INTERNATIONAL JOURNAL OF RESEARCH CULTURE SOCIETY ISSN: 2456-6683 Volume - 4, Issue - 6, June – 2020
Monthly, Peer-Reviewed, Refereed, Indexed Journal Scientific Journal Impact Factor: 5.245
Received on :16/06/2020 Accepted on : 29/06/2020 Publication Date: 30/06/2020

Competency Absolute of Administrative Court in Indonesia for Applications That Are Not Responsible By the Institution And/Or Government Officials

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Abstract: *The existence of the Administrative Court as part of the exercise of judicial power has been affirmed in the 1945 Amendment. Since the enactment of Law Number 30 of 2014 concerning Government Administration, it has brought significant changes to the absolute competence of the Administrative Court, where competence was initially limited then became wider. In addition, Article 53 of the Government Administrative Law also regulates the absolute competence of the Administrative Court in terms of the silence of Government Intitution and/or officials at the request of citizens, whereas in Article 53 of Law Number 5 of 1986 concerning Administrative Court the absolute competence of the Administrative Court in terms of the silence of Government Intitution and/or officials is basically regulated. Although the two regulations govern the same thing, namely regarding the absolute competence of the Administrative Court for requests that are not responded to by Government Intitution and / or Offices, but for the material there are different legal consequences, in addition there are also differences regarding legal mechanisms and remedies used in that case. The difference in the provisions in Article 3 Administrative Court Law and Article 53 Government Administrative Law on applications not responded to by the Intitution and / or Government Official also has legal implications, namely the emergence of norm conflicts.*

Key Words: *Absolute Competence, Administrative Court, Petition.*

1. INTRODUCTION:

Indonesia is a constitutional state based on Article 3 of the 1945 Constitution. The formal definition of rechtsstaat (the rule of law), as stated by Friedrich Julius Stahl, form of the state according to law, which contains four main elements, namely recognition of basic human rights, there is a division of powers, a government based on laws and regulations, and an administrative court.[1] The existence of an administrative court in Indonesia is emphasized in Article 24 paragraph (2) of the 1945 Constitution, states:

"Judicial power is exercised by a Supreme Court and a judicial institution that subordinates it to the General Courts, the Religious Courts, the Military Courts, and the Administrative Courts, and by a Constitutional Court."

Regulations regarding administrative justice are specifically regulated first with Act Number 5 of 1986 concerning Administrative Court, and subsequently underwent two changes through Law Number 9 of 2004 and Act Number 51 of 2009. Authority of Peratun in Article 47 of the Law Administrative Court is examining, deciding, and resolving Administration Disputes. Administrative Dispute is a dispute arising in the field of administration between a civil person or legal entity and a administrative institution or official, both at the central and regional levels, as a result of the issuance of a administration decision, including employment disputes based on statutory regulations applicable. In addition to the written decision issued by the Intitution and/or Government Official, the Administration court is also authorized to examine, decide upon and settle the lawsuit against the actions of the Intitution and/or Government Official who has not issued a decision, whereas that is an obligation, according to the Administrative Court Law The Intitution and/or Government Official has refused to issue the said decision or has issued a decision on the refusal. The lawsuit is called a negative fictitious suit. The regulation is intended so that government bodies or officials always be responsive and orderly in providing services to the public, bearing in mind that not doing anything can be submitted to the administrative judicial institution. Overall, Article 3 of the Administrative Court Law has broadened the scope of the absolute competence of the Administrative Court.[2]

Regarding public requests that are not responded to by Government Officials in the context of negative fictitious decisions, these are also regulated in Article 53 of Law Number 30 Year 2014 concerning Government Administration. The Government Administrative Law guarantees basic rights and provides legal protection to citizens and guarantees the implementation of state duties as required by a rule of law. This law is a material law of the Administrative Court system. The Law on Government Administration also forms the basis of the administration of government in an effort

to improve good governance and as an effort to reduce Corruption, Collusion and Nepotism, to create a better, transparent and efficient bureaucracy.

