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HARMONIZATION OF STATE ADMINISTRATIVE COURT LAW AND OTHER LAWS CONCERNING THE STATE ADMINISTRATIVE COURTS EXCLUSIVE AUTHORITY

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Abstract

This study describes and analyzes the urgency of harmonizing the exclusive authority of State Administrative Court as stipulated in the State Administrative Court Law and Non-State Administrative Court Law, and how to do this harmonization in relation to the implementation of legality principles, the theory of hierarchical regulations, and laws on the establishment of laws and regulations. As normative research using statutory and conceptual approaches, this research used a descriptive qualitative analytical method. It is expected that the results of this research can contribute to the development of Constitutional law and State Administrative Law, as well as to contribute ideas to policymakers in making and formulating various regulations related to appropriate methods to overcome disharmony in regulating the exclusive authority of the State Administrative Court to ensure that the law issued on the exclusive authority of the State Administrative Court meets society's needs for good laws and regulations. This study concluded the following points: first, it is necessary to harmonize the State Administrative Court Law and laws other than State Administrative Court on the exclusive authority of the State Administrative Court to avoid any overlap to ensure harmonization of the laws. Secondly, the usual drafting method is more appropriate than the omnibus method because we only need to amend the State Administrative Court Law, while the other laws remain unamended.

Keywords: *harmonization, exclusive administrative court authority, state administrative court law.*

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A. Introduction

Law No. 5 of 1986 on the State Administrative Court has been amended twice, through Law No. 9 of 2004 and Law No. 51 of 2009. According to these three Laws on State Administrative Court, the exclusive authority of the State Administrative Court is to adjudicate state administrative disputes. This state administrative dispute can be in the form of a written decision issued by a state administrative agency/official (TUN), which is detrimental to a person or civil legal entity.[2] In addition, state administrative decisions can also be rendered by state administrative agencies or officials not issuing decisions, although this is their obligation.[3]

The exclusive authority of the state administrative court as stipulated in the State Administrative Court Law has remained unamended. Apart from this fact, in its development, several new laws were issued, namely Law No. 14 of 2008 on Public Information Disclosure, Law No. 2 of 2012 on Land Acquisition for Public Utilities Construction, Law No. 30 of 2014 on Government Administration, and Law No. 7 of 2017 on General Elections. According to these laws, the State Administrative Court has the authority to adjudicate disputes regarding the material regulated in the law.

In practice, however, the procedure as stipulated in the State Administrative Court Law is not fully applied in Law No. 14 of 2008, Law No. 2 of 2012 and Law No. 7 of 2017. This procedure includes a preparatory hearing prior to the main hearing,[4] the grace period for filing a lawsuit of 90 (ninety) days from the date of receipt or announcement of the decision of the state administrative agency or official,[5] the case settlement that differs from the common hearing procedures[6] or speedy procedures according to the State Administrative Court Law,[7] and legal remedies not in accordance to the regulation in the State Administrative Court Law.[8] While the State Administrative Court Law never stipulates any single article indicating the possibility to have a special examination which will be regulated in a separate law.

[2] Law No. 5 of 1986 on the State Administrative Court amended through Law No. 9 of 2004 on Amendments to Law No. 5 of 1986 on the State Administrative Court and Law No. 51 of 2009 on the Second Amendment to Law No. 5 of 1986 on the State Administrative Court (State Administrative Court Law) art. 1 point 4.

[3] State Administrative Court Law (n 2) art. 3 (1).

[4] State Administrative Court Law (n 2) art. 63.

[5] State Administrative Court Law (n 2) art. 55.

[6] Supreme Court Circular No. 2 of 2014 on Settlement of Cases at the First and Appeal Levels in 4 (Four) Judiciary Environments.

[7] State Administrative Court Law (n 2) art. 99.

[8] State Administrative Court Law (n 2) art. 122; art. 131; art. 132.

Law No. 30 of 2014 grants authority not yet regulated in the State Administrative Court Law. These new authorities include the expansion of the authority of the State Administrative Court which not only examines State Administrative Decisions but also government administrative actions,[9] the General Principles of Good Governance (AUPB) which are different from those regulated in the State Administrative Court Law,[10] the authority of the State Administrative Court to receive, determine whether there is an element of abuse of authority committed by government officials,[11] the obligation of State Administrative Court to render a decision on the acceptance of the application or often known as positive fictional decisions,[12] a regulation regarding the obligation to take prior administrative measures before filing a lawsuit to the State Administrative Court,[13] a regulation regarding the obligation to take prior administrative measures before filing a lawsuit to the State Administrative Court,[14] and a regulation regarding the obligation to take prior administrative measures before filing a lawsuit to the State Administrative Court.

From this description, it is clear that in practice, the authority of the State Administrative Court is also set forth in other laws that sometimes do not comply with the stipulation in the State Administrative Court Law. Some also regulate new matters, and some amend the previous arrangement, which in practice may lead to legal disharmony. On this basis, this research aims to analyze the exclusive authority of the State Administrative Court as stipulated in the State Administrative Court Law and other laws mentioned above related to the harmonization of laws and regulations.

