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Quo Vadis Object of Civil Court of Justice Disputes After Government Administrative Law : Regional House of People's Representative Decision Concerning Dismissal Recomendation for Regional Chief/Vice Chief

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ABSTRACT

The presence of Act Number 30 Year 2014 concerning Government Administration has presented significant developments in the context of Civil Court of Justice in Indonesia. One thing that is very highlighted after the enactment of the Law is that the definition of state administrative decisions which are only interpreted as a decision issued by a state administration official in this case is the executive body and is concrete, individual and the final becomes a state administrative decision issued by the executive, legislative and judicial institutions and has the additional nature of factual action. One of the cases that the author examined in this paper is related to the decision of the Gorontalo's legislative assemblythrough Gorontalo's legislative assembly decision Number 29 / KEP / DPRD / IX / 2017 which basically contained the impeachment of the Gorontalo District Deputy Regent. In accordance with the existing provisions, the characteristics of the action are in accordance with the criteria set out in the provisions of the Act, but from a substantive point of view is still debated in the theoretical level both with regard to the criteria of officials who issue decisions in this case the Regional People's Representative Assembly (institutions) and the nature of decisions that are not final as stipulated in the provisions of the Act of Local Government.
Keywords: the object of civil court of justice disputes; regional house of people's representative; quo vadis

INTRODUCTION

One of the most important principles in the rule is due process of law principle. Furthermore, Jimly explained, due process of law principle provides a strict platform for governance the implementation of. Respect for laws and regulations is realized in conformity with government actions with written legal rules. However, at certain times, state officials can still take actions that exclude the law.(1) As a keeper so that every state's administrative actions remain in accordance with the provisions outlined and adjusted to the characteristics of the rule and then added to the principle. The existence of this judiciary guarantees that citizens are not hurted with arbitrary state administrative decisions. This judiciary must be independent and free from all interventions, so that decisions can be as fair as possible. From the beginning, this has been the raison d'etre of state administrative justice. The administrative court was a derivative product of French Revolution who succeeded in overthrowing the absolute monarchical system. Napoleon as France leader at that time then formed Conseil d'Etat to prevent the leader from acting recklessly. The agency later became the top of administrative justice system in France.(2)

In Indonesia, the formation of state administrative justice is based on Law Number 5 of 1986 concerning Civil Court of Justice and its amendments (PRATUN Law). The PRATUN Law regulates the absolute competence of PTUN, as "the executor of judicial authority for people seeking justice from Civil Court of Justice dispute."(3) What is intended as Civil Court of Justice dispute is "a dispute arising in State Administration between a civil person or legal entity and a State Administration Agency or Officials, both at central and regional levels, as a result of the issuance of Civil Court of Justice Decision, including an employment dispute based on applicable laws and regulations. "

Absolute competence explanations of governance administration under the law it's problematic nature. This reminds about strict limits concerning Civil Court of Justice Decision that only meaning" The written enactment issued by Board or Administrative officials containing law action of administrative law according to statutory provision which are concreate, individual, and final that arising legal consequences for someone or Civil law". Based on Philipus M. Hardjon opinion as cited by Victor Neno, the regulation describes kinds of administrative dispute that can't be forward to Civil Court of Justice.(4) This thing also give revision, dinamics, law new breakthrough in the future relates to Civil Court of Justice's absolute compentence.

Hadjon's concerning was answered along with the formation of Law Number 30 of 2014 concerning Government Administration (AP Law). This law redefines and expands the meaning of state administrative decisions. State administrative decisions no longer solely include written decisions, but also factual actions. It is also include criteria (1) Decisions of State Administration Agencies and / or officials in the executive, legislative, judicial and other state; (2) based on statutory provisions and AUPB, (3) It is final in the broader meaning; (4) Decisions that have the potential to cause legal consequences; and / or (5) Decisions that apply to society.(5)

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Definition of the Civil Court of Justice decision becomes interesting, considering that so far, it is generally understood that the Civil Court of Justice decision can only be issued by the executive agency. The new definition broadens the scope of the provisions so that it now also includes Civil Court of Justice decision and / or Official in legislative, judicial, and other. This raises further questions about whether decisions made by legislative bodies can be disputed to Civil Court of Justice. Considering the definition of a state official in the AP Law includes all "elements that carry out Government Functions, both within the government and other state administrators." Again, the law provides an open interpretation space regarding limits on the implementation government functions.

