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RESEARCH

An Existence of State Administration Court in Establishing Good Governance

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ABSTRACT

Administration officials have broad authority in carrying out the affair of government. With this broad authority tends to be misused to cause harm and injustice in the society, therefore there must be other institutions that control it. Based on the theory of Trias Politica executive agencies are politically controlled by the legislative and juridical institutions controlled by the judiciary, because the officials running the state administration executive functions that control the judiciary is legally the state administrative court. Judicial control of administrative functions of the state administrative court in addition aims to provide legal protection for the public and state administration officials themselves, as well as state administrative law enforcement agencies who aspire to realize a good and authoritative government.
Keywords: Good government, State administrative court

INTRODUCTION

Indonesia is a state of law. As a state of law, it reflects that our countryprovides law as essential meanings in all aspects of society. A state governmental management must be proceededbased on law fixed regulations. Due that Indonesia is a state of law, any systematical acts of nation must be based on principal of law. Primary nation acts is a limitation for nation supreme power. Foundation of acts systems which regulate about norms of law and any law regulations are therefore obeyed also for governments and its officials.

Applying term "State of Law" has been actually differentiated by several civic statesman. The experts in west Europe (continental) as Immanuel Kant and F.J. Stahl applies "Rechtstaat", but A.V dicey uses "Acts of Law". Both terms have resembles meaning, a state of law, but difference fundamentally because of distinguished historical background and vision about nation principal. A.V Dicey describes three definitions of "the rule of law", first is supremacy of law, second is equality before the law, third is constitutional human right guarantee.(1) As " Rechstaat" in F.J. Stahl view consists of: first, admission and protection for human rights; second, discrimination and distribution of power in state (triaspolitica); third, Governmental Nation Regulation based System (wetmatigbestuur); fourth, an existence of state administrative court.

According to acts of law in Anglo saxon system, there is a difference definition about "Rechstaat" to Europe Continental. The examples of debate isin the rule of law there is no separated general court in state administrative court. Besides, in Rechstaat there is separated general court in state administrative courtin contrary. But the discussions are both of them either rechstat or acts of law proclaim protection of Human Right, an existence of constitution of law or supremacy of law, no absence and arbitrary governmental regulations.

Considering for both systems as known that Indonesia is familiar to Rechstaat system. For a detail, it is particular explore the thoughts of Indonesian Law Experts such as Oemar Seno Aji(2), Padmo Wahyono(3), and Philipus M. Hadjon(4).

Oemar Seno Aji describes that Law state of Indonesia should be identical to Indonesia.(3) Because Pancasila must be rise as Fundament and Source of Law, therefore state of law Indonesia is also state law of Pancasila. In any words, The law state of pancasila has been grown up eternally and dispended by some nation proclaims based on Bhineka Tunggal Ika principal.

Regarding the definition Law state Pancasila(5), Padmo Wahono observes it with togetherness principal Fundaments as quoted to UUD 1945(6) (this principal is still exist although this regulation has been proceeded for amendments, vide section 33). According to Padmo Wahono in togetherness principal is people voices are priorities but rights and dignities of people should be still regarded. So that in his opinion, when government leads governmental system, it is very essential to mind about people needs and human rights.

Philipus M. Hadjon(4) then argues that Indonesia state of law can not be compared to neitherrechstaatnor Acts of Law with some reasons:

1. Either rechstaat or acts of law conception derived from historical background in effort or opposition toward arbitrary power, but Indonesian system has previously rejected any forms of arbitrary and absolutism.

2. Either rechstaat or acts of law positions admittance and protection toward human rights in a central source, but in Indonesian system forwards harmony between government and society either.
3. For human right protection,rechstaat conception forwards wetmatigheid and acts of law concerns equality before law, In the other hand, Indonesia considers harmony within governmental and society relationship.

Even though Indonesia can not be classified to one from two groups, but the impacts of Dutch Colonialism which principles in Law of Continental, Indonesia has been therefore established and influenced by Law of Continental system (rechstaat).

