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The Role of the Banda Aceh State Administrative Court in Testing Abuse of Authority by State Administrative Agencies/Officials in Accordance with Law Number 30 of 2014 Concerning Government Administration

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Abstract
Abuse of authority by State Administrative Agencies/Officials in terms of making decisions and/or actions in the administration of government carried out by exceeding the limits of authority, mixing up authority, and/or acting arbitrarily as referred to is in accordance with the contents of Article 17 of Law No. 30 of 2014 concerning State Administration. Meanwhile, decisions and/or actions that are determined and/or carried out by exceeding the authority or arbitrarily invalid if they have been tested and there is a court decision with permanent legal force. The purpose of this study is to analyze and describe the understanding of abuse of authority by State administrative agencies/officials, describing the role of the State Administrative Court as an institution that examines abuse of authority by State Administrative Agencies/Officials. This research is a qualitative legal research with a normative approach and is supported by empirical data using primary data and secondary data. The approach used to answer legal issues in this study is to use a statute approach and a conceptual approach. The results of this research conclude that the understanding of abuse of authority by State Administrative Agencies/Officials is in the administration of government carried out by exceeding authority, mixing up authority, and/or acting arbitrarily, as well as the role of the State Administrative Court as an institution for examining abuse of authority by State administrative agencies/officials regarding State Administration in Courts Until now, the Banda Aceh State Administration has never handled disputes over abuse of authority as stipulated in Article 21 of Law Number 30 of 2014 concerning State Administration. However, in its arrangement, civil servants if they abuse their authority can be prosecuted and prosecuted under the State Administrative Law, namely in the form of severe administration as stated in article 80 paragraph (3).
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1. Introduction

This research is motivated that there are officials of the State Administrative Agency/Officials who carry out government affairs not based on applicable laws and regulations with abuse of authority. State Administration according to the provisions of Article 1 paragraph (7) of Law No. 5 of 1986 jo No. 9 of 2004 jo Law No. 51 of 2009 is a state administration that carries out functions to carry out government affairs both at the center and in the regions. From this understanding, it can be concluded that: State administration is the same as state administration. State administration or state administration is a function or duty to administer government affairs within our country.

Abuse of authority is the use of authority by Government Agencies and/or Officials in making decisions and/or actions in the administration of government that are carried out by exceeding authority, mixing up authority, and/or acting arbitrarily as referred to in Article 17 and Article 18 of Law Number 30 of 2014 concerning Government Administration. Authority is the right possessed by Government Agencies and/or Officials or other state administrators to make decisions and/or actions in the administration of government. TUN law questions the exercise of government authority of TUN bodies or officials that can bind citizens to their legal actions and the means of legal remedies to resist. Therefore, state administrative law is included in public law or TUN Law is a special section of constitutional law related to the implementation of government affairs by TUN bodies or officials that are not regulated by the norms of civil law or criminal law. While its relationship with civil law, it can be said that the government in carrying out its government duties does not rarely use the provisions of civil law.

Based on the above background, then the identification of the issue raised is how the role of the State Administrative Court as an examining agency for abuse of authority by the State Administrative Agency / Official in Banda Aceh.

This study aims to review, analyze, explain and find an understanding of abuse of authority by State

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administrative agencies/officials based on laws and regulations related to research, as well as look at the role of the State Administrative Court as an institution for testing abuse of authority by State Administrative Agencies/Officials (TUN) in Banda Aceh.

The purpose of this research is that it can help the TUN judiciary and other courts to facilitate the process of mixing in the judiciary, especially the State Administrative Court (Peratun) throughout Indonesia. As well as assisting in the explanation of what authority can and cannot be done for TUN agencies / officials in carrying out their duties.