Problem focused in this paper then is that question previously, particularly with regard to the object of the DPRD's decision regarding of regional chief / vice chief dismissal. There are a number of reasons behind this locus selection. First, DPRD position in Indonesia's own constitutional system is quite controversial; there is a long debate between those who sit between the executive or legislative. Second, regional chief / vice chief dismissal itself is actually part of the oversight function of the DPRD on regional chief / vice chief performance. In its implementation, the DPRD uses the right of a questionnaire which is the constitutional right of the legislative body. However, the arrangements regarding the "supervisory function" and the " inquiry right of" in constitution itself are only found in the chapter on the House of Representatives (DPR), so that the constitutional nature only applies necessarily to the institution. Its attachment to the DPRD itself still needs to be tested, which has formal consequences for the DPRD's decisions based on the "supervisory function" and the "inquiry right". Third, the final nature of the DPRD's decision related to regional chief / vice chief dismissal is still open to the debate room, considering that it is part of a series of dismissals stipulated in Law Number 23 of 2014 concerning Local Government which then changes to Law Number 9 of 2015 concerning Second Amendment to Law Number 23 of 2014 concerning Local Government (UU Pemda). The power to dismiss regional chief / vice chief themselves rests with the President.

These three will later be discussion subject in this paper. In addition to analyzing the problems with the related positive laws of Indonesia, this paper will also examine them through comparative approach to the practice of Civil Court of Justice in Germany. Germany was chosen in view of the similarity of its legal system with Indonesia. In this country there are also state administrative justice institutions with systems and gaps that are similar to Indonesia. In addition, the establishment of AP Law was also inspired by the German government administration system and was compiled in consultation with the GTZ Support for Good Governance from Germany.[6]

METHODS

Research in law or was often referred to as legal research had its own characteristics that cannot be compared to qualitative and quantitative research methods. Legal research had aimed to find the meaning of 'law' in human activities when interacting with other communities.[7] In this regard, the researcher was used type of explorative normative legal research.[8] The approach was used by the author in writing were case approach and legislation approach with the main focus[9] in exploration of rules regarding Civil Court of Justice, its disputed objects and its cases implications related to the DPRD decision related to Regional chief / vice chief dismissal. With regard to this matter, the type of data was used in this study was secondary data classified into 2 (two) types, primary legal materials including legislation and secondary legal materials including books, scientific articles and other written sources relating with this research.

RESULTS

Civil Court of Justice: Comparison of Absolute Competence with Other Countries

Before further analyzing of problem comes from DPRD decisions related to regional chief / vice chief dismissal as disputes objects of state administrative, absolute competence of Civil Court of Justice itself needs to be reviewed first. In general, this discussion will continue to move within the corridor of the Indonesian state administrative justice system, as stipulated in a number of statutory regulations. Among them are the PRATUN Law, which has been amended several times, as well as the AP Law. On the basis of this also, comparisons with systems implemented in other countries are needed to provide a more comprehensive describes of the problem to be explored. Comparisons can also provide additional arguments, leading to a new 'novum' discovery in this study. As mentioned in the background, there are a number of reasons which justify Germany election as a comparison country. In fact, Germany has a legal system that is concordant with the Indonesian legal system. Within this country there are also state administrative justice institutions with systems and gaps that are similar to Indonesia. In addition, the establishment of AP Law was also inspired by German government administration system and was compiled in consultation with the GTZ Support for Good Governance from Germany. Compared to Indonesia, the practice of state administrative justice in Germany is much older. The state administrative court in Germany was first established in 1863, and since then its existence in alongside with other areas.[10]

PTUN jurisdiction is regulated in Article 4 of PRATUN Law, as "the exercise of judicial power for the people seeking justice for State Administration disputes." The definition of state administrative disputes as regulated in the

provisions of Article 1 number 4 of PRATUN Law are "disputes arising in State Administration between a civil person or legal entity and State Administration Agency or Officer, both at central and regional levels, as a result of the issuance of State Administration Decision, including employment disputes based on applicable laws and regulations. "

However, before judicial efforts are taken, the PRATUN Law requires preliminary efforts in the settlement of state administrative disputes. The PRATUN Law introduces two institutions to accommodate the scheme, administrative appeals and objections. If there are parties who are dissatisfied with the results of the two models of dispute resolution, then a lawsuit can be taken to Civil Court of Justice. Thus, its juridiction becomes conditional. Competence can be activated only if administrative efforts have been carried out.

Administrative court in Germany has authority to try and decide on all non-constitutional public legal disputes, unless the matter is expressly stated as the domain of fiscal or social court authority.(11) The description contains two important keywords that limit the jurisdiction. Category "public law" describes the limits of products and legal actions that can be tested relating to public affairs, outside the criminal act which has its own judicial institution. The "non-constitutional" nature itself describes the differentiation of jurisdiction between administrative justice and constitutional court (bundesverfassungsgerich). It is called as authority to adjudicate constitutional disputes and validity regulations established by parliament.