As described by Soetadyo Wignjosoebroto: "Colonial Law by any means is a substantial considered law formally in regular period, and most of its, norms is still common one in any Indonesian change conditions. The growth of Indonesia Law nowadays since in the colonialism era to afterwards is an advance tends to law form of Europe, the Dutch Law system in this case. Being misconnected by this traditional form as advanced in history between Indonesia and Dutch which are involved to many aspects institutionally, such as its court and education aspects defined for insisting Indonesia is about to advance its national law and stepped from beginning so that ignoring anything reached …. "[(7)]

In the explanation above, by establishing state of law, Indonesia intends to build State Administrative Court as practiced by Europe Continental regions. An existence of state administrative court in every modern nation, in welfare state principles nation particularly (state with welfare idealism) is a pattern which can be principles of hope in society or citizen who protect their malfunctioned rights by state administrative public law officers as his or her concluded decisions and policy.

STATEMENT OF THE PROBLEMS

Frankly in a real situation, it is assumed that state administrative court is requested for an existence as a way by aggrieved justice finders in a reason that state administrative officers or institutions have done malfunctioned in their powers and sentenced to ban acts of law.

In Indonesia, state administrative court known as court of state administration as regulated by acts number 5 year 1986 with additional acts number 9 year 2004. Based on section 24 verse 3 amendment three Fundamental Acts 45 (UUD 45) which was legalized November tenth 2001 with additional acts section 2 verse 2 acts number 4 by year 2004 about supreme power for court as known with 4 court institution scopes, as follow: General court, Court of Religion, military court, and court of administration. Every institution has authority and function in its mission as a result, all of the court Institutions have their own absolute distinguished competences.

DISCUSSION

State Administrative Court and Law Protection for People of Indonesia

The purpose and position of state administrative court in a nation is based on philosophy of nation as practiced. Republic of Indonesia is a law state based on Pancasila and UUD 1945 (Fundamental Acts 1945), as right and interest of Individual are therefore primary concerned besides its people right. Individual interest is equal to public or society interest. Therefore, according to Marbun philosophically, purpose of establishing State Administrative Court is to provide a cover towards individual rights and society until balance, harmony and equality are created between human and people or society interests.[(8)] Pramudi Atmosudirjo, the purpose of establishing State Administrative Court is to grow and preserve exact state administration based on law (rechmatig) or exact functionally (effective) or functioned efficiently.[(9)] Sjachran Basah frankly explores that purpose of establishing State Administrative Court is to provide a guide of law and exact law not only for its people merely but also for state administration by means to protect and guide society and individual interests.[(10)] As to nation administrative for keeping discipline, peace and safety to realm strong governance, clean and respected under state of law Pancasila.

Therefore, the Institution of State Administrative Court is one of Institution which proceeds authority of law, as an Independence authority under supremacy of High Supreme Court regarding a procedure to rise law supremacy and justice. A law supremacy and justice is a part of law protection for people based on public law act when administrative officers ban the law.

As the previous description so State Administrative Court proceeded for giving law coverage (with principal of justice, truth, conductivity, and guarantee for law) for law society (justiciabelen) as they are concerned for

untreated accordingly with law act reason proceeded by state officers by audit, retiring, and solving for state administrative malfunctions.

Therefore, it is said that, even though there are norm administrative state principles acts of administration officers but when an absence for administrative institution to watch its performance, there it must be ignored for applied norms. Consequently, the existence of State Administrative Court is necessary. The intention for that actually beside to control juridically towards procedures for state administrative application, it also can be aform law protection for society because its position in Law view is weak.

Regarding about the conception of law protection for people in Indonesia, When concerning about form meaning of Pancasila meant familiarity or hand in hand, according to Philipus M. Hadjon(4), this togetherness soul principle is also known principle of harmony. The principle of harmony leads relation between government and its people and also one state supremacy to another which rises link in functional proportional relationship among nation supremacies.

In this balance relationship based on harmony, therefore problem of the dispute may be solved by consensus and court is a final way. It comes because consensus is a reflection for preventive law coverage by providing opportunity for people to claim truth in definitive. Consensus has an important definition observed by Government acts based on independence of proceeding because government tends to decide with careful decision as dispute should be commonly avoided.