As stated in Article 1 paragraph (3) of the Constitution of the Republic of Indonesia of 1945, Indonesia is a country of law. This means that all government administration activities must be carried out under the law. One of the elements of the state of law is the existence of an administrative judiciary for the resolution of disputes. For this reason, a State Administrative Court has been established and the issuance of Law Number 5 of 1984 concerning the State Administrative Court as amended by Law Number 9 of 2004 and Law Number 51 of 2009 (PTUN Law).

The absolute competence of the State Administrative Court (PTUN) is to examine disputes arising from State Administrative decisions (TUN) issued by TUN Agencies/Officials. There are several elements of the decision of the TUN Agency or Officer that must be fulfilled to be considered a TUN Decision and so that disputes that arise from it can be examined at the PTUN. As for the TUN Agency or Official itself, sometimes it still causes confusion due to its understanding in the PTUN Law. As stated in Article 1 Number 8 of the PTUN Law: "A State Administrative Agency or Official is a body or official who carries out government affairs based on applicable laws and regulations." Abuse of Authority by State Administrative Agencies/Officials According to Law Number 30 of 2014 concerning State Administration. In connection with the foregoing, one of the administrations of government is regulated in Law Number 30 of 2014 concerning Government Administration. The Government Administration Law guarantees basic rights and provides protection to citizens and guarantees the implementation of state duties as demanded by a legal state in accordance with Article 27 paragraph (1), Article 28 D paragraph (3), Article 28 F, and Article 28 I paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Based on these provisions, citizens of society do not become objects, but rather subjects who are actively involved in the administration of government.

Government Administration Arrangements in Law Number 30 of 2014 guarantee that decisions and/or actions of government agencies/officials towards citizens cannot be carried out arbitrarily. With the existence of Law Number 30 of 2014, citizens will not easily become objects of state power. In addition, this Act is a transformation of the General Principles of Good Governance (AUPB) that have been practiced for decades in the administration of government, and are concretized into binding legal norms.

The administration of government must be based on the principle of legality (Muhammad & Husen, 2019), the principle of protection of human rights (Pietersz, 2018) and the AUPB, especially in this case the principle of not abusing authority (Handitya, 2019). The principle of not abusing one's own authority is regulated in Law Number 30 of 2014, namely Article 10 paragraph (1) letter e and its explanation. This principle requires every government agency and/or official not to use its authority for personal or other interests and is not in accordance with the purpose of granting such authority, does not exceed, does not abuse, and/or does not interfere with authority.

According to the provisions of Article 17 of Law Number 30 of 2014, government agencies and/or officials are prohibited from abusing authority, the prohibition includes a ban on exceeding authority, a prohibition on mixing up authority, and/or a prohibition on acting arbitrarily. Government agencies and/or officials are categorized as exceeding authority if the decisions and/or actions taken exceed the term of office or time limit for the enactment of the authority, exceeding the boundaries of the territory of the authority; and/or contrary to the provisions of laws and regulations. Government agencies and/or officials are categorized as mixing up authority, if decisions and/or actions taken outside the scope of the field or material of the authority granted, and/or contrary to the purpose of the authority granted. (Penyalahgunaan, Di Ptun, Hengky, & Antoro, 2021) Government agencies and/or officials are categorized as acting arbitrarily if the decisions and/or actions taken without a basis of authority, and/or contrary to court decisions with permanent legal force. (Barhamudin, 2019)

Based on Article 20 of Law Number 30 of 2014, supervision and investigation of alleged abuse of authority is first carried out by the Government Internal Supervision Apparatus (APIP). The results of APIP's supervision of alleged abuse of authority are in the form of no errors, administrative errors, or administrative errors that cause state financial losses.

