# Functional the Strengthening Role of Administrative Court as An Effort to Maximize People Legal Protection

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**Abstract.** As a judicial institution that stands from the mandate of the rule of law, Indonesian's Administrative Court (PTUN) is still not optimal in carrying out its role to provide justice for administrative decisions. Different from other judicial institutions located in each district/city, the Administrative Court is only available in a few areas. In addition, the executorial power of the Administrative Court's decision which is not monitored has made the disputing parties not enforce the decision several times. This condition makes the Administrative Court appear to be only a formality institution that does not have any coercive provisions. This paper discusses the hindering factors of Administrative Court performance and the importance of strengthening the judiciary. The research method used is normative legal research based on the law related to PTUN.

**Keywords.** Administrative Court, The Strengthening Role, Administrative Law

## 1 Introduction

The Administrative Court or hereinafter referred to Peradilan Tata Usaha Negara (PTUN) is one of the judicial institutions in Indonesia under the Supreme Court which is intended as a means of legal protection (rechtsbescherming). PTUN was formed based on Law Number 5 of 1986 concerning the Administrative Court which has undergone 2 (two) amendments, namely Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning Administrative Court, and then amended by Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning the Administrative Court (hereinafter referred to the Administrative Court Law).

The sovereign government has the power to protect its people from various disturbances, even threats from other countries. On the other hand, the people hope that the state can protect their rights, so that people can live safely, comfortably and without any disturbance [1].

PTUN which was formed as an administrative court, aims to provide legal protection for people who are in dispute with the Administration Agency or Official (TUN Agency or Official). In addition, PTUN is also an administrative law enforcement agency that aspires to create a government based on general principles of good governance /Algemene Beginselen Van behoorlijk Bestuur (AAUPB). In short, the establishment of PTUN is actually to protect the people from arbitrary actions by the authorities/government officials.

PTUN rised in Indonesia is a form of embodiment of the conception of the rule of law, as this view according to the understanding of Continental Europe which states that one of the elements of a democratic rule of law is an Administrative Court [2]. Thus, philosophically PTUN is a forum for the people to get justice and legal protection for a decision made by the TUN Agency or Official.

With the authority they have, it is natural for the public to have high hopes for the Administrative Court. The presence of PTUN is considered to be a way and a solution to the problems of the people who have been harmed by decisions issued by the TUN Agency or Official. Unfortunately, this public expectation is not matched by the existence of PTUN when viewed from the large number of provinces, districts/cities and Indonesian people, as well as the provisions of existing laws and regulations. Since nearly 36 years of existence, the existence of PTUN has not been felt optimally in responding to the need for legal protection for the people. There are various weaknesses that hinder legal performances that should have been resolved from the beginning of the PTUN's establishment, but in fact until now there has been no adequate progress and strengthening.

In this paper, there are 2 (two) things that need to be raised into the formulation of the problem as a discussion on how to strengthen the role that must be done to maximize the role of the Administrative Court in providing legal protection for the people from government actions that violate the law and/or the

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principles of good governance, and the solution will be discussed scientifically, namely: 1. How is the existence of PTUN in Indonesia when viewed from the relative competence possessed? And 2. How is the existence of PTUN in Indonesia in terms of the executorial power of court decisions?

The type of research carried out in this paper is normative research, namely research carried out based on the provisions of the legislation associated with the issues raised. Pieter Mahmud explains in his book, legal research is a process to find the rule of law, legal principles, and legal doctrine that aims to answer the legal issues faced [3]. The normative legal research in this paper is to look at the application of the Administrative Court Law in relation to the reality of the current legal application.

## 2 Research Methods

The research method used is normative legal research based on the law related to PTUN. The material for analizing and identifying the problems are taken from Articles of Law Number 9 of 2004 concerning about Amendments to Law Number 5 of 1986 concerning Administrative Courts, namely regarding the place of domicile.