B. Problem Formulation

This article focused to answer two problem formulations, namely: why is it necessary to harmonize the authority of the State Administrative Courts as stipulated in the State Administrative Court Law and the authority of the State Administrative Courts stipulated in other laws? And, how can the State Administrative Court Law and other laws relating to the exclusive authority of the State Administrative Court be harmonized?

[9] Law No. 30 of 2014 on Government Administration, art 1 number 1, number 5, number 7, number 8, number 18.

[10] Law No. 30 of 2014 on Government Administration (n 9) art. 10.

[11] Law No. 30 of 2014 on Government Administration (n 9) art. 21.

[12] Law No. 30 of 2014 on Government Administration (n 9) art. 53.

[13] Law No. 30 of 2014 on Government Administration (n 9); Supreme Court Regulation No. 6 of 2018 on Administrative Efforts, art. 75-77.

[14] Law No. 30 of 2014 on Government Administration (n 9) art. 48.

C. Methodology

As normative legal research, this research was conducted by reviewing literature and secondary data using the legal approach and the conceptual approach. The statutory approach[15] is done by examining all laws and regulations that are related to the legal issues examined. This research particularly examines the 1945 Constitution of the Republic of Indonesia, the State Administrative Court Law, Law no. 14 of 2008 concerning Public Information Disclosure, Law no. 2 of 2012 concerning Land Acquisition for Public Utilities Construction, Law no. 30 of 2014 concerning Government Administration, Law no. 7 of 2017 concerning General Elections, the Law concerning the Sequence of Legislation, and the Supreme Court Regulation which serves as the technical regulations for the implementation of these laws.

This approach analyzes the harmonization will between one law and another law or between laws and the constitution or between regulations and laws. This analysis is expected to solve the issues at hand, including providing reasons for the need for harmonization of laws, particularly the harmonization between the State Administrative Court Law and other laws on the authority of the State Administrative Court.

The conceptual approach[16] was applied to find out the reasons for the need to harmonize the state administrative court law with the government administration law, the public information disclosure law, the land acquisition law for public interest, the Election Law relating to the exclusive authority of the State Administrative Court. In addition, it is also important to know how to harmonize the state administrative court law with other laws as mentioned above relating to the exclusive authority of the State Administrative Court.

On this basis, this research used the concept of harmonization of laws and regulations as the main approach. The concept of harmonization of laws and regulations is linked to the hierarchical theory of laws and regulations and principles in the implementation of laws and regulations. An understanding of these views and doctrines serves as a basis for building a legal argument for solving the issues at hand.

[15] Peter Mahmud Marzuki, *Penelitian Hukum* (Prenada media Group 2019) 133.

[16] Marzuki (n 15) 134. The Conceptual Approach departs from the widely developed views and doctrines in the scientific law that are relevant to the current research.

D. Discussion and Results

1. Exclusive Authority of the State Administrative Court Under the State Administrative Court Law and Other Laws

a. Exclusive Authority of the State Administrative Court Under the State Administrative Court Law

The exclusive authority of the State Administrative Court[17] has never been amended, in that it constantly aims to adjudicate state administrative disputes or disputes that arise in the field of state administration between civil persons or legal entities and State Administrative agencies or officials both at the central and regional levels as a result of the issuance of state administrative decisions, including employment disputes.[18] Meanwhile, a state administration decision refers to a written decision issued by a State Administrative Agency or Official, which contains a state administrative legal action based on concrete, individual and final applicable laws and regulations, which creates legal consequences for a person or civil law entity[19]. If a State Administrative Agency or Officer does not issue a decision, while it is their obligation, this matter is equated with a State Administrative Decree.[20]

Furthermore, the elucidation section of each article defines "government affairs" as activities that are executive in nature ;[21] by "laws and regulations" is defined as all generally binding regulations issued by the People's Legislative Body together with the Government both at the central and regional levels, as well as all decisions of the State Administrative Agency or Officials, both at the level and at the regional level, which is also generally binding[22]; while the term 'dispute' referred to here is bound to have a special meaning in accordance with the function of the State Administrative Court, namely assessing differences of opinion regarding the application of the law. In terms of decision making, the State Administrative Agencies or Officials principally constantly carries the interests of the public and society, although, in certain matters or cases, some individuals or civil entities may deem the decision as leading to losses. Therefore, in the principles of State

[17] State Administrative Court Law (n 2).
[18] State Administrative Court Law (n 2) art. 1 point 4.
[19] State Administrative Court Law (n 2) art. 1 point 3.
[20] State Administrative Court Law (n 2) art. 3 (1).
[21] State Administrative Court Law (n 2) art. 1 point 1.
[22] State Administrative Court Law (n 2) art. 1 point 1 of 1.

Administrative Law, the person concerned shall be given the opportunity to file a lawsuit in court.[23]

Article 2 of the State Administrative Court Law regulates State Administrative Decisions which are not included in the meaning of State Administrative Decisions according to the State Administrative Court Law. The State Administrative Decisions referred to in Article 2 of the State Administrative Court Law include: 1) State Administrative Decisions, which are civil law acts; 2) State Administrative Decisions, which is a general arrangement; 3) State administrative decisions that still require approval; State Administrative Decisions issued under the provisions of the Criminal Code or the Criminal Procedure Code or other laws and regulations that are criminal in nature; 4) State Administrative Decisions issued on the basis of the results of the examination of the judiciary based on the provisions of the applicable laws and regulations; 5) State Administrative Decisions regarding the administration of the Armed Forces of the Republic of Indonesia; 6) Decisions of the Election Committee both at the central and regional levels regarding the general election results.