It is worth noted, access to administrative justice in Germany does not depend on administrative actions formality. Individuals right to file disputes in Civil Court of Justice is fully protected by the constitution. German administrative justice institutions do not recognize any administrative effort that must precede Civil Court of Justice process. Objective disputes in Civil Court of Justice system in Indonesia are all forms of Civil Court of Justice decisions. Furthermore, changes to the PRATUN Law through Law Number 9 of 2004 (Law 9/2004) then provide more strict restrictions regarding Civil Court of Justice decisions. Substantively, there is no significant difference between the limitation o f Civil Court of Justice decisions as mentioned above, the changes are merely editorial and adjusted to a number of new terminology that was rise up due to changes in the constitution and the enactment of Law Number 48 of 2009 concerning Judicial Power as stipulated in of law 9/2004 Article 2 letter f and letter g. Significant changes only occurred after the emergence of AP Law, through the provisions of Article 87, category of Civil Court of Justice decisions was maximally expanded. The decisions no longer solely include written decisions, but also factual actions and stewardship in executive, legislative, judiciary and other state administrators, final in a broader sense, decisions that have potential to cause legal consequences and decisions applicable to society.

The paradigm adopted by AP Law regarding Civil Court of Justice decisions seems similar to prevailing paradigm in German administrative justice system. German administrative justice has the authority to adjudicate all forms of dispute over administrative legal conduct, issued by public officials. Administrative acts include all forms of orders, decisions and other authorities by an authority that is individual and has direct legal consequences and has binding power. The "administrative" category does not apply to parliaments that run constitutional law, unless the agency applies administrative law. Some fields that are often the domain of German state administrative justice disputes include public order and security, foreign policy, buildings, traffic, trade and industry, civil administration organizations, subsidies, access to public institutions, public welfare, education, environmental protection, public facilities, development planning and public service matters.

Position of DPRD in the Indonesian State Administration System

Even though it does not strictly adhere to the theory of separation of power, the 1945 Constitution of Republic of Indonesia NKRI implicitly divides state power according to the paradigm of the theory. State power in the theory of separation of power as formulated by Montesqueieu is divided into executive, legislative and judicial. The difference between the three lies in the function of each institution against the law.(12) The demarcation of each function in Indonesia is seen in the division of constitutional chapters. The 1945 Constitution of Republic of Indonesia separates State Government Power in the hands of the President, MPR, DPR, DPD and Judicial Power.

The division of this chapter then explains the debate about DPRD position, which is spread on the tension between executive and legislative powers. If it is reviewed in the constitution, DPRD arrangements are listed in Chapter VI regarding Local Government. The similarity chapter nomenclature to the chapter governing the power of the President shows that the DPRD is part of executive power. Furthermore, the provisions embedded in Article 18 paragraph (3) and paragraph (4) and the presence of Law Number 17 of 2014 concerning the People's Consultative Assembly, the House of Representatives, the Regional Representative Board and the Regional House of People's Representative (MD3 Law) have confirmed institutional position both at provincial and district / city. The climax is the provision contained in Article 18 paragraph (5) of the NKRI Constitution which in essence states that there is a division of powers between central government and "regional government" institutions as executives in the regions. Implicitly, there is an executive inequality scheme between the two institutions based on the division of authority. This position is consistent with the theory of unitary state that does not recognize the division of legislative power to the regional level.(13) As a result, the DPRD is structurally an executive institution in the region.

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Even though it is an executive institution, the DPRD can carry out legislative function as the DPR. The practice of implementing legislative functions by the executive actually also occurs at the central level. Article 20 paragraph (2) states that each draft law is discussed jointly by the Parliament and the President for mutual agreement. In addition, the MD3 Law also provides budgetary and oversight functions to the DPRD, in order to complement the DPRD's legislative functions.

Decisions on Regional chief / Vice Chief Dismissal Issued by the Regional House of People's Representative According to Local Governments Regulation

As a legal protection for governance implementation in Indonesia, the Local Government Regulations includes a number of important arrangements, one of which concerns the dismissal of the regional chief / vice chief in the middle of them term of office. The regional head / deputy may be dismissed because of death, own applications, or dismissed, as stipulated in the provisions of Article 78 paragraph (1) of the Local Government Regulations. Furthermore, the Local Government Regulation also regulates the mechanism for implementing Local dismissal, clearly stipulated in the provisions of Article 79 and Article 80 of the Local Government Law. Furthermore, the Local Government Regulation has also set a safeguard scheme if later DPRD opinion that has received authorization from the Supreme Court is not executed. If the DPRD leadership does not submit for the dismissal of the regional chief / vice chief no later than 14 (fourteen) days after receipt of the Supreme Court decision, the President shall dismiss the governor and / or deputy at the proposal of the Minister and the Minister dismissing chief / vice chief at governor's application as representative of Central Government. Meanwhile, if the governor as representative of Central Government does not submit a proposal to the Minister, the Minister dismisses chief / vice chief.