## 3 Results and Discussion

### 3.1 Serum The existence number problem of PTUN in Indonesia

PTUN as an institution seeking legal protection for the people is often unable to provide satisfaction to the people. This is because the norms regulated in the Administrative Court Law are not implemented properly. Several things to be noted for PTUN are one of them related to its relative competence. Relative competence relates to the authority of the court to adjudicate a case based on its jurisdiction. A judicial body is declared authorization to examine a dispute if one of the parties is in the jurisdiction of the court.

The regulation regarding the relative competence of PTUN is regulated in Articles 6 of Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning Administrative Courts, namely regarding the place of domicile which contains the following provisions:

- Paragraph (1)
  "(1) *The Administration Court is domiciled in the Regency/City, and its legal area covers the Regency/City area*."
- Paragraph (2)
  "(2) *The Administration High Court is domiciled in the capital of the Province, and its legal area covers the territory of the Province*"

From these provisions, it can be seen that the PTUN law mandates that the PTUN domicile should be in each district or city area, and the high court is in the province. The number of regencies and cities in Indonesia is 514 regencies/cities, while the number of provinces is 34. However, for now, the number available is only limited to 27 PTUN and only 4 for the number of PTTUN (The Administrative High Court). The 27 PTUNs include PTUN Jakarta, Medan, Palembang, Surabaya, Ujung Pandang (Makassar), Bandung, Semarang, Padang, Pontianak, Banjarmasin, Manado, Kupang, Ambon, Jayapura, Banda Aceh, Pakanbaru, Jambi, Bengkulu, Palangkaraya, Palu, Kendari, Yogyakarta, Mataram, Serang, Pangkal Pinang and Gorontalo [4].

As for the 4 PTTUNs that are spread out, only in the Medan PTTUN which has jurisdiction in all regencies/cities on the island of Sumatra. PTTUN Jakarta which oversees the areas of West Java, Banten, and Kalimantan Island. Then the PTTUN Surabaya which oversees the jurisdictions of East Java, Central Java, Yogyakarta, Bali, NTT, and NTB. And finally PTTUN Makassar which has jurisdiction in all regencies/cities in Sulawesi, Maluku, and Papua [5]. From this condition, we can see that one PTUN or PTTUN can cover the jurisdiction of several regencies/cities or other provinces.

The limited condition of the TUN court will certainly have an impact on the mobility of the disputing parties. For example, in the case of the rejection of mining permits in the Tumpang Pitu Banyuwangi area, where the community had to travel to the PTUN Surabaya, the distance was approximately 307 km. The long distance traveled is one factor in the slow mobility in handling disputes, and of course the costs incurred will be more for transportation purposes.

The regulation regarding competence related to the domicile or residence of the parties, namely the Plaintiff and the Defendant is regulated in Article 54 of Law Number 5 of 1986 concerning the State Administrative Court with the following provisions:

- (1) "A lawsuit for an administrative dispute is submitted to the competent court whose jurisdiction covers the domicile of the defendant.
- (2) If the Defendant has more than one Administration Agency or Official and is domiciled not in the same jurisdiction of the Court, the lawsuit shall be submitted to the Court whose jurisdiction includes the domicile of Administration Agency or Official.
- (3) In the event that the domicile of the Defendant is not within the jurisdiction of the Court where the Plaintiff resides, then the lawsuit may be submitted to the Court whose jurisdiction includes the Plaintiff's residence to be forwarded to the Court concerned.
- (4) In certain cases, in accordance with the nature of the administrative dispute in question which is regulated by a Government Regulation, a lawsuit may be submitted to the competent Court whose jurisdiction covers the place of residence of the Plaintiff.
- (5) If the Plaintiff and Defendant are domiciled or located abroad, the lawsuit is filed with the Court in Jakarta.
- (6) If the Defendant is domiciled in the country and the Plaintiff is abroad, the lawsuit is

submitted to the Court at the Defendant's domicile."

From the provisions of the article, it can be seen that the provisions of the lawsuit are in principle submitted to the court at the place of the defendant, but in exceptional conditions it is possible to use a court in the plaintiff's territory whose provisions are regulated in a Government Regulation. However, until now the Government Regulation that regulates this has not been issued.