Dispute explained is based on section 1 number 4 Acts number 5 year 1986 with additional acts number 9 year 2004, as implies:

"Dispute in state administration (state administrative dispute) is a dispute appearing in state administration sector (State administrative dispute) between persons or private institutions with institution or administrative officers (the officers of state administration) either in centre or regions, as a consequence for this administrative conclusion (State administrative decision), included employment based on applied fixed acts".

In fact actually, state administrative dispute appears when one or public institution has unsatisfactory, as a result of conclusion as known that officers of administrative of state in proceeding public interest is inevitable from procedure to issue conclusion, as there is an opportunity can rise unsatisfactory. Beside officer can do material issuance as long as in public law procedures. But if the crime of public law is in material form (onrechmatige overheidsdaad) so administrative state court is not authorized to proceed the case, because state administrative actss has not been nowadays adopted as administrative court in France in which it must be pattern to win solutions about any administrative disputes in the world. Viewing in advance anyhow (Regarding Governmental Administrative Restoration), in my opinion, there should be established in integrated regulation system of nation, it is defined as any state administration malfunctions is solved in state administrative court. In fact, it is required due that beside the role of state administrative court as quoted in constitution, it also can allow (simplify) Dispute case in state administration via single door and avoid overlapping authority in solving state administrative dispute.

It is very strong correlation with state administrative law enforcement, government is now arranging actss conception about governmental administration as it takes twelfth conception (February sixth 2006). As we are observing that the acts is a law of material derived on Indonesian state administrative law, the contents describes about law fundaments and actss for governmental administrative officers to conclude issuance, avoid malpractice of authority and ban opportunity to admit CCN (Corruption, Collusion, Nepotism). The more important thing that the acts is a basic pattern for beraucracy restoration is also fundament to change mindset governmental cultural mind set, changing nobility mental or service for leader mind changed to be state and people dedicated orientation governmental officers with professionalism, and also concerns to people interests as holder of souverignity. Even more interesting after the acts of state law administration has been concluded, it claims to revitalize role of state administrative court, by any means acts of formal state administrative law (acts number 5 year 1986 with additional acts acts number 9 year 2004 about state administrative law) must be soon revised, because governmental administration acts allows state law administration reigns broader. The privilege can be role of lawyer of state administrative court concludes amount of indemnifications trial and insistence effort (includes dwangsom) towards guilty sentenced in banning government general principles state administrative governmental officers which have bad impacts to society and nation. Also completion to state administration dispute case by material act for administrative governmental officers (onrechmatige overheidsdaaad) as an absolute competence state administrative court.

In connection to state administrative court as one "Independence supreme institution of law" equalized to other courts and actsd to provide law guidance will share benefits as :

1. Reformation for governmental revitalization for society interest
2. Law stabilization for development
3. Preservation and achieving justice in society

4. Preserving equality between private and public interest(10)

Based on the real fact, it is assumed that beside general court, state administrative court is a repressive law coverage form which could provide protection of law for society by guiding role of court. The role can be proceeded at any forms as therefore guarantees and preserve harmony relationship between people and government based on familiarity conception of Indonesian law norm.

State Law administration Enforcement as an effort to establish Good Governance.

Indonesia is a modern law principle nation, Insisted to provide a stabilized and dynamic role and law function as it is capable to manage any interests without omitting its basic idea for justice. Law as described has also insistence to enforce or by any means, law protection given also consists of necessity for law enforcement.

Definition from law enforcement described above, I am in his agreement described by Abdulkadir Muhammad.(11) In his opinion, law enforcement can be settled by effort to proceed law as accordingly, supervising its procedure to avoid infringement, and if it happens for it, it should return for law enforcement to recover. Consequently law enforcement is proceeded by act of law that in my opinion can be classified as follow:

1. First reprimand to stop infringement and never proceed in return.
2. Load-current exact necessities (indemnifications or fines)
3. Certain dispossession (light, middle and high administration fine as: dispossession of authority or dishonor firing status)
4. People Publication (printing and or electronics)
5. Political Black list recommendation (to executive, Legislative and judicative if one proceeds fit or proper test)
6. Act of physical sentence (imprisoned)

Even though law enforcement by nation as described above, but it is unpractical in reality, as in my opinion, all of the problems begin with inner morality of every officer and inconsistent acts to manage punishment or fine procedures in state administrative court.