Government agencies and/or officials who feel that their interests are harmed by the results of APIP supervision can apply to the State Administrative Court (PTUN) to assess whether or not there is an element of abuse of authority in decisions and/or actions as stipulated in Article 21 of Law Number 30 of 2014. PTUN is authorized to receive, examine and decide applications for assessment of whether or not there is abuse of authority in the decisions and/or actions of Government Officials before criminal proceedings are carried out as stipulated in Article 2 paragraph (1) of Supreme Court Regulation (Perma) Number 4 of 2015 concerning

Guidelines for Beracara in the Assessment of Elements of Abuse of Authority. Furthermore, in paragraph (2), it is stated that the PTUN is only authorized to receive, examine and terminate assessment applications after the results of the supervision of the government's internal supervision apparatus. The decision on the application must be decided within a period of not more than 21 (twenty-one) working days from the time the application is submitted.

At the beginning of its birth, the AUBP arose as a reaction to the use of free authority (freis ermesen) (Asyikin, 2020) by the government in order to carry out its responsibilities as a consequence of the implementation of the conception of the Welfare Law State (Widjiastuti, Warka, Suhartono, & Hufron, 2020), in which the AUPB acted as a means of protection for citizens against government actions. In the Indonesian legal system, the existence of AUBP is spread in several statutory provisions, including Law No.9 of 2004 concerning Amendments to Law No.5 of 1986 concerning State Administrative Courts (UU TUN) and Law No. 30 of 2014 concerning State Administration (Law on State Administration).

AUBP is defined in Article 1 paragraph (17) of the State Administration Law as "a principle used as a reference for the use of Authority for Government Officials in issuing Decisions and/or Actions in the administration of government". In the TUN Law, AUBP is placed as one of the reasons for filing a lawsuit by a person or civil legal entity who feels aggrieved by the existence of a State Administrative Decree (KTUN). In the State Administration Law, AUBP, together with laws and regulations, is placed as a reference for the government in carrying out actions and/or decisions as stated in Article 8 paragraph (2) and Article 9 paragraph (3) of the State Administration Law as follows: Article 8 paragraph (2) Government Agencies and/or Officials in exercising the Authority must be based on: (a) laws and regulations; and (b) AUPB. Article 9 paragraph (3) The absence or vagueness of laws and regulations as referred to in paragraph (2) point b, does not prevent authorized Government Agencies and/or Officials from determining and/or carrying out Decisions and/or Actions as long as they provide general benefits and are in accordance with the AUPB. (Solechan, 2019)

In the Government Administration Law, it is possible for other principles to arise in the AUBP as long as these other principles are used as the basis for the judge's judgment contained in the Court's decision of permanent legal force. Thus, the judge and the AUBP have a unique relationship. On the one hand, AUPB is a test tool used by judges to test government decisions and/or actions. On the other hand, the judge is the "creator" of the AUPB through its rulings. (Solechan, 2019)

Literature Review

Local Government Administration is a tool of Local Government to achieve its goals. The core material of Local Government Administration is the study of how local governments provide good services to the community in order to create the welfare of the people of the region.m Local government administration essentially aims to create efficiency, democratization and innovation in Local Government. The effectiveness of the implementation of local government administration can also ensure the integrity of national integration. (Sandiasa, 2018)

The principle of regional autonomy contained in article 18 of the 1945 Constitution of the Republic of Indonesia (UUD NRI of 1945) is more expressly stated in its explanation which states that "because the Indonesian state is an eenheidstaat, Indonesia will not have areas in a staat environment as well, the indonesian regions will be divided into provincial areas the provinces will also be divided into smaller areas". In regions of an autonomous nature (Streek and Locale rechts gomenschappen) or regions of a purely administrative nature, all according to the rules to be established by law in the regions of an autonomous nature will be held regional representative bodies therefore in the regions even the government will be jointed on the basis of consultancy. (Safa'at, 2015)

In the explanation of the Government Law, it is explained that the use of state power against citizens is not without requirements (Rahman, 2020). Citizens of the Society cannot be treated arbitrarily as objects. Decisions and/or actions against citizens must be in accordance with the provisions of laws and regulations and general principles of good governance. Supervision of Decisions and/or Actions is a test of the treatment of citizens involved who have been treated in accordance with the law and pay attention to the principles of legal protection that can effectively be carried out by state institutions and a free and independent State Administrative Court (Sihotang, ., & Sa'adah, 2017). Therefore, the system and procedure for the implementation of government and development tasks should be provided for in the legislation (Nik Mahmod, 2013).