The Government Administration Act has brought significant changes to the competence of the Administrative Court, because the absolute competence of the initially limited Administrative Court has become wider. Understanding Decisions and the scope of Decisions in the Government Administration Act is broader than Decisions as objects of disputes Administrative Court according to the Administrative Court Law.[3]

Article 53 The Government Administration Law regulates that institution or government officials do not stipulate or make decisions and / or actions which become their obligations in accordance with statutory regulations, within 10 (ten) working days after the application has been received in full, then the application is considered legally granted. This is known as a positive fictitious decision. This is also known as the principle of Accepti (fictum Positum), which is that if the time determined in making a decision has passed the specified time limit, and the decision has not been issued then, the official is deemed issued. In the event that the institution or government officials does not determine or make a decision and / or action on an application, the injured applicant may submit an application to the court to obtain a decision on receipt of the request.

Furthermore, based on Article 53 of the Government Administration Act, the Supreme Court as an institution that has the authority to regulate the implementation of procedural law in judicial bodies has issued the Republic of Indonesia's Supreme Court Regulation No. 5 of 2015 concerning Guidelines for Procedures to Obtain Decisions on Acceptance of Requests to Obtain Decisions and / or Actions of institution or government officials, which are then revoked and have been replaced with the Republic of Indonesia's Supreme Court Regulation No. 8 of 2017 concerning Procedure Guidelines for Obtaining Decisions on Acceptance of Requests to Obtain Decisions and / or Actions of institution or government officials.

From the context of these two conflicting norms, which are contained in two Laws which regulate the same material but with different legal consequences both materially and formally, it will be an interesting legal issue to understand about the two concepts of the decision and its validity in administrative dispute resolution, especially in the Administrative Court for justice seekers.

2. CONCEPTUAL FRAMEWORK:

a. Absolute competence
Absolute competence (absolute authority / attribution of judicial power) is the authority of a judicial institution in examining certain types of cases and absolutely cannot be examined by other court institution.[4]

b. Administrative Courts
Administrative Court are legally in the General Provisions of Article 4 of Law No. 5 of 1986 is one of the executors of judicial power for the people seeking justice against administrative disputes.

c. Application
Based on the provisions of Article 1 number 1 of the Republic of Indonesia's Supreme Court Regulation No. 8 of 2017 concerning Guidelines for Procedures for Obtaining a Decision on the Receipt of an Application to Obtain Decisions and / or Actions of institution or government officials. Application is a request that is submitted in writing to the court if the application is considered legally granted because the institution or government officials does not determine the decision and / or take action.

d. Administrative Institution or Officer
Administrative Institution or Officer, in Article 1 number 8 in the Administrative Court Law is a Administrative Istitution or Officer is an Intitution or Officer that carries out governmental affairs based on applicable statutory regulations

3. THEORITICAL FRAMEWORK:

a. State Law Theory
State Law *(Rechtsstaat)* according to F.J. Stahl has the following elements: first, recognition and protection of human rights; second; the separation and distribution of state power *(trias politica)*; third, the government based on law *(wetmatig bestuur)*; fourth, the existence of administrative court
state law

b. Authority Theory
The authority that comes from these laws and regulations is obtained through three ways, namely attribution, delegation, and mandate. Regarding attribution, delegation and mandate, H.D. van Wijk / Willem Konijnenbelt as quoted by Ridwan, defines it as follows:[5]
1) Attribution, granting of government authority by the legislators to government organs.
2) Delegation, delegation of governmental authority from one governmental organ to another governmen organ.
3) Mandate, a mandate occurs when a government organ allows its authority to be carried out by another organ

c. Legislative Theory
To resolve conflicts between legal norms (legal antinomy), the principles of conflict resolution (principles of preference) apply, namely:[6]
1) *Lex superiori derogat legi inferiori*, Higher laws and regulations will knock out lower laws and regulations.
2) *Lex specialis derogat legi generali*, special rules will knock out rules that are general in nature or special rules that must take precedence.
3) *Lex posteriori derogat legi priori*, the new rules overpower or override the old ones.