According to explanation above, the regulation concerning dismissal process of regional chief/vice chief in the Local Government Law has shown a significant role and was initiated by the DPRD. Textually, the right expressly contributing to the process is the right to express an opinion. If the opinion is proven to obtain pro justitia authorization from Supreme Court, legal consequences will soon arise, in the form of the dismissal of regional chief/vice chief. After this process is passed, the political gap to prevent termination is relatively closed. Some regional chief (and / or vice chief) have become "victims" of this dismissal process. The most recent case was experienced by Fadli Hasan, Vice Regent of Gorontalo Regency in Gorontalo Province. Fadli Hasan was accused of asking for a project fee of 30 percent from the infrastructure construction contractor in his area.[14] In the Gorontalo DPRD plenary session held on September 22, 2017, the DPRD then stated that Fadli violated the oath / promise of office, did not carry out the obligations of the Regional Chief/Vice Chief, violated the prohibition, and bad attitude.[15] This opinion was stated in Gorontalo DPRD Decision Number 29 / KEP / DPRD / IX / 2017. Regarding this decision, the legal team of Fadli Hasan filed a number of lawsuits in several areas of justice at the same time, including state administration.[16]

To further review whether Civil Court of Justice has the authority to examine this decision, PTUN absolute authority itself needs to be recalled. The state administrative court is basically a forum for every community to seek justice for the actions of the state administration which are considered to cause harm. The AP Law then reforms the paradigm of state administrative decisions which are always adhered to by the PRATUN Law. In general, the characteristics of state administrative decisions can be divided into two sub-characteristics, formal and material.

Table 1. The characteristics of state administrative decisions

Formal	Material
1. It is stipulated by authorize officials 2. It is made based on the procedures 3. Appropriate substances with decision objects 4. It is made based on firm philosophical, sociological and juridical	1. It is not only covers written decision, but factual action 2. Board/administrative officials decision in executive, legislative, judiciary and state executor 3. It is based on statutory provisions and AUPB 4. It is final in wider broad 5. The enactment of decision has potential to rise up legal consequences and/or 6. Prevailing decision for citizen

DISCUSSION

Formal Characteristics of DPRD Decision Regarding Recommendations on Dismissal of Regional Chief/Vice Chief

The formal characteristics of state administrative decisions according to AP Law give the question as to whether the DPRD as a body can be categorized as an "authorized official" so that the decision can be sued to PTUN. Article 1

number 3 of the AP Law, which is meant as a governing body or official is "an element that carries out governmental functions, both within the government and other state administrators." With regard to these provisions, the AP Law provides a broad and open definition of government officials, encompassing the environment other countries. This provision thus applies to branches of legislative, judicial, and other independent institutions, as long as they are in the corridor of administrative action.

As it has been constructed in previous section, DPRD itself has relatively unique position in the Indonesian constitutional system. The constitution has emphasized that institutionally, DPRD is an entity that together with region chief forms regional government institutions. DPRD is part of the executive branch, and at the same time has the functions of a legislative body. Thus, the DPRD can be categorized as a governing body. As a consequence, all of its decisions that meet the criteria in Article 87 of the AP Law can be categorized as state administration decision (beschikking). This is certainly outside the rules that are regulating and binding to the outside (regeling), such as local regulations.

As for decision context on the termination of regional chief/vice chief recommendation, the process has been regulated in Local Government Law. As long as the DPRD runs the process, the decision can be categorized as a state administration decision. Even so with the substantive criteria, as well as the application of philosophical, sociological and juridical foundation. These things can be a formal “touchstone” for the DPRD's decision regarding the dismissal.

Material Characteristics of DPRD Decision Regarding Recommendations on Dismissal of Regional Chief/Vice Chief

AP Law has provided 5 new material criteria regarding state administrative decisions, the first being 'written decisions and / or factual actions'. In accordance with the mandate of Article 21 paragraph (6) of Government Regulation Number 16 of 2010 concerning Guidelines for Regulations DPRD Preparation concerning DPRD rules, right to express an opinion by DPRD must be stated in a written decree. So that statement opinion has a concrete form and meets legal certainty.