Thus, the current number of PTUN and PTTUN is not ideal when compared to the number of existing provinces and districts/cities. So that to optimize the role of PTUN in providing legal protection for the people from arbitrary actions of the authorities and/or other unlawful acts committed by the authorities/government, it is necessary to establish PTUN and PTTUN in accordance with the number of existing Provinces and regencies/cities.

### 3.2 The Executorial Power Problem Of The Administrative Court Decisions

In addition to the existence of the number of PTUN and PTTUN which is far from ideal, another problem that becomes the weakness of the PTUN at this time is regarding the executorial power of PTUN decisions which are self-execution or the execution of decisions made by themselves. When the Administrative Court has issued a court decision, there is no institution that oversees the execution of the decision. So it is very possible that there will be non-compliance of the Administration Agency or Official in carrying out court decisions. Of course, this is a rather worrisome condition, even though the Administrative Court Law has been revised twice, but this change is not able to bring progress to the quality of dispute resolution [6].

Several factors that can cause the weak execution of PTUN decisions are First, PTUN decisions do not provide coercive rules for the Administrative Agency or Officials (TUN) to carry out their decisions. This is also inseparable from the nature of the Administrative Decree (KTUN) which adheres to the Contrarius Actus, namely only the Administration Agency or Official who issues the KTUN as the party authorized to revoke it.

Second, namely the regulation regarding forced money for TUN Agency or Officials that has not been regulated. In article 116 (7) of Law Number 51 of 2009 concerning the Second Amendment of Law Number 5 of 1986 concerning the Administrative Court which contains the following:

"Provisions regarding the forced money amount. Types of administrative sanctions, and prosedures for the implementation of forced money payments and/or administrative sanctions imposed on officials who are not willing to implement court decisions are regulated by laws and regulations".

However, in reality, untul now the legislation in question hasnot provided the amount, sanction, or tuype as mandated by article 116 paragrahp (7). So that the conditions that occur are legal problems (vacuum of norm) and floating court decisions (floating execution)

Third, is the factor of TUN bodies or officials who do not comply with court decisions. This problem also arises from the implementation of the regional autonomy system, with regional autonomy all regional head officials can make administrative decisions to manage their regions. The regional autonomy authority granted by this law often becomes legitimacy for regional heads to issue decisions or policies for their regions, including ignoring the TUN decisions.

## 4 Conclusion

Based on the above discussion, it can be concluded that, firstly the number of PTUN in Indonesia is very far from what is regulated in the legislation. Article 6 of the Administrative Court Law mandates that PTUN must be located in each district/municipality of which the number of districts and municipalities in Indonesia is 514, while the PTUN available in Indonesia is only 27 of which in several regions. Likewise for the availability of PTTUN, where there are only 4 PTTUN located in Medan, Jakarta, Surabaya, and Makassar. Meanwhile PTTUN should be established in each province which should be 34 PTTUN. This condition greatly affects the affordability of the community in demanding justice, because they have to travel quite a distance at a higher cost.

Secondly, the Administrative Court does not have a coercive court decision, so often the Disputing State Administrative Body or Official neglects to implement it. This condition is a consequence of the absence of a party that supervises the execution of the decision, the decision of the Administrative Court which is self- so that the parties are responsible for the decision.

From this discussion, the Administrative Court should be able to be improved by fixing these problems. Efforts can be initiated by setting provisions regarding forced money sanctions if the parties do not carry out the PTUN decision as mandated by Article 116 paragraph (7) of Law no. 51 of 2009. In addition, it is also necessary to initiate the need to regulate the neglect of the implementation of the Administrative Court Decision, including a criminal act of contempt of court, so that TUN officials who ignore it can be criminally prosecuted. Meanwhile, to answer the problem regarding the minimum number of PTUN in each district/city which is very far from the provisions of the law, the government must plan the development of PTUN and PTTUN in all provinces and districts/cities in Indonesia in accordance with the mandate of Article 6 of Law No.9 of 2004.

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