The task of the government to realize the goals of the state as formulated in the preamble to the 1945 Constitution of the Republic of Indonesia and this task is a very broad task. So wide is the scope of duties of Government Administration that regulations are needed that can direct the implementation of Government to be more in line with the expectations and needs of the community (citizen friendly), in order to provide a foundation and guidelines for Government Agencies and / or Officials in carrying out the duties of government administration. The provisions of the administration of the Government are regulated in an Act called the Government Administration Act. The Government Administration Law guarantees basic rights and provides protection to citizens and guarantees the implementation of state duties as demanded by a legal state in

accordance with Article 27 paragraph (1), Article 28 D paragraph (3), Article 28 F, and Article 28 I paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Based on these provisions, citizens are not objects, but rather subjects who are actively involved in the administration of Government (Indra Permana, 2015).

Methodology

This writing uses the normative legal writing method, because this research prioritizes the study of legal products or laws which are primary data in supporting legal writing and identifying a problem (Sonata, 2015). The type of close legislation, and the approach to the analysis of legal concepts are used as supporters of the normative method of writing law (Syaifudin & Pratama, 2013). Argumentation techniques are used to prioritize reasoning and then argumentation is carried out based on the ability of the author. Description techniques are also used in describing legal issues that are described and fully described (Hartati, 2019).

Analysis and Discussion

An understanding of government agencies and/or officials is categorized as exceeding authority if the decisions and/or actions taken exceed the term of office or time limit for the validity of the authority, exceeding the territorial boundaries of the authority; and/or contrary to the provisions of laws and regulations (Panjaitan, 2017).

It said that an official in the state administration is currently in the spotlight of various parties regarding the abuse of authority by civil servants who have positions in government organizations (OECD, 2006). Authority allows conflicts of interest to arise between state officials and the public. Authority is always attached to the position, authority will not arise if a position does not exist. The position is contained in a legal entity or organization of a public nature in relation to the administration of the state and in office (Setiawan & Asyikin, 2020).

Article 1 number 3 of Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia, provides a definition of the elements of fulfilling administrative actions related to abuse of authority, namely: "exceeding authority or using authority for purposes other than those for which the authority is intended, or including negligence or neglect of legal obligations in the administration of public servants". There are three elements in the abuse of authority, namely: the element of intentionality, the element of transferring the purpose of authority, and the element of negative personality. In addition to these three elements, it is necessary to pay attention to the basic arrangement of the source of authority possessed by officials of the state civil apparatus. Each official of the state civil apparatus has different authorities and sources of authority, so if there is an indication of abuse of authority, it is necessary to pay attention and prove the error and the source of authority he has (Suwindayani Utami & Ayu Putri Kartika, 2019).

State organizers always bind the authority to carry out public policies as part of the implementation of state administration. Authority can function if the position is filled or represented by an individual or private person (natuurlijke persoon). A person who fills a position in a government agency is referred to as an official or government official who is a civil servant. The general principle of good governance is a guide in the administration of government towards the direction of justice, welfare and freedom from violations of regulations committed including abuse of authority committed by officials of the state civil apparatus. This principle functions in carrying out government and is guided in carrying out the functions of administrative positions in setting a policy. Abuse of authority allows for a conflict of interest among state officials as the driving force of government with a society that feels disadvantaged from the use of inappropriate authority (Ombudsman, 2020).

Authority within the scope of state administrative law is the official power that an official official of the state civil apparatus has to carry out actions by himself or to give such authority to other parties based on laws and regulations. The power possessed by the government is part of its authority, so that in exercising authority it must be carried out based on positive law. The exercise of authority in accordance with the provisions of laws and regulations creates a harmonious legal relationship between the government and citizens, and distances conflicts of interest from both parties (Suryawati, 2020).

