good governance expand and more variety which adjust to global development of politics, economic.

According to G.H. Addink (2018), good governance is a general concept and there are 3 (three) values to further develop namely, rule of law, democracy and institutions. Further explanation that 3 (three) values have developed into related six principles by different institutions and from different perspectives. Transparency of information from government is important and guarantee under Act No. of 14 of 2008 of Public Information Disclosure, this is one of six principles and as an goal of good governance (Sakapurnama & Safitri, 2013).

In the past 25 years ago, principles of good governance not yet legalized, but already use as principles of good governance to supervise the government, without any umbrella act as legal basic. It is difficult to implement the principles of good governance as normatively. The history of governance administration in Indonesia had

changed after the Act No 30 of 2014 of Governance Administration legalized and bring a new paradigm that becomes an umbrella act for government. This act gives the clear regulations of how to implement the governance's activities, administrations sanctions, type of administrative decree, administrative efforts and the principles of good governance.

The principles of good governance is states in some acts, namely Act No. 6 of 2014 of Village, Act Number 28 of 1999 of Effectuation of Government of Free of Corruption, Collusion and Nepotism, Act No. 37 of 2008 of Ombudsman, Act No. 25 of 2009 of Public Service, Act No. 5 of 2014 of Civil Servant, which are using as base of government's activities. Eventhough there are some acts which states the principles of good governance, they are complete each other, in order to make a legal certainty for government and public.

It is clearly states in Article Number 5 Act Number 30 of 2014 of Governance Administration that implementation of governance administration should be based on: principle of legality, principles of human rights protection and principles of good governance. As states in Article Number 10 of Act No30 of 2014 of Governance Administration the principles of good governance are: legal certainty, beneficiary, impartiality, accuracy, not abuse of power, openness, public interets, good service, besides that had been declare in judge verdict and legally binding (Suhariyanto, 2018).

It is understood there is a relations between the principle of good governance and the rights of citizen to get the good government, while it is an obligations of government to govern the people, based on the civic rights, values, norms and solidarity. The principles of good governance has to established based on standard of domestic values, and therefore is able to make claim against the government as proper conduct to govern (Bach-Golecka, 2018). Therefore there might be differences of principles of good governance in each country, but the basic and universal values are the same, either the implementation also different.

In British and Irish Ombudsman Association has 6 (six) principles of good governance, i.e.: independence, openness and transparency, accountability, integrity, clarity of purposes, effectiveness which are relates. They tried to practice, evaluate, research how the citizen accept and principles of good governance in the governance's activities, thus they will make report and published in general. It is the impact of accountability, transparency of governance; activities. The principles of good governance is not well practice in Nigeria, since there are some politics problems, anti-corruption mechanism not properly implemented, high unemployment, and some important sector which badly impact the governance and the people (Ekundayo, 2017). This condition shows that in each states, the principles of good governance may apply with different types.

The globalization and modernization has been impact the society, governance, democracy, politic than it has to transform from the conventional government to modern government. David Osborne (1993) provides ten principles of reinventing government, i.e. catalytic government, competitive government, mission-driven government, result-oriented government, customer-driven government, enterprising government, decentralization, community-owned government, anticipatory government, market-driven government, while the last four principles are commonsensical. As Osborne's (1993) explained that in the fast and rapid changes, the government's needs to transform such as become entrepreneurial than bureaucratic type.

The internet has made changes which impact to our lives, without exception also the government service, from conventional government to e-governments and began to transform to the e-services. As cited from Bindu et al., (2019) the e-governance road map in future, which divide into 4 clusters, begin with public administration system in 1990 -2000, then 2000 – 2010 with transformation models, information system models, in 2010 – 2016 with system evaluation, process re-engineering,

user acceptance, and the last cluster comprises of open data, social networking, participatory governance, application of Web 2.0. The result of their research might be consider to apply in this current situation with proper explanation for each condition.

