Philosophical, Juridical, and Historical Review of TUN Dispute Resolution Including State Civil Officer Disputes Post Administrative Efforts

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Abstract. This research aims to determine and analyze the philosophical, juridical, and historical review of State Administrative Court (PTUN) dispute resolution, including state civil officer disputes after administrative efforts. The method used in this research is normative-empirical legal research with a statutory approach, conceptual approach, case approach, and sociological approach. With the concept of Administrative Efforts, there is a legal problem, namely the disharmony in the regulation of administrative efforts as regulated in Article 48 of Act Number 5 of 1986 with those regulated in Articles 75 to Article 78 of Act Number 30 of 2014 and the Circular Letter of the Supreme Court Republic of Indonesia Number 1 of 2017 letter E number 3 and Supreme Court Regulation Number 6 of 2018. Based on the results of the research, combining State Administrative (TUN) dispute resolution after Administrative Efforts based on Act No. 5 of 1986 and Act Number 30 of 2014, a judicial system has been implicitly formed. The integrated administrative justice system is perfect because all TUN and/or Government Administration dispute resolution is first through administrative efforts. The regulation of administrative efforts in Act No. 5/1986 and the regulation of administrative efforts in Act No. 30 2014 cover each other and complement each other, with Administrative Efforts as a *premium remedium* and PTUN institutions as the *ultimum remedium*.

1 Introduction

Administrative efforts such as *quaestio* vexata are needed in resolving state administrative disputes, which are unresolved problems in terms of legal substance, legal structure, and legal culture. So, in this case, the law is referred to as *lex est dictamen rationalis*, which means that the law is a command of reason. Legislative regulations as the *lex est dictamen rationales* of the formation of legislative regulations need to explore the philosophical, sociological, and juridical thoughts contained therein. The formation of legislation assumes that the product of the resulting legislation is clear and harmonious with vertical and horizontal legislation. It

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turns out that this assumption, as put forward by police officers and factual notaries faced in the field, especially by judges, is not in line with the assumptions of those forming statutory regulations; this is by the adage which reads "*nulla regle sans foute*" which means that there are no regulations without defects so that the regulations become unplaced. However, on the other hand, judges must not refuse or complain about adjudicating cases because the legislation is unclear, not firm, and not harmonious. So, in such circumstances, interpretation becomes a very important and absolute thing to do, so it is precisely what is said in the legal adage. Legal interpretation is the core strength of the law itself (*legis interpretation legis vim obtinet*).

The first cause of the TUN dispute about what and why the TUN Dispute Training was held after Administrative Efforts and state civil officer (ASN) disputes for judges by the Directorate of Technical and Administrative Personnel Development by the TUN Judiciary, where this discussion will lead to the realm of ontological philosophy. Second, look for and find out what and why the TUN Post-Administrative Efforts and ASN Dispute Dispute Training for judges is carried out by the Directorate of Technical Personnel Development and TUN Judicial Administration, where this question brings into the realm of epistemological philosophy. Third, the aim/benefit/utility of holding TUN Dispute Training after Administrative Efforts and ASN Disputes for judges by the Directorate of Technical Personnel Development and TUN Judicial Administration, where these questions will lead to the realm of axiological philosophy.

2 Methodology

This paper uses a normative research method, which examines primary legal materials in the form of statutory regulations, secondary legal materials, namely literature or opinions of legal experts, and tertiary legal materials in the form of legal dictionaries [1]. The approach methods used in this study are the statutory approach, the conceptual approach, and the case approach. The collection of legal materials was carried out using library research, namely searching and studying literature related to this writing material. A literature study was carried out by taking inventory and studying legal materials related to the problems in this writing.