Civil servant officials can be said to abuse authority if in the exercise of authority that has been granted with a certain purpose it turns out that there is a deviation from the goal to be achieved ("Code of Conduct for Law Enforcement Officials," 2021). The goals that have been set and are to be achieved are not carried out as they should be. Abuse of authority does not occur as a result of a forgetfulness, but rather consciously and convincingly to transfer the goal to be achieved with a goal that is personally beneficial to a certain group or group. The government and or administrative officials who deliberately abuse authority must be held accountable based on the element of their guilt in accordance with the realm of state administrative law (Suwindayani Utami & Ayu Putri Kartika, 2019).

Analysis of the forms of abuse of authority, officials of the State Administration are exceeding authority, mixing up authority, acting arbitrarily. Government is categorized as exceeding authority if the actions taken: exceeding the time limit and the area of enactment of the authority. Government officials are categorized as

mixing up authority if the actions taken are outside the scope of the field or material of the authority granted. Government officials are categorized as acting arbitrarily if the actions are carried out without a basis of authority. [1]

Administrative justice is actually also a branch of justice (Artayasa, 2020). Montesquieu and Kant who maintained the classical view argued that the law was the only source of positive law (Fakultas Syariah dan Hukum UIN Sunan Ampel Surabaya, 2017). Judges must adjudicate according to the law and must not judge the core or fairness of the statute (Adonara, 2016). While the Act is always imperfect because its creators cannot predict everything that will happen in the future (Guttel & Harel, 2008).

A judgment is the nature of the judiciary, the core and purpose of any judicial activity or process, containing the settlement of cases that since the process began have burdened the parties. From the series of judicial proceedings, nothing outside the judicial judgment can determine the rights of one party and the burden of obligations on the other party, the validity of an action according to law and the obligation to be carried out by the party required in the case. Among the judicial proceedings are only judgments that have crucial consequences for the parties (Soeroso, 2016).

Significant changes regarding the construction of the definition of KTUN in the AP Law will expand the meaning of the KTUN. The definition of a KTUN only uses criteria in the form of written provisions, issued by Government Agencies or Officials and these provisions are issued in the context of government administration. Compared to the definition of KTUN regulated in the PTUN Law, it provides narrower criteria. A KTUN must meet concrete, individual, and final elements, which have legal consequences for a person or civil legal entity. With the broader definition in the AP Law, the KTUN criteria in the PTUN Law become irrelevant. However, article 87 of the AP Law shows that the KTUN criteria regulated in the PTUN Law are still recognized for their existence as long as they are given a broader meaning to the meaning of a KTUN.

Written Determination in the PERATUN Law is revitalized in the AP Law into a form that is not just a formal action in written form, but a determination must also be interpreted in the form of a Factual Action, although not in written form. The written determination in the PERATUN Law must meet the following elements (Riza, 2018):

a. The form of the determination must be written
b. He was issued by the Agency or TUN Officer
c. Contains legal action TUN
d. Based on applicable laws and regulations
e. Concrete, individual and final
f. Cause legal repercussions for a person or civil legal entity.

This means that TUN officials can be said to have issued an injunction not only as far as the legal action in the form of the issuance of a beschikking but the determination is also interpreted in the form and or Factual Act. Theoretically, Factual Acts have so far been understood to be not part of government legal actions but are Factual Acts committed without or having a legal basis (Riza, 2018).