The principles of good governance relates with bureaucracy reformation as it is important to develop the new paradigm of governance administration. This principles has two functions, first as principles which should implement in the governance administration based on regulations, and second as basic principles as tool test in Court. Both functions are *mutatis mutandis*, means that the principles can be used in the different ways with the same aims or goals.

The principles should be implement in the governance administrations besides the principle of legality and the principle of protection of human rights (Art No 5 Act No. 30 of 2014 of Governance Administration), and government's decree and act should be based on this principles and regulations (Art No 8 Act No. 30 of 2014 of Governance Administration). Implementation of the principles besides which had been stated in the Art No 10) are allowed as far as it used as legal reasoning by judge in the binding force verdict.

As tool test in Court it means that it is use to test, whether the dispute object is against this principles as stated by the Plaintiff in their suit. In the lawsuit, the Plaintiff has to mentioned clearly, which principles has been violated by the government. The materiele requirements for lawsuit are against the law and the principles of good governance (Art No 53 para (2) Act No. 9 of 2004 of The Amendement of Act No. 5 of 1986 of Administrative Court). In the modern state law, test of government's decision not only based on appropriation between the rules, but also to the principles of good governance (Tjandra, 2011). The amendement of Act No. 5 of 1986 of Administrative Court, put the principles of good governance as materiele requiriements for lawsuit, it showed the effort of government to have a good governance.

As stated in the Art No 53 para 2 of Act No. 9 of 2004 of Amendment of Act No. 5 of 1986 of Administrative Court, that the principles of good governance refer to Act No 28 of 1999 of Effectuation of Government of Free of Corruption, Collusion and Nepotism.

Government or official decision should be based or can be justified on legal rules as one embodiment of rule of law, and the principles of good governance as basic values. As Raz stated that the rule of law is an inherent virtue of law and always is the great moral value (Grant, 2017). Implementation or government's activities in Indonesia has to based on Pancasila as moral values, which inspired the society. Besides also has to shift paradigm from steer become serve, as stated by Denhardt and Denhardt (2000) that in democratic society the democratic values is important and highlight, and efficiency and productivity should be put in democracy, community and public interest. It is important for government to assist the citizens to meet their interests or problems, rather than to steer the society. The previous style of government has to left behind, otherwise it is not compatible to the modern and digitalization era.

IV. CONCLUSION

It is important to reconceptualize the Court considering some points. Since the modernization, globalization impact the administrative law in Indonesia. Due to the reasons, government has to prepare, build an administrative court with the new concept based on societies needs, principles of good governance. New concept of administrative court has to comprises all of government's act in public service, so that it will give a good system of judiciary of administrative law enforcement and protection of civil rights.

The aims of reconceptualization of the Court are to increase the supervision to government and implement the principles of good governance to build good governance. It is urge to make new act of the Court instead of make a regulations, for legal

certainty and law enforcement in administrative law.

REFERENCES

- [1] Addink, G. H. (2018). Good Governance: Importance in Practice, Theories and Definitions. *Halu Oleo Law Review*, 1(1), 1-32.
- [2] Ariyanto, A., Saraswati, R., Sukirno, S. (2020). Asymmetric election of protecting the voting of the noken system in selecting the regional head in Papua. *Test Engineering and Management* 83, pp. 3229-3237
- [3] Bach-Golecka, D. (2018). The Emerging Right to Good Governance. *AJIL Unbound*, 112, 89-93.
- [4] Bimasakti, M. A. (2019). Lawsuit in administrative court after administrative proceedings based on perma no. 6 of 2018. *Jurnal Hukum dan Peradilan*, 8(3), 458-480.
- [5] Bindu, N., Sankar, C. P., & Kumar, K. S. (2019). From conventional governance to e-democracy: Tracing the evolution of e-governance research trends using network analysis tools. *Government Information Quarterly*, 36(3), 385-399.
- [6] Cassese, S. (2012). New paths for administrative law: A manifesto. *International Journal of Constitutional Law*, 10(3), 603-613.
- [7] Denhardt, R. B., & Denhardt, J. V. (2000). The new public service: Serving rather than steering. *Public administration review*, 60(6), 549-559.
- [8] Ekundayo, W. J. (2017). Political elite theory and political elite recruitment in Nigeria. *Public Policy and Administration Research*, 7(5), 1-8.
- [9] Grant, J. A. (2017). The ideals of the Rule of Law. *Oxford Journal of Legal Studies*, 37(2), 383-405.
- [10] Kramer, U., & Hinrichsen, T. (2015). German Law of Administrative Court Procedure: an Overview.