Second criterion is in the form of "Decision of Board / or Official of State Administration in executive, legislative, judicative, and other state administrators environment ". According to these criteria, this regulation can be interpreted in two ways. First, it covers the administrative functions carried out by general secretariat institutions of each non-executive institution, or second it covers all forms of non-executive institution decisions that are determinative (beschikking). If the first meaning is relatively clear, the second meaning requires further justification.

Regulations regarding German state administrative justice system itself have actually banned the state administrative judiciary from accepting lawsuits on constitutional authority, such as judicial review. The latter is the absolute competence of German Constitutional Court. However, the same law also provides exceptions to the legal products of legislative bodies that are non-regulating. Thus, DPRD decisions or administrative actions that are individual and incurring losses can be sued to Civil Court of Justice. A similar framework can be applied in the DPRD's decision on the recommendation to dismiss regional chief/vice chief. Moreover, according to the provisions in the constitution, the DPRD is part of the regional government. The initiation dismissal of regional chief/vice chief must therefore be seen in the running framework of the regional government.

The third criterion, "Based on the provisions of the law and General Principles of Good Governance (AAUPB)". The authority to dismiss regional chief/vice chief is obtained by the DPRD based on Local Government Law, so that these actions meet the legality requirements (wetmatigheid). AAUPB itself is more used as an instrument for evaluating the performance of regional chief/vice chief. If there is a violation of this principle, they can be filed for dismissal.

The fourth criterion, 'is final in wider meaning. This clause has fundamental weaknesses because it does not limit the meaning "in the wider meaning". However, an interpretation of this clause has been tried through the Supreme Court Circular Letter No. 4 of 2016 concerning the Enactment of Supreme Court Chamber Plenary Meeting Results Formulation 2016 as Guidelines for the Implementation of Duties for the Court (SEMA 4/2016). The SEMA defines the final in a wider meaning as "State Administration decisions that have caused legal consequences although they still require approval from superiors or other agencies."(17) The final clause in wider meaning can also be read comprehensively with PRATUN Law, which provides an interpretation of the "final", wherein State administrative decisions cannot be sued if the said state administrative decisions still require approval as stipulated in Article 2 letter c of the PRATUN Law.

If it is interpreted based on the two interpretive models above, the final criteria from DPRD's decision about recommendation to dismiss regional chief/vice chief is not achieved. In accordance with the provisions in Local Government Law, the decision must still obtain an MA authorization. The end of this process is in the hands of the President for Governor dismissal and Minister of Home Affair for Regent / Mayor dismissal. The final decision is in the hands of these two institutions. Even so, the decision will only have legal consequences after the entire process is achieved. However, the legal consequences arising from a decision so that it can be sued to PTUN apparently does not

have to be concrete. A decision that still has the potential to cause legal consequences also apparently can be the object of a lawsuit.

The fifth criterion, 'Enactment for Citizens'. In accordance with Article 1 number 15 of AP Law, what is meant as a citizen is "a person or legal entity that is related to Decree and / or Action." This clause appears to be used to replace the "individual" criteria in state administrative decisions in the PRATUN Law regime. As mentioned earlier, the object of DPRD's decision related to the dismissal of regional chief/vice chief hich incidentally is an individual person, so that it is individual characteristics.

The above description shows that DPRD decision contains recommendations for dismissal of regional chief/vice chief that meets material and formal characteristics of state administration decision. The debate is quite crucial regarding the final nature of the decision itself. Even though it still requires the approval of other institutions, the recommendation is based on the inquiry committee's investigation and potential to have legal consequences. As a result, technically, the type of decision regarding the dismissal of regional chief/vice chief can be sued to the PTUN.

CONCLUSION

It can be concluded that, basically, DPRD's decision regarding the dismissal of regional chief/vice chief that meets the criteria of state administration decision, and thus becomes jurisdiction of Civil Court of Justice. This is even if the decision still requires other agreements. As an analogy in other judicial bodies, the Constitutional Court expanded its authority by declaring itself the authority to examine government regulations as subtitute of laws (Perppu), even though later Perppu itsellf still needed DPR approval. However, but to has efficiency, the authors suggest that this step not be taken, consider that there will be several other types of decisions that can still be sued, such as a presidential or Minister of Home Affairs decision stating the dismissal of regional chief/vice chief. This is to save the time and energy of the plaintiffs, so that they do not need to repeatedly visit Civil Court of Justice. Legal weakness that have been shown previously may also be able to provide input for the legislators to be able to provide stricter arrangements for fundamental matters. In the future, differences in interpretation can be minimized, especially in the context of the state administrative justice system.

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