3 Results and Discussion

3.1 Post Administrative Efforts and ASN Disputes Training for State Administrative Court Judges

There is a legal problem, namely the disharmony in the regulation of administrative efforts as regulated in Article 48 of Act Number 5 of 1986 [2] with those regulated in Articles 75 to Article 78 of Act Number 30 of 2014 [3] and Circular Letter of the Supreme Court of the Republic of Indonesia Number 1 of 2017 letter E number 3 [4] and Supreme Court Regulation Number 6 of 2018 [5]. There are many ASN disputes submitted to the PTUN after the Joint Decree of the Minister of Home Affairs, Menpan RB, and BKN Number 182/^597/SJ, Number 15 of 2018, Number 153/2018 Date September 13, 2018, and Letter from the Minister of Administrative and Bureaucratic Reform Number B/50/M.SM.00/2019 dated February 28, 2019. In this decision, 2,357 civil officers were found guilty of committing corruption crimes (TIPIKOR), and the decision had permanent legal force. As of January 14, 2019, National Bureau of State Officer (BKN) data submitted to the Corruption Eradication Commission revealed that only 393 civil officers of those number had been subjected to PTDH (Dishonorable Dismissal). Act No. 5 of 2014 concerning State Civil Apparatus

independently regulates Administrative Efforts. The implementation of post-administrative measures in PTUN is not uniform [6] since ASN disputes end up in the State Administrative Court.

In this case, the relationship between the government and its citizens must be prioritized through the principle of harmony, in which the community is the holder of the highest sovereignty, as stated in Article 1, paragraph (2) of the 1945 Constitution of the Republic of Indonesia. So, the government must be able to open up space to satisfy the community's aspirations. The scope of government relations with its citizens is carried out through the principle of harmony, which has advantages and disadvantages. The advantage is the establishment of a balanced and harmonious relationship. On the other hand, there is also a negative side, namely confrontation and mutual hostility, so the government, with all its actions, always tries to establish a harmonious relationship with citizens so that there is no confrontation and no mutual hostility. Then, what if a dispute occurs? The most important thing is the means and method of resolution, namely the availability of means of legal protection by prioritizing deliberative resolution through administrative efforts and resolution through the judiciary, which is the last resort (*ultimum remedium*).

The provisions mentioned above are mandatory and apply to all TUN disputes. This means that the resolution of every TUN dispute must first take administrative measures consisting of objections and administrative appeals. If the exhausting administrative efforts still do not find a resolution, then the dispute can be submitted to the PTUN [7]. However, if the government is based on a balanced, harmonious, non-confrontational, and non-hostile relationship in community life, then disputes will inevitably arise. It implies that if the relationship between the government and citizens is harmonious, then there will be no possibility of disputes between the government and the people.

The main ideas are philosophical, sociological, and juridical in Act Number 5 of 1986 concerning State Administrative Courts [2,7]. First, philosophically, the Republic of Indonesia aims to create a prosperous, safe, peaceful, and orderly national state life system to guarantee the equal status of citizens under the law so that equality, balanced and harmonious relationships are maintained between the officers and the community. Second, sociologically, although national development aims to create conditions so that every member of society can enjoy an atmosphere and climate of order and legal certainty that has justice as its core, in its implementation, there is the possibility of conflicts of interest, disputes or disputes arising between State Administrative Bodies or Officials and Community Citizens. Third, to ensure the fairest possible resolution of conflicts between different interests, one of the best ways is through legal channels, namely holding a State Administrative Court. In our system of laws and regulations, it is known that state administrative disputes are resolved through administrative measures. After the existence of this law, they are now able to submit problems to the High State Administrative Court.

Normativizing the juridical main idea that the resolution of State Administrative disputes is open through Administrative Efforts, this main idea is elaborated in Article 48 of Act Number 5 of 1986 concerning State Administrative Courts [2]. For a more in-depth study, it is necessary to discuss Article 48 of Act Number 5 of 1986. The study of Article 48 is: (1) In the event that a State Administration Agency or Official is authorized by or based on statutory regulations to resolve administratively a particular State Administration dispute, then the State Administration dispute must be resolved through administrative efforts. (2) The new Court has the authority to examine, decide, and resolve State Administration disputes as intended in paragraph (1) if all relevant administrative efforts are used. Where the *Normadressat/personal gebied* Article 48 paragraph (1) of Act 5/86 directly is to a State Administration Agency or Official, while indirectly is to a Person or Civil Legal Entity. And *Normadressat/personal gebied* Article 48 paragraph (2) is directly to the Court, while indirectly is to a Person or Civil Legal Entity.

The legal figure of Article 48 of Act Number 5 of 1986 concerning the TUN Judiciary is a **norm/rule for granting authority** (*bevoegdheidsverlenende normen*) to**:**

a. State Administrative Bodies and Officials to administratively resolve certain State Administrative disputes if the statutory regulations determine this.
b. State Administrative Court will examine, decide, and resolve TUN disputes if all relevant administrative measures have been used.