The exclusive authority of the State Administrative Court in addition to the above is limited by the following stipulation: "The new court has the authority to examine, decide and resolve State Administrative disputes if all the relevant administrative efforts have been used."[24] The State Administrative Court Law also provides that:[25]

> The court is not authorized to examine, decide, or settle certain State Administrative disputes in the event that the disputed decision is issued: 1) During a time of war, a state of emergency, a state of natural disaster, or an extraordinary situation which is dangerous based on the applicable laws and regulations; 2) In an urgent situation for the public interest based on the applicable laws and regulations.

Subsequent restrictions, although temporary in nature, only existed at the beginning of the formation of the Administrative Court Law. It was proven that state administration disputes that have not been decided by the Court within the general court environment at the time of the formation of the Administrative Court Law

[23] State Administrative Court Law (n 2) art. 1 point 4.
[24] State Administrative Court Law (n 2) art. 48 (2).
[25] State Administrative Court Law (n 2) article 49.

were still being examined and decided by the Court within the General Court environment.[26]

The exclusive authority of the State Administrative Court in its development is not only contained in the State Administrative Court Law, but is also stipulated in several other laws, which will be discussed under the authority of the State Administrative Court according to the laws other than the State Administrative Court Law.

b. Exclusive Authority of the State Administrative Court According to the Laws Other than the State Administrative Court Law

1) According to Law no. 14 of 2008 on Public Information Disclosure

The implementation of this public information disclosure law involves several parties, namely Public Agencies, Public Information Users, and the Information Commission. In this context, Public Agencies refer to executive, legislative, judicial, and other bodies with the main functions and duties related to the administration of the state; Public Information Users refer to people who use public information; The Information Commission is an institution that establishes technical guidelines for public information service standards and resolves public information disputes through mediation and/or non-litigation adjudication.[27]

Filing a lawsuit over a public information dispute can be done through the State Administrative Court if the person being sued is a state actor.[28] A lawsuit can only be submitted if one or the parties to the disputed state in writing do not accept the Adjudication decision from the Information Commission no later than 14 (fourteen) working days after receiving the decision (Article 48 paragraph (1). Furthermore, the parties who do not accept the decision of the State Administrative Court, may appeal to the Supreme Court no later than 14 (fourteen) days after receiving the predetermined decision of the State Administrative Court.[29]

Based on the aforementioned description, there is no substantive provision that contradicts the understanding of the authority of the State Administrative Court according to the Public Information Disclosure Law. Given the fact that

[26] State Administrative Court Law (n 2) art. 142 (1).
[27] Law No. 14 of 2008 on Public Information Disclosure art. 1 number 1, number 11, number 3.
[28] Law No. 14 of 2008 on Public Information Disclosure (n 27) art. 47 (1).
[29] Law No. 14 of 2008 on Public Information Disclosure (n 27) art. 50.

several state administrative bodies/officials constantly issue decisions, some individual parties as information users can suffer from losses if they do not get the desired public information. Therefore, an Information Commission was established to resolve public information disputes through alternative dispute resolution. This is a kind of administrative settlement which is also known in the State Administrative Court Law. A lawsuit can only be filed if one or the parties to the dispute state in writing that they do not accept the Adjudication decision from the Information Commission.

The main difference in this law lies in the limitations period for filing a lawsuit, namely within 14 days after the adjudication decision, while the State Administrative Court Law limits filing a lawsuit to 90 days from the issuance of the State Administrative Decision. Another different point is seen in the stipulation for those who are not satisfied with the decision of the State Administrative Court. They are required to immediately file an appeal to the Supreme Court in case they are not satisfied with the decision. The technical follow-up to this law is regulated in the Supreme Court Regulation No. 2 of 2011 on Procedures for Settlement of Public Information Disputes.

2) According to Law No. 2 of 2012 concerning Land Procurement for Public Utilities Construction

The implementation of land acquisition for public utility construction, especially in terms of determining the location involves several parties, namely: state institutions, ministries, and non-ministerial government agencies, provincial governments, district/city governments, and State-Owned Legal Entities, State-Owned Enterprises acquiring land, parties entitled to land/owners of land rights, as well as Governors who make decisions if there are objections to the decision regarding the designation of the location of land for public utility construction, which was previously carried out through public consultation.[30]

From this description, there is nothing that conflicts with the understanding of the authority of the State Administrative Court according to the Law on Land Acquisition for Public Interest, because there are state administrative bodies/officials who issue decisions, there are individual parties as owners of land rights who can suffer loss if an agreement is not reached with the government

[30] Law No. 2 of 2012 on Land Acquisition for Public Utilities Construction, art. 19.

