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# Validity Issues in Government Acts Administrative Law in Indonesia

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**Abstract**
In a state in law, any government action should be based on law. It is based on the universal principles in the administration of the State, namely the principle wetmatigheid van bestuur or legality. This principle specifies that the absence of the basis of authority granted by a legislation in force, government action was illegal. The source of all these actions is legal, especially the written law. Meaning that all the actions of government officials should be sourced from there. Reflection that the government will not have the authority to run the government, without any legality in accordance with actions. In this connection, the principle of legality is a basis for action to realize the harmonious acts of government by law. In this dimension meeting between understanding the rule of law and understand the sovereignty of the people based on the principles of honesty and certainty, which is protected by the constitution. That the measuring instrument consists of the administration follow the rules of law or the rules of written law and the general principles of good administration, or principle of common principles of proper administration. In normative it is regulated in Law. As the substance, there is the principle that b ersifat morality, as its size and it is an unwritten rule of law. In fact, for the legislation as written law rule most still sectoral and overall have not been codified.
**Keywords:** Validity of Acts of Government, State Administration Law, State Law Indonesia

**Background of the problem**
To run a country in order to achieve peace, prosperity and tranquility along with the necessary authorities who regulate and manage all resources to achieve the objectives of a country. The ruler of a country in terms of the state of science, political science, administration generally known as government. For all the activities of the government in the running of state power is usually referred to as government.

Basically the government is a group of people who were given a legal power by local people to carry out the above settings interaction that occurs either between sesame and sesame between institutions and between institutions. Interactions it is to meet their daily livelihood and achieve common goals.

Government in various references has many meanings. Most experts who provide an understanding of government in a broad sense, ie government by function and is associated with the doctrine of Trias Politica. This doctrine was first proposed by Jonh Locke (1632-1704) and Montesquieu (1689-1755) and at the level it was interpreted as the separation of powers (sparation of powers).

In view of Montesquieu, the government is all state agencies are commonly known and consists of three powers, namely the first; legislative or power to make laws (rule making function); The second, or the executive power to implement laws (rule application function); third, namely judicial authority prosecute for violations of the Law (rule adjudication function) or the authority which oversees the implementation of the Act. Trias politica is a normative basis which is essentially that power should not be handed over to the same people to prevent abuse of power by the ruling party. Thus there will be no suppression of the rights of citizens.[1]

According to Van Vollenhoven, the government was divided into 4 (four functions), the first function is, bestuur (government in the narrow sense); secondly, the function of the police who carry out preventive rechtszorg (prevention of violations of the rule of law in its effort to maintain the order of society. Thirdly, the function of the judiciary is the power to ensure fairness in the country and the fourth, the function regelin. That is the power to make regulations that are general in the exercise of power in the state.

Lemaire (1970), the government divides into five function called by Djoko Sutono as Pancapraja. The fifth function is (1) Bestuurszorg function (carry out public welfare), (2) function Bestuur (run Act), (3) the function of the police, (4) a hearing function, (5) the function of making laws.[2]

Thus the entire function utu must be run by the government in order to realize the purpose of the State, which means an effort to enforce the law. This effort can be understood on the basis that the law is not simply a technology, but rather a means to express their values and morals.[3]

In other situsasi, the term enforce the law was sufficient to address all of them, however, in other situations, like a lot going on right now in Indonesia, it was not enough. Indonesia requires a redefinition unequivocally, that this country is not only based on the law, but also based on moral. Experiences that occur in

[1]Miriam Budiardjo, 1986. *Dasar-Dasar Ilmu Politik*. Jakarta : PT.Gramedia. P.151.
[2] Dharma Setyawan Salam. 2002. *Manajemen Pemerintahan Indonesia*. Jakarta : Djambatan. P.33-34.
[3] Satjipto Rahardjo. 2003. *Sisi-Sisi Lain Dari Hukum di Indonesia*. Jakarta ; Kompas. P.58.

 

this country is very lack of discipline, this situation gives a very valuable lesson, that the law of the country that does not have a direct relationship with disciplined behavior.

Relative countries regulate the relationship between the individual or legal entity with the government, then there is a particular perspective in this regard. That if one or the Civil Law Firm who feel aggrieved by a kepentinganya administrative decision may submit a written guguatan to the competent court, berisis demand that administrative decision disputed void or invalid, with a claim for compensation or rehabilitation. [1]

**Follow the legitimacy of Government**

The basis or rationale that can be used to sue with respect to the demands of no validity or cancellation of an administrative decision, specified in article 53 paragraph (2) of Law No. 9 of 2004 on the Amendment of Law No. 5 of 1986 on Judicial Procedures State which include:

a. Administrative Decision being contravenes the legislation in force.
b. Administrative Decision being contravenes the General Principles of Good Governance.[2]

How is the case with the explanation of Article 53 letter b and c of Law No. 5 of 1986?. Is the scope limitation or equal to letter a above?. This Act does not mention the explanation according to Article 53 paragraph (2) b of this Act: a basic cancellation is often called "abuse of authority". Obviously aalah to some extent.