4. LITERATURE REVIEW:

Administration institution or officials is briefly referring to: anything and anyone who is based on the prevailing laws and regulations when carrying out a field of government affairs, then at the time of doing so he can be considered to be a status of Administration institution or officials.[7] Every action taken by a Administration institution or officials must be based on its authority. Authority is formalized power over a certain group of people, as well as power over a certain field of government unanimously that comes from legislative or government authority, whereas authority (competence, bevoegdheid) only concerns a certain part or certain area.[8]

The principle of legality implies that the authority of government originates from laws and regulations, meaning that the source of authority for the government is legislation. Theoretically, the authority derived from the laws and regulations is obtained through three ways, namely attribution, delegation, and mandate.[9]

Government decisions that lead to legal consequences for people or legal entities, can be brought to court by the Administrative Court, if the government decision according to the person or legal entity affected by the decision is contrary to statutory regulations or the General Principles of Good Governance. Article 4 of the Law on Administrative Court stipulates that: *" Administrative Court is one of the exercise of judicial power for people seeking justice for Administration dispute"*.

The court has the duty and authority to examine, decide upon and settle state administrative disputes. Referred to as state administrative disputes as referred to in Article 1 number 10 of the Law on Administrative Court, is disputes arising in the field of administration between civil persons or legal entities and administrative istitution or officials, both at the central and regional levels, as a result of issuing administrative decisions, including employment disputes based on applicable laws and regulations.

Sjachran Basah stated, the state administrative dispute was divided into 2, namely:[10]

a. Disputes between administrations (internal disputes)
Disputes that are internal in nature, concerning competency issues disputed by one institution against other institution, are caused by overlapping authority, which can lead to obscurity of authority. In such a situation by Sunaryati Hartono it is assumed that "law of authority" arises. This happens, because in general it is not easy to determine clearly the limits of the country's administrative authority.
b. Disputes between state administrations and the people (external disputes)
The administration of the natural state carries out its task of carrying out an act of determination *(beschkkingshandeling)* which results in a provision *(beschikking)*. As a result of the administrative actions, it is not uncommon for disputes to occur due to administrative actions in the form of irregularities, thereby violating human rights and obligations and disturbing the balance between individual interests and the public interest. The strictness of these deviations, brings harm to those affected by the provisions, namely the people. "

The elements of administrative justice according to Sjachran Basah are:[11]

a. The existence of law, especially in the administrative law environment that can be applied to an issue.
b. There are concrete legal disputes, which are basically caused by the written provisions of the administration.
c. A minimum of two parties, and at least one of the parties must be the administration.
d. There is a judiciary institution and separate, which has the authority to decide whether it is neutral or impartial.
e. The existence of formal law in order to apply the law *(rechtstoepassing)* and find the law *(rechtsvinding)* "in concreto" to ensure compliance with material law.

5. METODE:

This research uses normative legal research. Normative legal research is library law research. In this normative study, the approaches used are:

a. Statutory Approach, is carried out by examining the statutory regulations from the highest norm to the lowest,
b. Case Approach, is carried out by examining cases related to the legal issues at hand. The cases examined are cases that have obtained a court decision of permanent legal force.

6. DISCUSSION:

The State Administrative Court which has absolute competence is to adjudicate a Administration dispute sued by a person / legal entity against the Administration institution/official. In addition to adjudicating a lawsuit on a Administration decision, the Administrative Court in Article 3 of the Law on the Administrative Court is also authorized to adjudicate a lawsuit against a Administrative institution / official who has not issued a decision as an obligation, whereas the time limit specified by the warehouse regulations The law on issuing the decision has passed, and the Law on the Administrative Court considers that the Administration institution / official has rejected the said decision or has issued a rejection decision.