party demanding the land, as well as the Governor who will resolve the issue before it is submitted to the State Administrative Court. In other words, if a Public Consultation on the development plan has been carried out within a maximum period of 60 (sixty) working days, and a repeat Public Consultation has been carried out with objecting parties within a maximum period of 30 (thirty) working days, and there are still parties those who object to the designated construction location, the agency requiring the land must report the objection to the local Governor, to be followed up by forming a team to conduct a review of the objection to the construction site plan. The results of the team's study are in the form of recommendations on the acceptance or rejection of objections to the construction site plan issued within a maximum period of 14 (fourteen) working days from the receipt of the application by a governor. Based on these recommendations, the governor issues a letter of acceptance or rejection of objections to the construction site plan. In the event that the objection to the construction site plan is rejected, the Governor shall determine the construction site plan. In the event that an objection is received on the planned construction site, the Governor will notify the Agency requiring the land to submit a construction location plan elsewhere.[31] This is a kind of administrative settlement which is also known in the State Administrative Court Law.

In case of further objections, a party entitled to select the location can file a lawsuit with the local State Administrative Court no later than 30 (thirty) working days after the issuance of the construction site plan. The State Administrative Court decides whether to accept or reject the claim as referred to within 30 (thirty) working days after receipt of the claim. Parties objecting to the decision of the State Administrative Court within a maximum period of 14 (fourteen) working days may submit an appeal to the Supreme Court of the Republic of Indonesia. The Supreme Court is required to render a decision within a period of 30 (thirty) working days after the request for cassation is received. A court decision that has permanent legal force becomes the basis for the continuity or cessation of Land Procurement for Public Utilities Construction.[32] The main difference in this law lies in the time for filing a lawsuit of 30 working days after

[31] Law No. 2 of 2012 on Land Acquisition for Public Utilities Construction (n 30) art. 19, art. 20, art. 21, art. 22.

[32] Law No. 2 of 2012 on Land Acquisition for Public Utilities Construction (n 30) art. 23.

the decision is made on the construction site issued by the Governor, while the State Administrative Court Law limits filing a lawsuit is 90 days after the issuance of the State Administrative Decree. Another different point lies in the regulation. Those who are not satisfied with the decision of the State Administrative Court, can immediately submit an appeal to the Supreme Court as the next legal action. The State Administrative Court and the Supreme Court must have issued a decision within 30 (thirty) working days after the request was received. The technical follow-up to Law no. 2 of 2012 is regulated in the Supreme Court Regulation No. 2 of 2016 concerning disputes in determining a suitable location for construction.

3) Authority of the State Administrative Court According to Law No. 7 of 2017 concerning Elections

Another authority of the State Administrative Court is stipulated in Law No. 7 of 2017 on General Elections. To hold these elections, it is necessary to have election organizers. Article 1, point 7 of the Election Law stipulates that election organizers are institutions that organize elections, consisting of the General Election Commission (KPU), the General Election Supervisory Agency (Bawaslu), and the Ethics Council of Election Organizers as a single unit of the Election Administration to elect members of the DPR, members of the DPD, the executives: President and Vice President, and to elect members of the Regional House of Representative Council (DPRD) through direct vote. Meanwhile, Article 1 point 27 of the Election Law stipulates that election participants are political parties for the election of members of the DPR, members of the Provincial DPRD, members of the regency/city DPRD, individual representatives of the election of members of the DPD, and pairs of candidates proposed by political parties or coalitions of political parties for Presidential and Vice-Presidential Election.

An electoral dispute includes disputes that arise in the field of election state administration between candidates for members of the DPR, DPD, Provincial DPRD, Regency/Municipal DPRD, or potential Political Parties Contesting Election, or prospective Pairs of Candidates with KPU, Provincial KPU, and Regency/Municipal KPU as a result of issuance of KPU decisions, Provincial

KPU decisions, and Regency/Municipal KPU decisions. Electoral disputes are disputes that arise between:

a) KPU and political parties contesting election that do not pass the verification as a result of the issuance of a KPU Decree concerning the Determination of Political Parties Contesting Election as referred to in Article 173;
b) KPU and Candidate Pairs that do not pass the verification as a result of the issuance of a KPU Decree regarding the Determination of Candidate Pairs as referred to in Article 235; and
c) KPU, Provincial KPU, and Regency/Municipal KPU with candidates for members of DPR, DPD, Provincial DPRD, and Regency/Municipal DPRD who have been removed from the final list of candidates as a result of the issuance of a KPU Decree concerning the Establishment of the Final Candidate List as referred to in Articles 256 and 266.

Pursuant to article 470 of the Election Law, a dispute resolution of the election process is resolved at the State Administrative Court. Furthermore, article 471 of the Election Law stipulates the procedure for settling disputes over the election process through the State Administrative Court. Submission of lawsuits over the election state administration disputes as referred to in Article 470 to the State Administrative Court, is carried out after the administrative measures at Bawaslu as referred to in article 467, article 468 and article 469 paragraph (2) have been used.