The problems of officers morality gains in abstraction even absurd to analyze types of officers disobedience in law due that mentality attitudes (humanity) and background of life in their activity. Even in this case there must be other controllers by establishing state administrative court in this nation that is legislated acts. Unfortunately, in nowadays there is no adequate acts to handle it. As I have argued that:

1. There is narrow definition about completed administrative state dispute object in administrative court. It by any means, definition of section 1 number 3 acts number 5 year 1986 additional acts number 9 year 2004 is led distortion from state administrative dispute broader which is theoretically consists of entire public acts.
2. Neizara formil law administration (administrative law procedure) has created but material law administrative state material is still absence.
3. Procession of execution state administrative court as managed in section 116 acts number 5 year 1986 in additional acts number 9 year 2004 is not being proceeded by execution of acts, as this case, there is still no clear procedure and execution for other administrative sanctions.
4. Many established certain courts but inside authority which consist of administrative dispute completion becomes overlap with state administrative court authority, as follow: completion of Department of labor conclusion in labor dispute, administrative intellectual creation, taxation dispute, etc.

The problems appear, in my opinion due that no harmony and synchronize of existent actss. The decision makers (people Representative Assembly and Government) should have discussed definitely and clearly by involving law experts (particularly expert of state law administration) before it had been created. It could have shared to public if necessary before concluded to avoid mess in material contains among actss one another.

Beside for practicality and efficiency law enforcement for state administration are not so urgent for establishing certain courts, not only creates financial lavish condition but also creates law uncertainty for law enforcement .If the reason about establishing certain court is just because lack of lawyer skills to complete certain cases and court procedures which run slow are all solvable. In court procedures in Indonesia it is presumed involvement for expert witness and *adhoc* lawyer if necessary when institution requires skills to complete certain cases and if necessary state law administrative lawyers are given opportunity to have continual study to extend special education about law (specialization) about certain state law administration aspects for example: tax law administrative, labor aspects, etc.) so that reason about lack of lawyer skill is solvable. But the reason about establishing certain court to fasten case completion is absolutely not correct because in reality one involved for

dispute tends to chew the rag while court procedure proceeding, even there are some sides who intend to lose time of court with certain reasons, as preparation checks, even though in the acts managed about maximal claim revision less than 30 days, but there are some claimers do not revise claims as fast as possible. Besides, it is assumed that in court, lawyers can not prepare open court for public with answers/replicates/duplicates/arguments for evidences fast when in practical, every court requests reducing duration one week in double or triple courts at once. If in the dispute claimer side has wise intention to obey quick and ordinary principle in court, so there must absence in arguing dispute in long period, even there is limitation cassation for state administrative dispute consists of conclusion of regional heads regarding their issuance admitted in regions described as sections 45 A verse 2 Alphabet C Acts number 5 year 2004 about supreme court. Based on the issuance, in my opinion, it is necessary to create another specific clausal in certain law procedure (in revision of acts number 5 year 1985 in addition to acts number 9) in which it provides privilege to lawyer for carrying on court procedures if they assume it has another side indicated to slowing the time of persecution, therefore considered for completion by lawyer in court fluency so they could proceeded decision in instant and simple in court as long as never pass exist law procedures.

With any limitation for formal law system in state administrative court, it does not mean that law enforcers must ignore or underestimate their law awareness. This case is based on theory that predicts could life without sense of law (rechtsgevoel). in every animal of law enforcement is very impossible to give exact prediction about law, and if there is similar theory applied for all independence trial court it is frequently elected unfair issue, also distorted to purpose of law, because the purpose of law is basically empowered justice.

To realize justice and empower state administrative law is if lawyer of state administrative in law can not search rule in acts, consequently the lawyer must decide an issue based on norm acts in state administrative of law known as common good government principles. The principles in my opinion can be found in Pancasila, acts of 1945 (UUD 1945) or custom in government (Convention).