The norms/rules for granting authority (*bevoegdheidsverlenende norms*) contained in Article 48, paragraph (1) and paragraph (2) are non-independent norms/rules. The norms/rules are not independent because they contain several restrictions, namely:

a. Article 48, paragraph (1) is in the phrase "authorized by or based on statutory regulations".
b. Article 48, paragraph (2) is in the phrase "if all relevant administrative efforts are used."
c. The nature of the norm of granting authority to State Administrative Bodies or Officials to resolve administratively in terms of statutory regulations granting authority is a necessity (*moeten*), why because in Article 48 paragraph (1) there is the phrase "must be resolved…….".
d. The nature of the norm of granting authority to the Court to examine and decide on State Administration disputes is conditional because, in Article 48 paragraph (2), there is the phrase "If all relevant administrative efforts have been used."

Based on these problems, according to the explanation of Article 48 paragraph (1), there are 2 (two) forms of Administrative Efforts, namely:

a. Administrative Appeal Procedure, in which case the resolution must be carried out by a superior agency or another agency than the one that issued the decision in question.
b. Objection Procedure, in terms of the resolution of the TUN verdict, must be carried out personally by the State Administration body or official who issued the decision.

3.2 Court with the Authority to Adjudicate TUN Disputes Post-Administrative Efforts

According to the General Explanation of Act No. 5 of 1986 and Article 51 paragraph (3) of Act No. 5 of 1986, the authority to adjudicate TUN dispute Post-Administrative Efforts lies on the State Administrative High Court. This is based on the government's statement before the Parlement (DPRI) Plenary Session regarding the Bill Concerning State Administrative Courts submitted by the Minister of Justice of the Republic of Indonesia. The minister stated, "This procedure is being taken to speed up the settlement process so that an element of legal certainty can be achieved." The division of authority to adjudicate TUN Disputes Post-Administrative Efforts is based on the Circular Letter of the Supreme Court of the Republic of Indonesia Number 2 of 1991 number IV.1 [8]. Letters a and b regulate the competency to adjudicate TUN disputes after Administrative Efforts:

a. If the basic regulations only determine the existence of administrative measures in the form of submitting an objection letter, then the lawsuit against the relevant TUN verdict is submitted to the State Administrative Court.
b. If the basic regulations determine the existence of administrative measures in the form of a letter of objection and/or require the submission of an administrative appeal letter, then the lawsuit against the TUN verdict, which has been decided at the administrative appeal level, is submitted directly to the High State Administrative Court.

Legal consequences: Distribution of authority to adjudicate TUN disputes after administrative measures based on SEMA RI No. 2 of 1991 number IV. 2. Letters a and b

create joint authority (concurrent jurisdiction) between PTUN and Higher Court TUN to adjudicate TUN disputes after Administrative Efforts [8]. This raises a new legal problem, namely whether the TUN High Court has the authority to adjudicate TUN disputes after Administrative Efforts obtained by attribution through Article 51 paragraph (3) of Law no. 5/1986 can be taken over only by using a Circular Letter, which incidentally is not included in the group of statutory regulations.

Philosophical Main Thoughts of Act No. 30 of 2014 related to Guarantee Means of Protection of Community Citizens [4]. In this case, the systematic main ideas contained in the General Explanation of Act no. 30 of 2014 concerning Government Administration in paragraph 5, which states, "In order to provide guarantees of protection to every Community Citizen, this law allows Community Citizens to submit objections and appeals against Decisions and/or Actions, to Government Agencies and/or Officials or the superior officer concerned. Community members can also file lawsuits against decisions and/or actions of government bodies and/or officials with the State Administrative Court." This main idea was normativeized into Articles 75 to 78 of Act Number 30 of 2014 concerning Government Administration.