From this description, this type of electoral dispute generally involves several parties as stipulated in the State Administrative Court Law, namely State Administrative Agencies/Officials who issue State Administrative Decisions (Provincial KPU, Regency/City KPU), the parties who accept the decision, (prospective candidate of the DPR, DPD, Provincial DPRD, Regency/Municipal DPRD, or election contested by political parties, or potential Candidate Pairs who may not accept decisions that are detrimental to them), and the administrative efforts that will be completed by Bawaslu.[33]

While Law no. 7 of 2017 limits the time for filling lawsuits over election state administration disputes is carried out no later than five working days after the announcement of the Bawaslu decision, the State Administrative Court Law stipulates that it should be done no later than 90 days. In the event that the lawsuit is incomplete, the plaintiff can correct and complete the lawsuit no later than 3

[33] Law No. 7 of 2017 on Elections art. 467, art. 468, art. 469 (2).

(three) working days from the receipt of the lawsuit by the State Administrative Court. If within that time the plaintiff has not completed the lawsuit, the judge renders a decision that the lawsuit cannot be accepted, and that no legal remedies can be taken against this decision. The State Administrative Court examines and decides on a lawsuit no later than 21 (twenty-one) working days after the claim is declared complete. The decision of the State Administrative Court as referred to in paragraph (6) is final and binding and other legal remedies cannot be taken. KPU is obliged to follow up on the Decision of the State Administrative Court no later than 3 (three) working days.

In order to deal with disputes over the election process, a special election state administrative council will be formed consisting of special carrier judges who work in the State Administrative Court. They are selected based on a decision by the Chief Justice of the Supreme Court of the Republic of Indonesia. This special judge shall have practiced his duties as a judge for at least 3 (three) years unless in a court having no judges who have worked for at least 3 (three) years. During the handling of election state administration disputes, this special judge was released from his duties to examine, try and decide on other cases. Special judges must be well acknowledged in elections.[34] The technical follow-up to this law is regulated in the Supreme Court Regulation No. 5 of 2017 concerning Electoral disputes

4) According to Law no. 30 of 2014 concerning Government Administration

Expansion of authority of the State Administrative Court according to Law No. 30 of 2014 is found in the provisions of Article 1 number 5, number 7 and number 8, which mandates that the State Administrative Court not only examines State Administrative Decisions but also Government Administrative Actions, namely the actions of government officials or other state administrators to ensure concrete actions in the context of administering government. The follow-up to this Law is technically regulated in the Supreme Court Regulation No. 2 of 2019 concerning Disputes on Government Actions.

The disputes over government actions are part of the exclusive authority of the State Administrative Court as regulated in Law No. 30 of 2014. However, the law does not regulate the technical implementation of the proceedings.

[34] Law No. 7 of 2017 on Elections (n 33) art. 472.

Meanwhile, in the State Administrative Court Law, government actions are not included in the exclusive authority of the State Administrative Court. In addition, there are no regulations regarding the technical proceedings. Based on the above issues, the Supreme Court issued Supreme Court Regulation No. 2 of 2019 which states that the phrase "State Administrative Decision" and the phrase "State Administrative Disputes" listed in Chapter IV of State Administrative Court Law must also be interpreted as "Government Action" in the context of resolving Government Action Disputes according to Regulations of the Supreme Court. The provisions of the procedural law that apply to settling government actions are the same as settling disputes over state administrative decisions as stipulated in Chapter IV of the State Administrative Court Law No. 5 of 1986 on the State Administrative Court, which remains in force, unless otherwise provided for in this Supreme Court Regulation.

Every Decision and/or Action must be based on statutory provisions and the General Principles of Good Governance (AUPB). In connection with AUPB Law No. 30 of 2014 regulates differently from what is regulated in the State Administrative Court Law. According to Law no. 30 of 2014, the definition of AUPB includes the principles of legal certainty, benefit, impartiality, accuracy, preventing abuse of authority, openness, public interest, and good service.[35] On the other hand, the State Administrative Court Law defines AUPB as legal certainty, orderly administration of the state, public interest, transparency, proportionality, professionalism, and accountability, as referred to in Law no. 28 of 1999 concerning the Implementation of a State that is Clean and Free from Corruption, Collusion, and Nepotism.[36] This different interpretation regarding AUPB will however be resolved in Article 10 paragraph 2 of Law No. 30 of 2014, because its provision states that other general principles outside the AUPB as referred to in paragraph (1) can be applied as long as it is used as the basis for the judge's assessment contained in a Court decision that has permanent legal force.

Apart from that, the additional authority of the State Administrative Court is also stipulated in the provisions of Article 21 paragraph (1) to (6) of Law Number 30 of 2014, that the State Administrative Court has the authority to

[35] Law No. 30 of 2014 on Government Administration (n 9) art. 10 (1).
[36] State Administrative Court Law (n 2) art. 53 (2).

receive, examine and decide on applications from agencies and/or government officials submitting applications to the Court to assess whether or not there was an element of abuse of authority in the decisions and/or actions they took. In this regard, the Supreme Court issued Supreme Court Regulation No. 4 of 2015 concerning Guidelines for Procedures in Assessing Elements of Abuse of Authority. The Supreme Court Regulation No. 4 of 2015 stipulates that the court has the authority to receive, examine, and decide on applications for assessing whether or not there is an abuse of authority in decisions and/or actions of government officials prior to criminal proceedings, after the results of the government's internal supervision.[37] Furthermore, the legal hearing will be carried out in a specific manner, namely, without any dismissal process or preparatory examination,[38] The State Administrative Court is obliged to decide within 21 working days on this matter,[39] and the final legal remedy is an appeal to the Administrative High Court which will also make a decision within 21 working days.[40]