In this connection, according to Philip M. Hadjon that in the Netherlands through AROBnya show this basis is rarely used because of hard evidence. Therefore, the claim is often used as the basis of the letter a, (contrary to the legislation in force). Further explanation is stated in the letter c, of this Act, that the basis of the cancellation is often called "prohibition act arbitrarily". [3]

Philip M. Hadjon states that do arbitrary restrictions in this case are difficult to measure. Dutch legislation seweng concept of liberty is shifted by the concept of "kennelijk onredelijk" (clearly unwarranted) that are more operational.[4]

On the constitution, it is stated in the Act of 1945, that Indonesia is a state based on law. From this fact, it is clear that the republic of Indonesia is a "State of Law". However, not clear if the Indonesian state that adheres to state law in the formal sense (narrow) or embrace the state of law in the material sense (broad).

As is known the state of law in the narrow sense as proposed by Immanuel Kant is the country as a night watchman. Meaning that the country is only a mere security guard. The new state act when security and order disrupted. In contrast to the state of law in a broad sense; then the state in this sense, not only maintain security and order dinner only. However, also actively participate in public affairs for the welfare of its people. Hence the sense of a state of law in a broad sense is very closely related to the sense of the welfare state, as the purpose of the state.

In countries that are already developed, the concept of the welfare state and social development was such that it demanded greater government role in creating laws to protect the interests of citizens, including the validity of any act of government.

About government interference is greater in the activities of community life, it is necessary in countries that are developing such as in Indonesia. This is so that the government may develop in all fields in the framework of national development. However, it remains to be the need to find ways that one hand can guarantee the authority to act and regulate the government, and on the other to ensure that the authority to act and organize it does not violate the rights of citizens.

In connection with the foregoing, the Republic of Indonesia aims to become state law in a broad sense. It can be seen from the destination country of Indonesia, as contained in the Act of 1945, which claimed and asserted that "..... the Government of Indonesia states that protect the entire Indonesian nation and the entire country of Indonesia to promote the general welfare, educating the nation and participate implementing world order based on freedom, lasting peace and social justice ... .. ".

Furthermore, in the narrow sense, the government is defined as executives who carry out the functions of running the Act, which is a group of people who were given the task to plan, collect, collate, organize, mobilize, and to do all community / population within a country in order to achieve the objectives of the state.

**Executive Authority**

Basically the executive authority is implementing Act. In this connection, Law No. 12 Year 2011 on the Establishment Regulations authorize the executive to determine the regulations under it as a form of translation.

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[1] From: pasal 53 ayat (1) *Undang-Undang Nomor 9 tahun 2004 tentang Perubahan Atas Undang-Undang Nomor 5 tahun 1986 tentang Peradilan Tata Usaha Negara*

[2] *Ibid.*

[3]Philipus M. Hadjon. 1993. *Pemerintahan Menurut Hukum (wet-En Rechtmatig Bestuur)*, Surabaya: Yuridika, Jurnal Fakultas Hukum Unair. P. 7

[4]*Ibid.*

 

In Law No. 12 In 2011 it was the sort order peraaturan legislation is as follows:

1. Constitution of 1945
2. MPR Decree
3. Law / Perppu
4. Government Regulation
5. Presidential Regulation
6. Regional Regulation

The action seeks to carry out all the functions and activities of government is usually called by the government. Thus the Government is serangkjaian activities implemented by the government in order to carry out its functions as stated in the legislation of the State. Therefore, in the narrow sense, government is covering all activities or functions of the implementation of the Act is done by the executive agency or institution that is the President and his staff from the Minister to the village chief.

As for what is meant by governance is the entire law enforcement activities conducted by executive agencies and institutions, namely the President, assisted by a minister with a civilian and non-civilian bureaucracy underneath. The concrete from Echelon Echelon I to V, ranging from employees of class I to class IV. Meanwhile, in a broad sense, government is all the activities and functions of state administration carried out by the legislature, executive and judiciary in achieving the goals of the country.