The development of competence (authority) to adjudicate, besides being regulated by the Law of each judicial intitution, the authority to adjudicate by a judicial institution can also be found or regulated in other laws and regulations. One of them is Law Number 30 Year 2014 Regarding Government Administration. In Law Number 30 Year 2014 Regarding Government Administration, at least in the Government Administrative Law there are 3 (three) authorities to judge by the Administrative Court contained in Article 53 which regulates that:

(1) The deadline for the obligation to determine and / or make a decision and / or action in accordance with statutory provisions.
(2) If the provisions of the legislation do not specify the time limit for the obligations referred to in paragraph (1), the Government institution and / or Officer shall determine and / or make a Decision and / or Action within a maximum period of 10 (ten) working days after the application is received completely by the Government institution and / or Officer.
(3) If within the time limit referred to in paragraph (2), the Government institution and / or Official does not stipulate and / or make a Decision and / or Action, then the said application is considered legally granted.
(4) The applicant submits an application to the Court to obtain a decision on receipt of the application as referred to in paragraph (3).
(5) The court is obliged to decide on the application referred to in paragraph (4) no later than 21 (twenty one) working days after the application is submitted.
(6) Government agencies and / or officials must determine the decision to implement the court's decision as referred to in paragraph (5) later than 5 (five) working days after the decision of the court is determined.

In connection with the norm material above, regarding the condition of the attitude of government institution / officials who do not respond to the requests of citizens, actually has been regulated in the provisions of Article 3 of the Law on Administrative Court, only the provisions in Article 53 of the Administrative Law Act of government consequences determined differently (a contrario). On one hand Article 3 of the Law on the Administrative Court stipulates that the Administration Institution or Officer who receives the application is deemed to have issued a decision containing the refusal of the said application if the stipulated deadline has passed and the Administration Institution or official is silent, not serving requests that have been received. Even though Article 53 of the Government Administration Act provides further explanation, it can be understood that Article 53 of the Government Administration Act stipulates that the Administration Institution or Officer who receives the application is deemed to have issued a decision containing the said application in the case of a grace period which have been determined to have passed and the Administration Institution or official is silent, does not serve the requests that have been received.

As a result of this concept shift, its application in court proceedings can be assessed from several case studies (case approach) assessments of requests that are not responded to by government institution and / or officials, as follows:

a. Case Number: 04 / P / FP / 2016 / PTUN-JKT, decided on February 10, 2016
   Application to the Jakarta Administrative Court for its application which is not responded by the Head of the South Jakarta District Prosecutor's Office as Respondent, for the actions of the Respondent who have not determined and / or made a decision regarding the status of confiscated goods within the stipulated time period of 10 (ten) working days counted since the request for determination of the status of confiscated goods has been received completely and correctly by the Respondent as a government official as the object of the request. The Court's decision granted the Petitioners' Petition in its entirety.

b. Case Number: 2 / P / FP / 2017 / PTUN.PDG, decided on October 20, 2017
The Petitioner submits an Application to the Padang Administrative Court for his application which was not responded by the Governor of West Sumatra as Respondent, for the Respondent's actions that did not stipulate and / or make a decision regarding the revocation of 26 (twenty six) active Non-Clear and Clean mining license enactment in West Sumatra. The Court's decision granted the Petitioners' Petition in its entirety.

7. ANALYSIS:

Requests that are not responded by Government Intitution and / or Officials have experienced a shift in the concept that was originally "silent-asking-over-time-rejected" which in practical terms is called fictitious-negative then becoming "asking-silent-past-time-considered granted" in practical terms are called positive-fictitious. So that it appears that the two laws and regulations regulate the same material, namely in terms of its fictitious concept, but different legal consequences that were previously set negative, then set to be positive in the concept of a new law, while the material is equally regulated in a norm equivalent or equal in the form of a Law, while the negative-fictional concept is also not explicitly stated in the transitional provisions of the Government Administration Law concerning revocation or invalidation, so there are legal implications which are causing conflict of norms over the material. For this situation, in the face of conflicts between legal norms (legal antinomy), the Lex posteriori derogat legi priori principle is applied, ie new regulations defeat or immobilize old regulations to resolve the conflicting norms above, resulting in the previously fictional-negative concept it has been previously regulated in a statutory regulation (the Law on Administrative Court) which has been ruled out / negated by a new concept that has become fictitious-positive. In another perspective, although in relation to the application of a norm (in the case of a negative fictional concept) due to the power of conduct regulated in the Administrative Court Law, if it is confronted with the efficacy / workability (efficacy) of the norm in the sense of whether a norm existing and applicable it still has an effective effectiveness or not with the birth of a new concept (in positive fictitious terms) regulated in the Government Administration Law. Of course the old concept by itself no longer has effective.