Factual action as part of KTUN as the object of a lawsuit in a TUN dispute is an inseparable part of the provisions on Discretion regulated in article 22 – article 32 of the AP Law. In article 1 paragraph (9) it is stated that Discretion is a Decision and/or Action determined and/or carried out by Government Officials to overcome concrete problems faced in the administration of government in terms of laws and regulations that provide choice, do not regulate, are incomplete or unclear, and/or there is stagnation of government. The AP Act provides room for TUN officials to issue Discretion. The problem then is, how to test the product of the TUN officials in the form of discretion (Sitorus, Erliyana, & Husein, 2018). The criteria for the KTUN version of the PERATUN Law, the scope of the PTUN's authority is only limited to testing KTUN. This is one of the important points in harmonizing the new PERATUN Law.

The decisions of TUN Agencies and/or Officials in the executive, legislative, judicial, and other state administrators in the AP Law expand the source of the issuance of KTUN which has the potential to become a dispute in the PTUN (Retnaningsih, Soroinda Nasution, Oktaviani, & Alfarizi Ramadhan, 2021). So far, based on Article 2 letter e of the PTUN Law, there is only one source of KTUN that is excluded, namely the KTUN regarding the administration of the Indonesian National Army. In its development, the current administration of the TNI is entirely in the executive environment, both coordinated through the Ministry of Defense and the TNI Headquarters under the command of the TNI Commander (Lutfi AR, 2022). Moreover, there is no forum to accommodate military administrative disputes. The Military Administrative Court has not functioned properly to date. The scope of the KTUN which includes the executive, legislative and judicial scopes, while the TNI is purely under executive power engaged in the administration of government in the defense sector, then every KTUN issued in its administrative management must be interpreted as a KTUN that can be disputed in the PTUN. This opens the curtain on exclusivistas in the armed forces, which are actually in democracies, there

[1] Muhammad Nur Mahdi, Clerk of the Banda Aceh Administrative Court, *Interview*, October 20, 2022.

should not be elements that cannot be touched by the law.

Based on article 53 paragraph (2) of the PTUN Law, the meaning of causing legal consequences can be traced by legal losses. In testing disputes, the PTUN Judge in constructing legal losses based on the fact of direct legal losses, based on the principle of causality and causing real losses (Martitah, 2018). The existence of direct and tangible losses can be traced if the KTUN in question has a legal relationship with a civil legal person or entity. However, the existence of the clause "has the potential to cause legal consequences" causes an expansion of the meaning of the legal standing of a person or civil legal entity who will sue in the PTUN whose losses are not yet real even though they can be sued in the PTUN (Harjiyatni & Suswoto, 2017).

The Decision Clause, which applies to Community Citizens, adds a new meaning of Individual in the criteria of a KTUN and expands the legal standing opportunities of community members or groups in filing a lawsuit at the PTUN. The loss of "Individual" editors in article 1 paragraph (7) and article 87 of the AP Law, in the context of KTUN testing in PTUN, the meaning of KTUN as a decision that applies to citizens is very relevant to the principle that applies to the implementation of PTUN decisions, namely the principle of erga omnes (the principle that affirms administrative court decisions are publicly binding not only with parties directly related to a case or KTUN) (Eric & Anggraita, 2021).

The logical consequence of applying this erga omnes principle to the implementation of a PTUN decision is that the KTUN criteria that can be sued is a decision that has the potential to cause legal consequences, so the party who has the opportunity to sue a KTUN is not only a certain individual who is directly related to a KTUN, but the public at large who has the potential to experience legal consequences for the issuance of a KTUN also has the opportunity to file a lawsuit with the PTUN (Santosa, 2020).

In relation to Government Agencies and/or Officials categorized as exceeding the Authority, if the Decision and/or Action taken: exceeds the term of office or the time limit for the validity of the Authority; beyond the territorial boundaries of the enactment of the Authority; and/or contrary to the provisions of laws and regulations.