C.F. Strong (1963) stated that the government in its broadest sense has the authority to maintain peace and security in or out ". [1]

Therefore, it must have the military strength or the ability to control the army, have legislative powers, have the resources, have the ability and financial strength adequate to finance and maintain the state and legal force for and on behalf of the state. Meanwhile, according to Utrecht stated that the government is a composite of all the reigns of state power (broad sense) that all state agencies in charge of organizing rule ".[2]

If the second note from the above definition, the rule can be interpreted as an effort or activity carried out by government authorities in the form of the application of the arrangement / housekeeping, settings, security, and protection of the people residing in these countries, which include; ,, population and natural resources, and all the people in all of life both in the economic, social, cultural, political, public order and state security.

The meaning of the rule described above seems in line with government functions defined in the Preamble to the Constitution of 1945, which the government is obliged to protect the entire Indonesian nation and the homeland of Indonesia, promote the general welfare, educating the nation and participate in implementing world order based on lasting peace and social justice.

The decision on the validity of the terms of State Administration, many formulas that have been given by the Bachelor, both in Indonesian literature and foreign literature. Of these formulations are similarities as well as differences in views on the validity of terms Administrative Decision.

In connection dengann this case, Van der Pot declared that in the making of statutes, the state administration should pay attention to special provisions. The provisions contained in the Constitutional Law, in particular is about competence and purpose) and the State Administration Law, which is about the procedure. If that provision is not executed, then it is likely there will be a provision containing deficiency (gebreken). Deficiencies in a statute may be because the statute was invalid. (niet rechtsgelding).

From descriptive, that for the validity of an administrative decision must meet the requirements concerning competence and objectives as well as about the procedure. Thus, if studied further, in addition to the authority and substance, an administrative decision must also comply with the provisions concerning the administrative processes or procedures. It is precisely this procedure that must be met and should not be remained unfulfilled.

In relation to this, it was concluded that there are four (4) conditions that must be met in order for provisions can serve as a valid provision, namely:

a. Provisions must be made by means of (organ) authorized (bevoed) makes.
b. Because the statement has the will, it will manufacture it should not include the juridical shortages.
c. Provisions must be given the form prescribed in the regulations which it is based, must also consider how to make that provision.
d. The content and purpose provision should be in accordance with the content and purpose of the rules basically.[3]

Indeed, in the case of issuing an administrative decision based on a second opinion scholar, found the difference. There are emphasizing padai provision contained in Constitutional Law, which is about competence

[1]Dharma Setyawan Salam.2002. *Manajemen Pemerintahan Indonesia*. Jakarta : Djambatan. P.36.
[2] *Ibid*.
[3] E.Utrecht, 1986. *Pengantar Hukum Adminsitrasi Indonesia.* Surabaya: Pustaka Tinta Mas. P 107

 

and purpose. This means that the competence and purpose of a decision held by the Agency or the State Administration officials must be based on legislation.

While other opinion that the making of a determination of the emphasis placed on a whim, where the will of the Board or the Administrative Officer. Concretely, a decision was made with the emphasis should not be juridically flawed. This illustrates that the will is a will that is in the field of civil law. Therefore, the determination of who issued it is a personal (private).

Note that the sense and the principles of the Civil Code that can not simply be used by analogy in Administrative Law in terms of determination. The statement will in civil law is different in nature from the will of the position statement. This is due to that the willingness which manifests the willingness state, written in the legislation (by law). Not a private whim.

That in private law is the complete independence of the individual in the association. So, an individual can only be bound by a legal obligation, which is the result of a legal act that pleases himself. People just tied it when people want him tied up. So his will be the basis of a legal act dilakukanya. But in terms of different statutes, as the official representative of the state apparatus are occupied not remove that provision to bind themselves. In this case, bound by statute, requires that the state administration is governed rather than obliging on yourself.

**Conclusion**

From previous exposure, that in state law, any government action should be based on law. It is based on the universal principles in the administration of the State, namely the principle wetmatigheid van bestuur or legality. This principle specifies that the absence of the basis of authority granted by a legislation in force. Without a cause invalidity legality of government acts. As a source of authority, then the whole apparatus pemerintahtidak action will have the authority that may affect or alter the legal position of citizens of the state or the society, without any legality in accordance with actions.

The principle of legality is a basis for action to realize the harmonious administration acts. Here met the familiar rule of law and understand the sovereignty of the people based on the principles of honesty and certainty, which is protected by the constitution.That the measuring instrument consists of the administration follow the rules of law or the rules of written law and the general principles of good governance, or worth. Morality is its size and it is an unwritten rule of law. Legislation as written law rule most still sectoral and overall have not been codified.

On this perspective, the general principle of good governance is the norm or grundnorm were not written to be used as the basis for every act of government. Without this principle follow the government lost its legitimacy. For the scope or boundaries of the validity of the acts of government include the authority that originates at the level of administration that is attributive, discretionary and mandate.

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