- [11] Munger, F. W. (2019). An Alternative Path to Rule of Law: Thailand's Twenty-First Century Administrative Courts. *Ind. J. Global Legal Stud.*, 26, 133.
- [12] Osborne, D. (1993). Reinventing government. *Public productivity & management Review*, 349-356.
- [13] Permana, T. C. I. (2015). Peradilan Tata Usaha Negara Pasca Undang-Undang Administrasi Pemerintahan Ditinjau Dari Segi Access To Justice. *Jurnal Hukum dan Peradilan*, 4(3), 419-442.
- [14] Phahlevy, R. R. (2019). Pergeseran Paradigma Peradilan Tata Usaha Negara Di Indonesia Dan Belanda. *Arena Hukum*, 12(3), 576-591.
- [15] Pratiwi, D. A., & Sari, M. E. P. (2017). An Analysis Of Good Governance In The Public Service Sector Of Batam. *Journal of Techno Social*, 9(1).
- [16] Pünder, H. (2013). German administrative procedure in a comparative perspective: Observations on the path to a transnational ius commune proceduralis in administrative law. *International journal of constitutional law*, 11(4), 940-961.
- [17] Ristyawati, A., Saraswati, R. (2018). An Effort of Political Party Simplification for the Effective Government Realization. *IOP Conference Series: Earth and Environmental Science* 175(1), 012170
- [18] Simanjuntak, E. P. (2018). Examination to determine the presence or absence of abuse of authority according to government administration law. *Jurnal Hukum dan Peradilan*, 7(2), 237-262.
- [19] Sakapurnama, E., & Safitri, N. (2013). Good governance aspect in implementation of the transparency of public information law. *Bisnis & Birokrasi Journal*, 19(1).
- [20] Saputro, A. (2019). Payment of Compensation for Officials Who Did Not Implement the Decision of the State Administrative Court. *Yuridika*, 35(2), 231-256.
- [21] Suhariyanto, B. (2018). Interception of justice authority of discretion abuse between administration court and corruption courts. *Jurnal Hukum dan Peradilan*, 7(2), 213-236.
- [22] Tjandra, W. R. (2011). Dinamika Keadilan dan Kepastian Hukum dalam Peradilan Tata Usaha Negara. *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada*, 75-88.
- [23] Utami, N.S., Prasetyoningsih, N., Hidayat, A., (...), Saraswati, R., Budiono, A. (2019). Equality of the political rights of people with mental disorders (PWMD) in general elections *Indian Journal of Forensic Medicine and Toxicology* 13(4), 1571-1575
- [24] Wairocana, I. G. N., Sudiarta, I. K., Layang, I. W. B. S., Sudiarawan, K. A., & Pramana, I. G. P. (2019). The Expansion of Administrative Decision Meaning Based on Government Administration Law: a Dispute Submission Process Approach. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, 8(1), 13-33.
- [25] Waridin, W., Dwiyanto, B.M., Saraswati, R., Mafruhah, I. (2020). Formulation of problem-solving design for indonesian informal sector migrant workers towards post-placement independence: Case study in Malaysia. *Research in World Economy* 11(1), 115-122
- [26] Zamroni, M. (2019). General Principles of Good Governance in Indonesia: What are The Legal Bases?. *Varia Justicia*, 15(1), 1-8.