Law No. 30 of 2014 also stipulates that the State Administrative Court has the authority to adjudicate applications related to the obligations of Government Agencies and/or Officials to determine and/or carry out decisions and/or actions within a maximum period of 10 (ten) working days after the complete application is received. However, when they do not do so, in this case, the application is considered legally granted by allowing the applicant to submit an application to the Court to obtain a decision on accepting the application. The court must decide on the application no later than 21 (twenty-one) working days after the application is filed. Government agencies and/or officials are required to issue a decision to implement a court decision no later than 5 (five) working days after the court decision is stipulated.[41] The stipulation in Article 53 of Law no. 30 of 2014 is generally also known as fictitious positive. If the State Administrative

[37] Supreme Court Regulation No. 4 of 2015 on Guidelines for Procedures in Assessing Elements of Abuse of Authority art. 2.

[38] Supreme Court Regulation No. 4 of 2015 on Guidelines for Procedures in Assessing Elements of Abuse of Authority (n 37) art. 10.

[39] Supreme Court Regulation No. 4 of 2015 on Guidelines for Procedures in Assessing Elements of Abuse of Authority (n 37) Article 20.

[40] Supreme Court Regulation No. 4 of 2015 on Guidelines for Procedures in Assessing Elements of Abuse of Authority (n 37) art. 21.

[41] Law No. 30 of 2014 on Government Administration (n 9) art. 51 (1).

Agency/Official does not do so within a certain time limit according to what is regulated in the law or if it is not regulated within a maximum period of 10 (ten) working days after the application is received in full, in this case, the application is considered legally granted by allowing the applicant to submit an application to the Court to obtain a decision on the acceptance of the application. The technical follow-up to this Law was originally regulated in the Supreme Court Regulation No. 8 of 2017 on Fictitious Applications. This is contrary to what is regulated in Article 3 paragraph (1) of the State Administrative Court Law. The decision or often referred to as negative fictitious.

In its development, the status of positive fictitious decisions implemented on the basis of the spirit of optimizing government services and further implementation of good governance by the Government together with the DPR will be optimized by Law No. 11 of 2020 concerning Job Creation. This Job Creation Law has amended several laws into one law, including the amendment to Law No. 30 of 2014. This amendment had a major impact on the concept of a positive fictitious decision, which specifically included changing the deadline for determining a KTUN to 5 (five) working days from the original 10 (ten) working days in Law no. 30 of 2014. The KTUN arrangement is written in electronic form with the absence of a State Administrative Court as an examining body and deciding applications for positive fictitious decisions. The authority of positive fictitious decisions is no longer the State Administrative Court. This decision is strengthened by SEMA No. 5 of 2021 on the Enforcement of the Formulation of the Results of the 2021 Supreme Court Chamber Plenary Meeting as a Guideline for the Implementation of Duties for the Court.

Provisions that are also amended in Law No. 30 of 2014 are a regulation regarding the obligation to take prior administrative measures before filing a lawsuit to the State Administrative Court. This is regulated in the Supreme Court Regulation No. 6 of 2018 concerning Guidelines for Settlement of Government Administrative Disputes After Undergoing Administrative Efforts. The Supreme Court Regulation No. 6 of 2018 stipulates that in examining, deciding and resolving government administrative dispute lawsuits, it is regulated that the court uses the basic regulations governing these administrative efforts. In the event that the basic regulations for issuing decisions and/or actions do not regulate

administrative measures, the Court shall use the provisions stipulated in Law No. 30 of 2014 on Government Administration.[42]

Based on the provisions of Article 3, Supreme Court Regulation No. 6 of 2018 indicates two possible actions, namely: first, all laws which in their implementation allow the emergence of state administrative disputes must regulate procedures for administrative efforts; or the second possibility is simply to use the provisions stipulated in Law No. 30 of 2014. According to Law no. 30 of 2014: community members who are harmed by decisions and/or actions can submit administrative efforts to government officials or superior officials who determine and/or carry out decisions and/or actions. Administrative measures consist of objections and appeals.[43]

Decisions can be objected no later than 21 (twenty-one) working days after the announcement of the decision by the Agency and/or Government Officials. This application of objection is submitted in writing to the Agency and/or Government Official, which must make a decision according to the application of objection no later than 10 (ten) working days. However, if it cannot be resolved within that time, the objection is considered granted, and is followed up with a decision in accordance with the application for objection by the said Agency and/or Government Official no later than 5 (five) working days.[44] Furthermore, the decision can be appealed within 10 (ten) working days after the objection decision is received. The appeal is submitted in writing to the Superior Official who made the decision. If the appeal is granted, the Agency and/or Government Official is obliged to make a decision in accordance with the application for appeal and must complete this appeal within 10 (ten) working days. Furthermore, the Agency and/or Government Official shall stipulate a Decision in accordance with the application for appeal no later than 5 (five) working days.[45]