The concept in the previous norms (negative fictitious) both by the community members and court practitioners is considered to remain in force and be used at the same time as the new norm concept (positive fictitious), it will actually cause legal uncertainty, both from the perspective of the legal concept and the legal remedies will be pursued and not in line with the essence of the formation of the Government Administration Law it self, among others is to create an orderly administration, provide legal protection to citizens and government officials, and provide the best service to the community.[12]

Based on all of the cases regarding the request that were not responded to by the government institution and/or official beforehand, it is known that the Court has granted the Petitioner's Application. The consideration, it appears that before reaching the attitude that granted the Petitioners' Petition, the Court first considered several aspects in its decision, including the Petitioner's legal standing, the Petitioner's interests, court authority, the Respondent's Petition and the Petitioner's petition materials. So even though according to the provisions of Article 53 Paragraph (3) the Law on the Administrative Court regulates that if within the time limit referred to in paragraph (2), Government Institution and / or Government does not determine and / or make Decisions and / or Actions, then the said application is considered legally granted and Paragraph (4) The Applicant submits an application to the Court to obtain a decision on receipt of the application as referred to in paragraph (3), based on the provisions -the provisions referred to in the Application submitted by the Petitioner to the Court are not necessarily granted, but through a testing mechanism at the hearing.

The second case study, is further analyzed in terms of the relationship between Article 53 of the Government Administration Law and Article 53 of the Law on Administrative Courts. Whereas when examined, from the second case study in Case Number: 2/P/FP/2017/PTUN.PDG, which was decided on October 20, 2017 it is known that, the Petitioner requested that the Respondent issue a Decision on the revocation of 26 (twenty six) IUP Active Non Clear And Clean that has not expired in the Province of West Sumatra, as requested, Number: 143/SK-E/LBH-PDG/VII/2017, dated July 31, 2017, page: Revocation of Non-Clear and Clean Mining Business License in Sumatra West. Furthermore, in the Decree 26 (twenty six) active and clear Non-Clean and Clean IUPs that have not expired, based on the announcement of the Directorate General of Mineral and Coal on behalf of the Minister of Energy and Mineral Resources Number: 1279.Pm/04/DJB/2017 dated June 16, 2017, from the second case, at least it was found that:

a. The Petitioner requested that the Respondent issue a revocation decision on 26 (twenty six) active Non Clear And Clean IUPs that had not expired in the Province of West Sumatra.
b. Regarding the material for the Petitioners' Petition for the Respondent, there is a decree in the form of an active Mining Business License (IUP).
c. Regarding decisions in the form of IUPs recorded respectively in the name of other parties.

From the above situation, although the case as stipulated in Article 53 of the Government Administrative Law is in the form of an Application, in fact the case is still a contentiosa case (containing a dispute) which is actually not different from the case as stipulated in Article 53 of the Administrative Court Law which is also a contentiosa case. Even though it is the same, not all applications submitted by the Petitioners to the Court constitute or fall within the scope of the Request to the Court to obtain a Decision to accept the Application, there must be criteria or limitations in the understanding of the Application. as for example in the second case study, there have been legal implications in the application of Article 53 of the Government Administration Law. If a person or a legal entity whose interests are impaired by a Administration Decree should use a claim mechanism as stipulated in article 53 of the Administrative Court Law, because in the second case study relating to the Administration Decree which has previously been published and is still active in this case the IUP, and the Administrative Decree in the form of the IUP is recorded in the name of another party, while in the case of the application as stipulated in article 53 of the Law The Government Administration Law which when examining the case is based on the examination mechanism guided by the Supreme Court Regulation 5 does not regulate the entry of parties other than the Petitioner and Respondent, while those who are registered as the owner of IUP, certainly have a legal interest to be given the opportunity in the trial examination process.