Developments of Interpretation of Administrative Efforts are as follows:

a. Administrative Efforts as an option
   - Administrative efforts are an option (SEMA Number 1 of 2017 Letter E number 3 letter d with the argument in Article 75 paragraph (1) using the terminology "can" [5]. This is based on Attachment II to Act No. 12 of 2011, Number 267. To express the discretionary nature of an authority given to a person or institution, the terminology "can" was instead used.
   - The Court that has the authority to adjudicate TUN Disputes following Administrative Efforts in accordance with SEMA Number 4 of 2016 letter E point 1 letter c is the State Administrative Court (TUN) [9].

b. Administrative Efforts are a Must

   Administrative efforts as a necessity are based on PERMA Number: 6 of 2018 Article 2 paragraph (1) [6]. The regulation replaces the term State Administrative Dispute as intended in Article 1 point 10 of Act no. 51 of 2009 into a Government Administration Dispute [10]. Not only do the terms change but the elements or elements of norms also change by replacing elements and adding new elements.

Table 1. Comparative elements

Article 1 number 10 Act no. 51/2009	**Article 1 number 5 PERMA 6/2018**
State Administrative Disputes ▪ Disputes arising in the field of TUN; ▪ Between civil law persons or bodies and state administration bodies or officials both at the center and in the regions ▪ As a result of the issuance of the TUN verdict, including employment disputes, ▪ Based on applicable laws and regulations. Missing elements: TUN disputes in the central or regional areas Including employment disputes Based on statutory regulations	**Government Administration Disputes** ▪ Disputes arising in the field of government administration. ▪ Between community members and government agencies and/or officials ▪ As a result of government decisions and/or actions ▪ Based on public law. ▪ New elements: ▪ In the field of government administration ▪ As a result of the issuance of Government Action ▪ Based on public law

3.3 Dispute Resolution in Court

Regulation of the Supreme Court of the Republic of Indonesia Number 6 of 2018 concerning Guidelines for Resolving Government Administrative Disputes After Taking Administrative Efforts, Article 3 paragraph (1) states that "the Court in examining, deciding and resolving government administrative dispute claims uses the basic regulations that regulate these administrative efforts." In this article, by carrying out a systematic interpretation, if the phrase "Court" in Article 3 paragraph (1) is connected to the meaning of the word Court in Article 1 point 8 of Perma No.6 of 2018, namely the State Administrative Court, then this means the State Administrative Court in examining, deciding and resolving administrative dispute claims using basic regulations governing administrative efforts. Thus, the norms of Article 3 paragraph (1) Perma No. 6 of 2018 is the State Administrative Court that does adjudicate the dispute, not the High State Administrative Court. Article 3, paragraph (2) further states, "In the event that the basic regulations for issuing decisions and/or actions do not regulate administrative efforts, the Court shall use the provisions regulated in Law Number 30 of 2014 concerning Government Administration." In examining, deciding, and resolving government administrative disputes, the State Administrative Court will use basic regulations governing administrative efforts and use Act No. 30 of 2014 in the basic regulations for issuing decisions and/or actions that do not regulate administrative efforts. Furthermore, in Article 5 paragraph (1) Jo Article 1 number 9 PERMA NO. 8 of 2018 Derogates Article 55 of Law No.5 of 1986 relating to:

a. When starting the calculation of the 90-day grace period from the time the TUN verdict is received or announced, it will be from the time the decision on administrative measures is received or announced by the Government Administration Agency/or official that handles the completion of administrative measures.
b. The original 90 days used calendar days as working days.

3.4 Administrative Efforts Act No.30 of 2014 versus Administrative Efforts Article 48 of Act No.5 of 1986

If Act No.30 of 2014 is positioned as General Law on Government Administration, Law No.30 of 2014 as an Umbrella Law for sectoral laws (*bijzondere*) is connected to the systematic main ideas contained in the General Explanation of Act Number 30 of 2014, which states that regulation of government administration is basically an effort to establish basic principles, with the phrase "main principles" meaning general principles. Thus, it can be concluded that the systematic main ideas in Act No. 30 of 2014 implicitly recognize the existence of more detailed sectoral regulations. By placing Act no. 30 of 2014 as the General Law on Government Administration and/or the Umbrella Law, the principle of *generalia verba sunt generaliter intelligenda* applies (general sentences must be understood generally or interpreted generally), and the principle of *generalis regula generaliter est intelligenda* (general regulations must be interpreted in a general way) and vice versa is applied, so that each rule remains in the area of each regime.