5) Harmonization of the Exclusive Authority of the State Administrative Court According to the State Administrative Court Law and Other Laws

From this description, it is clear that the exclusive authority of the State Administrative Court to adjudicate a dispute according to the object or material or

[42] Supreme Court Regulation No. 6 of 2018 on Guidelines for Settlement of Government Administrative Disputes After Undergoing Administrative Efforts art. 3 (1) and (2).
[43] Law No. 30 of 2014 on Government Administration (n 9) art. 75 (1) and (2).
[44] Law No. 30 of 2014 on Government Administration (n 9) art. 76.
[45] Law No. 30 of 2014 on Government Administration (n 9) art. 78.

subject matter of the dispute is stipulated in various laws and regulations, not only in the State Administrative Court Law, but also in the Law. No. 14 of 2008 concerning Public Information Disclosure; Law No. 2 of 2012 concerning Land Acquisition for Public Utilities Construction; Law No. 30 of 2014 concerning Government Administration; Law No. 7 of 2017 concerning Elections; as well as Law no. 30 of 2014 concerning Government Administration

This paper believes that the stipulation in the Law on Public Information Disclosure, the Law on Land Acquisition for Implementation of Public Utilities Construction, and the Election Law, as seen from the aspect of the object or material or subject matter of the dispute is still in line with the stipulation in the State Administrative Court Law, which states that the subject matter of the dispute is in the form of a written decision issued by a State Administrative Agency/Official which is concrete, individual, final and creates legal consequences for a person or civil legal entity. The same also applies in the three laws, which contain an administrative settlement that will resolve the dispute before it is submitted to the State Administrative Court. This is also known in the Law on the State Administrative Court. The difference between the State Administrative Court Law in these three laws is the timeframe for filing a lawsuit after the issuance of the decision to the State Administrative Court, the dispute resolution period, which is determined in each law, its legal remedies and the absence of preparatory hearing.

The three laws and regulations above which give authority to the State Administrative Court to resolve disputes contained in these laws and regulations, based on the hierarchy of laws and regulations, have an equal position, since they are in the form of a law. Moreover, when it is associated with one of the principles relating to the implementation of two laws that regulate the same matter, it relates to the implementation of the three laws, namely law No. 14 of 2008 concerning Public Information Disclosure, Law No. 2 of 2012 concerning Land Acquisition for Public Utilities Construction, as well as Law No. 7 of 2017 concerning Elections. These laws can be categorized as more specific rules of law will prevail over more general rules, if the maker is the same (*lex specialis derogate lex generalis*).

Thus, it is crucial that the former must be harmonized with the State Administrative Court Law. In other words, it must state in one of the articles in the State Administrative Court Law that the State Administrative Court has several authorities which will be specifically regulated in other laws, for which it is now in force, namely Law No. 14 of 2008 concerning Public Information Disclosure; Law No. 2 of 2012 concerning Land Acquisition for Public Utilities Construction; as well as Law no. 7 of 2017 concerning Elections. These laws can be mentioned and ended with words and others to anticipate when an additional special State Administrative Court authority is regulated in a new law. This will stipulate both the State Administrative Court Law and other laws, which regulate the authority of the State Administrative Court, and this is principally the same as resolving disputes between State Administrative Agencies/Officials and civil law persons or entities related to State Administrative Decisions. However, to deal with the differences between these laws, including the different period of time in filling a lawsuit in dispute resolution after the state administrative decision is issued by the State Administrative Agency/Official, the dispute resolution period, the legal remedies that can be taken, and the different institutions that will resolve administrative problem shall be regulated in another specific Law, which are separated from these laws.

Law No. 30 of 2014 known as the Government Administration Law regulates the orderly administration of government, including regarding decisions and procedures. In the context of law enforcement in the field of state administration, this Government Administration Law also becomes a new basis for the State Administrative Court in examining State Administrative disputes. This is because the Government Administration Law also regulates the object of dispute in the State Administrative Court, namely State Administrative Decisions, requests that are silenced by State Administrative Agencies or Officials, and filing lawsuits through administrative efforts, even though as is known that the procedural provisions have also been regulated previously in the Law on State Administrative Courts.[46]

[46] Riza Riza D, 'Keputusan Tata Usaha Negara Menurut Undang-Undang Peradilan Tata Usaha Negara Dan Undang-Undang Administrasi Pemerintahan', (2018) 3 Jurnal Bina Mulia Hukum 1. 87.

The enactment of the Government Administration Law has shifted state administrative law towards a new paradigm, and thus the alignment is needed with the procedural law of the State Administrative Court in order to create synchronization and harmonization in Indonesian laws and regulations. The implementation of synchronization and harmonization of laws and regulations in Indonesia is an essential need because issues of legal development increasingly require a more comprehensive approach.[47]

In principle, there must be synchronization and harmonization between Law no. 30 of 2014 and the State Administrative Court Law. Law No. 30 of 2014 can be categorized as the later law repeals an earlier (*Lex posteriori derogate lex priori*). However, this condition must be immediately followed up with amendments to the State Administrative Court Law, the contents of which are synchronized with the amendments and arrangements for new matters contained in Law No. 30 of 2014.