Criteria or limitations in the definition of application as referred to in Article 53 of the Government Administration Law is necessary to avoid a point of contact with the provisions of Article 53 of the Administrative Court Law, so as to avoid the lawsuit mechanism as stipulated in the Article of the Court Law Administration, community members in this case a person or a Legal Entity first choose the strategy of submitting an Application to the institution and/or official authorized to revoke a Administration Decree which has previously been issued and is still active, if not responded then can use a mechanism Application to the Court as referred to in Article 53 of the Government Administration Law.

The situation as in the second case, in the future does not happen again, along with the issuance of the Supreme Court Regulation 8 in lieu of the Supreme Court Regulation 5 by the Supreme Court. The replacement, at least one of the two aspects of the analysis presented above relating to the application material and the opportunity for third parties to proceed has been accommodated in the Supreme Court Regulation 8, as follows:

Article 3 Paragraph (2): *"Application Criteria for obtaining decisions and / or actions of government isntitutions and/or officials, namely:*

a. Application within the scope of authority of government institutions and/or officials
b. Requests for decisions and / or actions to carry out government functions
c. Requests for decisions and / or actions that have never been determined and / or carried out by government and / or officials
d. Application for the interest of the Applicant directly

Article 3 Paragraph (3): *Excludes the Application object that can be submitted to the Court, as follows*
a. An application is an implementation of a court decision that has permanent legal force; or
b. An application for a legal matter that has been filed in a lawsuit.

8. CONCLUSION:

From the discussion as explained earlier, several conclusions can be drawn, including:

a. The absolute competence of the Administrative Court in the assessment of applications not responded to by Government Institutions and / or Officers has been regulated in Article 3 of the Law on Administrative Courts. This is regulated by a concept that can be explained simply "please-silently past time-rejected" which in practical terms is called or known as fictitious-negative. Then related to the absolute competence of the Administrative Court in the assessment of requests that are not responded to by the Government Institutions and / or Official, it is also regulated in Article 53 of the Government Administration Law, so that over the regulation there has been a shift in the concept which can simply be explained as "please - silence - over time - is considered granted "which in practical terms is called positive-fictitious.
b. The difference in the provisions in Article 3 of the Law on Administrative Court and Article 53 of the Government Administrative Law on applications that have not been responded to by these Government Institutions and/or Officials has legal implications both in normative aspects and in judicial review in practice (practice), among others:
    1) There are circumstances that the two laws and regulations regulate the same material, namely in terms of fictitious concepts, but different legal consequences that were previously set negative, then set to be positive in the concept of a new law, while the material is equally regulated in a norm equivalent or equal in the form of a Law, while the negative-fictional concept is also not explicitly stated in the transitional provisions of the Government Administration Law concerning revocation or invalidation.
    2) In its assessment in the Court (practice) as in the second case study, for example, it is known that there are legal implications because there are no criteria or limitations in the understanding of the Application as stipulated in

Article 53 of the Government Administration Law and no other parties are interested. so that in the case study, because the Petitioner's petition is related to the Administrative Decree which has previously been published and is still active, and the Administrative Decree in the form of the IUP is recorded in the name of another party, so the examination is in contact with the provisions of Article 53and Article 83 of the Law on Administrative Courts. But then, the Supreme Court has issued Supreme Court Rules 8 as a Substitute for Supreme Court Rules 5 by the Supreme Court, which then regulates the criteria of the request and does not include the object of the Application that can be submitted to the Court.

9. SUGGESTIONS:

The suggestions given by researchers are as follows:

a. The state institution authorized to form a law in this case the DPR together with the Government shall amend the Law on the Administrative Court and adjust it to the Government Administrative Law, particularly with regard to the regulation of applications which are not responded to by the Government Institution and/or Official
b. Shifting the concept of a request that is not responded to by the Government Institution and/or Official to be positive-fictive, needs to be confirmed by the Supreme Court regarding the inapplication of the fictitious-negative concept, in order to avoid disagreements among court practitioners so that there is no registration and examination of fictitious cases. these negatives.

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