With law coverage protection for society toward administrative public law officers who ban law is connected to existence of state administration as law and justice empowerment. in my argument, this condition is a realization from good governance theoretically known as good in governance. According to Adnan Buyung Nasution (1998), the conception of good governance reflects to transparency, control and accountability management governmental system which is created as central value. In implementation for good governance, law must be fundament, principal, and rules for the concept application. Meaning that, there should be an effort as how rule of law itself could practice in good governance. This case is also determined by B. Arief Sidharta (1999), that good governance is only possible to occur in a state which there is law supremacy in creating society and civilization of life.

As most of people have known, a concept of good governance derived from an idea of link of interdependence and interaction from many institution sectors for all levels in nation particularly legislative, executive, judicative. Regarding to juridical control by judicative towards executive about procedure of good governance expected that in well realization. Control juridical by judicative in this case government proceeds its state as administration function held by state law administration court. In this case means court of state administration as one of components in a system to create and determine good governance.

I have observed a strong interdependence with existence conception of state administration court. This interdependence can be known by understanding main principals from good governance itself and main functions from state law administration. Besides the components of good governance are still not describing about each criteria, the main thing, there are five main principles as follow: accountability, transparency, openness, rule of law, or quality fairness or level playing field (act for fairness or equality treatment). This last principal is also called protection for human rights.

If the conception of good governance correlated to conception of law supremacy conception and conception of good and clean government in state administrative law normatively, so there must be a similarity with conception of rechmatigeid van bestuur as a label for legal system for government or in law principal. If the act of public law administrative officers as onrechtmatigheid, it means that act of administrative officers are deviance at law.

Definition word good in good governance based on Sjahruddin Rasul[(12)] consists of two meanings first value to rise people interest, wish and value which can remind people ability in reaching purpose of national independence, continual establishment, and social welfare; second, Effective and efficient functional aspects from government in proceeding the tasks to gain the purposes. Besides he reflects governance as an institution which consists of three domains as follow, state (Nation and government), private sectors (privates and trades), and society (people). With the three domains are in effort to realize good governance in interaction and managed are about to commit their own duty.

Abandoning from the three domains, nation sector or government in broad meaning is a strong aspect, different to private or society which the positions are very weak because all of policies determined by the nation

sector. Therefore private sectors and this society have protections from law in case there law administrative officers inflict their rights. This protection of law quoted in section 53 verse 1 acts number 9 year 2004 which describes:

"Persons or public law institutions that are indicated their interests are inflicted by issuance of nation administration, one could propose written claim to authorized court which contains that issuance of administrative dispute is concluded for cancelation or not legalized, at once or without claim of indemnification or rehabilitated."

Based on the conditions, It proceeds law enforcement and law protection for Indonesian people in this acts of state administrative court. This case is based on principal fourth and fifth from five principles of good governance, but in a system of accountability, transparency and openness is also important thing for governmental procedure. Based on Sjahrudin Rasul, accountability is a realization of duty to be in charge success or failure in proceeding organization mission in reaching fixed purposes.(12) In governmental system, accountability is a realization of duty from government institution to be in charge for its success and failure. According to that explanation in my opinion, state administrative officers in their duties are about in request for their work responsibility when committing public law, even more when the act is against the law. This law responsibility can be claimed in law prosecution to state law administrative as law institution for judicial control execution.

As about transparency and openness in good governance conception is two chained things. Transparency and openness in act of public law by institution or state administration officers is an act to provide law protection for society. It is said that because in aspect of institution or officials state administrative have created policy or issuance, therefore society should have interest under the policy and issuance in open and transparent conditions. Example, in civil servant employee recruitment or university student enrollment for state campus must be created in a single administrative issuance in transparent and open for public to know about procedures and result of recruitment. This case will later be in charge in law decision, if those who are inflicted by the issuance of state administration regarding previous result recruitment.

CONCLUSION

It can be concluded that existence of state administrative court besides as a type of law modern nation, also contributes law protection for society and its government officials because state administrative court proceeds a control juridical for any acts of law for administrative state officials. In regard with principals in good governance is basically patterned to officials doing any governmental affairs are about to avoid CCN (Collusion, Corruption, Nepotism), creating better procedures, transparent and efficient, also establishing more democratic, objective, and professional principals in regard to proceed governmental cycle toward creation of fairness and exact law in society.

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