3.5 The following are several employment disputes in statutory regulations:

a. Act Number 8 of 1974 concerning Personnel Principles

The tenth part of the Civil Officer Court in Article 35 states that "Settlement of disputes in the field of personnel is carried out through the judiciary for this reason, as part of the State Administrative Court as intended in Act Number 14 of 1970 concerning Basic Provisions of Judicial Power [11].

b. Act Number 5 of 1986 concerning State Administrative Courts

The first section discusses what this law means. State administrative disputes, including employment disputes based on applicable laws and regulations, are disagreements that occur in the field of state administration between individuals or civil legal entities and State Administrative bodies or Officials, both at the central and regional levels, as a result of the issuance of a decree.

c. Act Number 43 of 1999 concerning Amendments to Act Number 58 of 1974 concerning Personnel Principles [12]

The provisions of Article 35 read as follows:

(1) Personnel disputes are resolved through the State Administrative Court.

(2) Personnel disputes resulting from violations of Civil Officer disciplinary regulations are resolved through administrative appeals to the Personnel Advisory Board.

(3) The agency, as intended in paragraph (2), is determined by Government Regulation.

d. Government Regulation Number 53 of 2010 concerning Civil Officer Discipline [13]

Article 32 in Chapter IV (Administrative Efforts) states that "Administrative efforts consist of objections and administrative appeals." Furthermore, Article 33 regulates the types of punishments that cannot be submitted to administrative measures. Article 34, paragraph (1) regulates disciplinary penalties that can be objected to. Paragraph (2) regulates the types of punishment that can be submitted for administrative appeal. Article 35 regulates where to submit objections, namely to superior officials who have the authority to punish. Article 38 regulates where to submit an administrative appeal, namely to the Personnel Advisory Board. The explanation in Article 35 paragraph (2) regulates that "Certain categories of Civil Servants who are sentenced to disciplinary punishment of honorable dismissal not at their own request and dishonorably dismissed as Civil Servants can submit an administrative appeal to the Civil Service Advisory Board."

e. State Civil Officer (ASN) Employee Disputes

The definition of State Civil Officer Disputes is contained in the Elucidation of Article 129 paragraph (1) of Act No. 5 of 2014. State Civil Officer (ASN) Disputes are disputes submitted by ASN regarding decisions made by the Supervisory Officer against an employee (ASN). Those who become ASN based on Article 1 point 2 of Act no. 5 of 2014 are State Civil Officers (PNS) and Contract Officers (PPPK). Then, the Personnel Supervisor Officer (PPL see Article 1 point 14 of Act No. 5 of 2014 is an official who has the authority to determine the appointment, transfer, and dismissal of ASN employees and develop ASN management in government agencies in accordance with statutory provisions).

❖ Settlement of ASN Employee Disputes

Resolving ASN employee disputes according to the provisions of Article 129 paragraph (1) of Act No. 5 of 2014 is carried out through Administrative Efforts. The Administrative efforts, according to Article 129 paragraph (2) Act No. 5 of 2014, consist of objections and administrative appeals.

- Objection in accordance with Article 129 paragraph (3) of Act no. 5 of 2014 submitted in writing to the superior official who has the authority to punish.
- An administrative appeal in accordance with Article 129 paragraph (4) of Act No. 5 of 2014 was submitted to the ASN Advisory Body.

3.6 Administrative Efforts Act no. 30 of 2014 Versus Administrative Efforts of Act no. 5 of 2014

Administrative Efforts, as regulated in Act No.30 of 2014 as *lex generalis*, and Administrative Efforts as regulated in Act No.5 of 2014 and Administrative Efforts as regulated in Government Regulation No.53 of 2010 as *lex specialist*, cover and complement each other implicitly, hence creating a perfectly integrated settlement of personnel disputes and ASN employee disputes. Every employment dispute and ASN dispute must be resolved first before being submitted to the State Administrative Court.

4 Conclusion

The combination of TUN dispute resolution after Administrative Efforts based on Act No. 5 of 1986 and Act No. 30 of 2014 has implicitly formed a perfectly integrated administrative justice system. All TUN and/or Government Administration dispute resolution is first carried out through administrative efforts. The administrative effort regulations in Law No. 5 of 1986 and Law No. 30 of 2014 cover and complement each other. So, administrative efforts are used as a *premium remedium*, and PTUN institutions are used as the *ultimate remedium*.

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