The court has the authority to accept, examine, and decide whether or not there is an element of abuse of Authority committed by a Government Official. (2) A Government Agency and/or Official may apply to the Court to assess whether or not there is an element of abuse of Authority in a Decision and/or Action. (3) The court shall decide the application referred to in subsection (2) not later than twenty-one (21) business days from the time the application is filed. (4) Against the decision of the Court as referred to in paragraph (3) may be appealed to the High Administrative Court. (5) The High Administrative Court shall decide the appeal as referred to in paragraph (4) no later than twenty-one (21) working days from the time the appeal is filed. (6) The decision of the High Administrative Court as referred to in paragraph (5) shall be final and binding.

However, in reality the role of the State Administrative Court as an institution examining the abuse of authority by state administrative bodies/officials regarding State Administration at the Banda Aceh State Administrative Court has never handled disputes over abuse of authority as stipulated in Article 21 of Law Number 30 of 2014 concerning State Administration. Civil Servants if abusing authority may be prosecuted and prosecuted by state administrative law in a severe administrative manner as stated in article 80 paragraph (3).[1]

Here is the flow of the application for testing The element of authority under article 21 is described in table form.

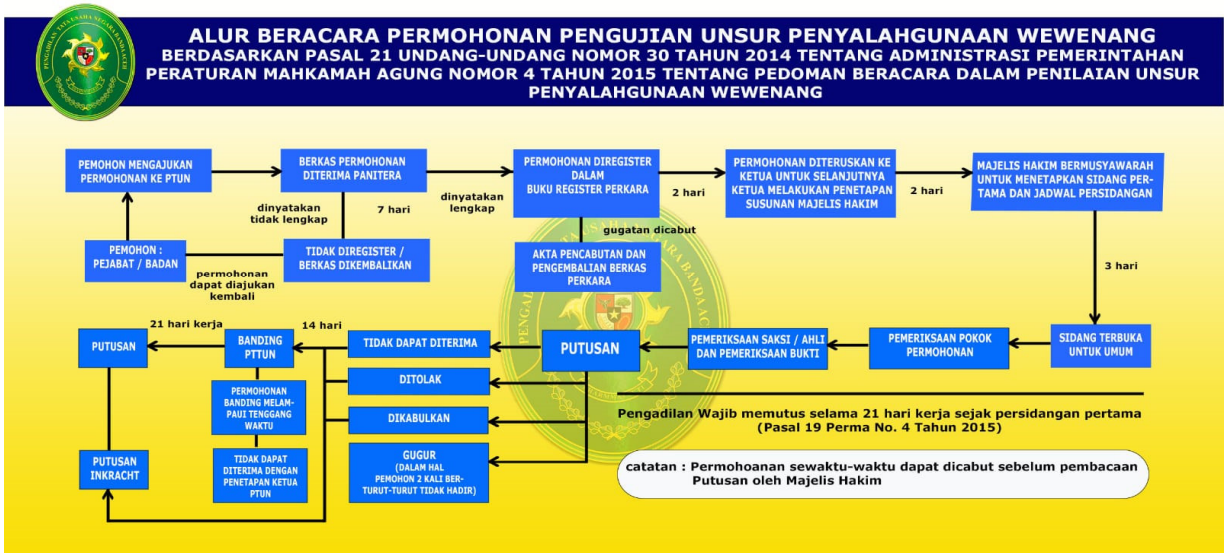

Figure 1 Flow of Application for Testing of Elements of Abuse of Authority

[1] Muhammad Nur Mahdi, Clerk of the Banda Aceh Administrative Court, *Interview*, October 20, 2022.

Conclusion

This study concludes that the understanding of abuse of authority by State administrative bodies/officials is in the administration of government carried out by exceeding authority, mixing up authority, and/or acting arbitrarily, as well as the role of the State Administrative Court as an examining institution for abuse of authority by State administrative agencies/officials on State Administration at the Banda Aceh State Administrative Court to date has never handled disputes over abuse of authority as stipulated in Article 21 of Law Number 30 of 2014 concerning State Administration.but in its arrangements Civil Servants if they abuse their authority can be prosecuted and prosecuted by state administrative law administratively as stated in article 80 paragraph (3).

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