Furthermore, Article 21 paragraph (1) to (6), stipulates that the State Administrative Court has the authority to receive, examine and decide on applications from agencies and/or government officials who submit applications to the Court to assess whether or not there is an element of abuse of authority in decisions and/or actions taken after the internal control was carried out on them. This is also not stipulated in the State Administrative Court Law, but this can be categorized as a special arrangement as stipulated in the three previous laws.

The provisions of article 3 concerning negative fictitious in the State Administrative Court Law and article 53 concerning positive fictitious in the Government Administration Law must also be removed because with the new provisions in the Job Creation Law the old rules no longer apply.

In terms of AUPB, since Law No. 30 of 2014 has stated that AUPB can be used other than what is used in Law No. 30 of 2014, as long as it has been used by a judge to assess a decision that has permanent legal force, the AUPB contained in the State Administrative Court Law remains valid. Finally, the obligation that requires administrative efforts of objections and appeals in all cases that are filed with a claim to the State Administrative Court must also be

[47] Riza (n 46).

included in the State Administrative Court Law, since it is not enough to have them regulated in the Supreme Court Regulation.

Thus, it is necessary to amend the State Administrative Court Law to avoid any overlap in its arrangements and to ensure harmonization in all laws governing the authority of the State Administrative Court, even though it is based on the principle of Lex specialis derogate lex generalis and Lex posteriori derogate lex priori as a way to solve the problem. On the other hand, the Supreme Court Regulation which technically regulates the implementation of various special provisions within the authority of the State Administrative Court must be maintained, such as Supreme Court Regulation No. 2 of 2011 concerning Procedures for Settlement of Public Information Disclosure Disputes; Supreme Court Regulation No. 2 of 2016 concerning Location Determination Disputes; Supreme Court Regulation No. 5 of 2017 concerning Electoral disputes; Supreme Court Regulation 4 of 2015 concerning Assessment of Elements of Abuse of Authority; Supreme Court Regulation No. 6 of 2018 concerning Administrative Efforts; and Supreme Court Regulation No. 2 of 2019 concerning Government Action Disputes, because it is impossible for all of these regulations to be accommodated in the State Administrative Court Law, because the State Administrative Court Law only regulates the main matters.

6) Harmonization the State Administrative Court Law with other Laws Relating to the Exclusive Authority of the State Administrative Court

This paper highlights the necessity to amend the State Administrative Court Law, which can possibly be done even though this law has been in effect for quite a long time. This is considering that Article 95 A of Law No. 13 of 2022, essentially stipulates that monitoring and review of laws will be carried out after the laws come into effect and will be carried out by the DPR, DPD and the government coordinated by instruments that specifically handle the field of legislation. Likewise, as stated by Satjipto Raharjo, there are quite a number of actions that can be classified into the category of legislation, both in the form of additions to existing regulations or those that amend them.

The method for amending the State Administrative Court Law is more compatible with the usual preparation method, instead of the omnibus model. This is partly due to Bivitri Savitri's opinion that the omnibus law is defined as a

law made to target major issues in a country, and also to revoke and amend several laws, even though in this case other laws are not amended. What needs to be amended is the State Administrative Court Law alone by incorporating new matters stipulated in the existing Act, which also contains the special authority of the State Administrative Court. In this line, according to Rofiq Hidayat's opinion, there are four weaknesses of this model, namely: Bills using the omnibus law method tend to be pragmatic and less democratic; limiting public space in giving aspirations and less democratic; lack of accuracy and caution in the formulation of each norm because there are quite a lot of affected laws that will be revised; and reducing the potential attention to the constitution and the Constitutional Court Ruling.

In line with the amendments to this State Administrative Court Law, the aspects that must be considered in harmonization as explained in Article 10 of Regulation of the Minister of Law and Human Rights No. 20 of 2015 including: procedural aspects (harmonization stages/procedures); substantial aspects (analysis of the conception of the substance/content material); and technical aspects (techniques for drafting laws and regulations). The main issue pertaining to the amendments to this State Administrative Court Law is the substance or material aspect. Therefore, the material or substance aspect is included in the application for an amendment to the State Administrative Court Law in order to carry out harmonization. The results of this conception analysis are set forth in the form of a written response and become meeting materials to harmonize the conception of the Draft Legislation.

E. Conclusion

It is necessary to harmonize the State Administrative Court Law to avoid any overlap in its arrangements and to ensure harmonization in all laws governing the authority of the State Administrative Court, namely Law No. 14 of 2008 on Public Information Disclosure Law No. 2 of 2012 on Land Acquisition for Public Utilities Construction; Law No. 7 of 2017 on Elections; Law No. 30 of 2014 concerning Government Administration; and the State Administrative Court Law.

The most appropriate method to harmonize between the State Administrative Court Law and other laws, which contains the authority of the State Administrative Court, is the usual drafting method, instead of the omnibus method, because the other laws have not been amended. Thus, we only need to amend the State Administrative Court Law

immediately to ensure that it can keep up with existing developments. The same also applies to the need for harmonization with other laws, which regulate the authority of the State Administrative Court.

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