



Research Article

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Resolution of Disputes Regarding Unlawful Acts by the Government in the Administrative Justice System in Indonesia

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Abstract

This study aims to analyze the expansion of the absolute competence of Administrative Courts to examine factual actions and/or illegal acts by the government. This paper is a doctrinal legal research using statute and conceptual approach. The result of this study argued that the expansion posed a legal problem since the absolute authority is determined by law. In this case, it is transferred through a Supreme Court Regulation without changing the law. The other problem was also found in the legal basis for judicial review and limited compensation. Ideally, it should be preceded by amending the law, broadening the legal basis for review, and providing fair compensation.

Keywords: Resolution; Disputes; Unlawful Acts; Administrative Justice System; Indonesia

1. Introduction

It is clearly stated that the absolute competence of Administrative Courts only tests State Administrative Decisions (KTUN) and resolves employment disputes (Law Number 9 of 2004 concerning State Administrative Court as amended by Law Number 52 of 2009. hereinafter referred to as the PTUN Law). Through Law No. 30/2014 concerning Government Administration (hereinafter written as UUAP Law), Administrative Courts are also given the authority to examine and resolve factual actions conducted by government agencies and/or officials. In order to resolve disputes over these factual acts, the Supreme Court of the Republic of Indonesia issued Supreme Court Regulation (hereinafter written as Perma) No. 2 of 2019 concerning Guidelines for Government Action Dispute Resolution and the Authority to Adjudicate Unlawful Acts by Government Agencies and/or Officials (*onrechtmatige overheidsdaad*).

Perma used the term government action, while UUAP Law used the term factual action. Perma also used the terms government action and illegal acts by government bodies and/or officials. The term illegal acts by the government itself is a translation of *onrechtmatige overheidsdaad* (OOD), namely from a term that is well known; *onrechtmatige daad*. There have been various translations of this term by Indonesian writers. There are those who translate actions against the law, acts against the law, and actions that are against the law (Prodjodikoro, 1967). Mertokusumo & Tjandra (2014)

mentioned several other translations such as immoral acts, acts without rights, acts without rights. In common law system, *onrechtmatige daad* has similar meaning to *tort* which defined by Rosa Agustina as a person who commits certain acts that cause loss to another person by violating the rights and obligations determined by law that do not arise from a contract or trust, for which compensation can be claimed for the loss caused (Agustina, 2003). All actions caused by intentional or negligence can be categorized as unlawful acts, as long as the act is wrong (violating the law in a broad sense). Therefore, the perpetrator deserves to be given the burden of compensating for the loss (Shidarta, 2010).

Factual actions and *onrechtmatige overheidsdaad* have been resolved through the Civil Court on the basis of a lawsuit in Article 1365 of the Civil Code. Historically, the settlement of the *onrechtmatige overheidsdaad* dispute through the General Court was based on Article 2 *Rechterlijke Organisatie* (RO) and the reason "while an Administrative Court has not been established." It was argued that "Several decisions of the Supreme Court of the Republic of Indonesia provide a legal basis, that while an Administrative Court has not yet been established, it is the general court that has the authority to hear claims for damages suffered by a person due to an illegal act by the Authorities."

After the issuance of PTUN Law and the establishment of an Administrative Court, the settlement of the *onrechtmatige overheidsdaad* case is still the absolute competence of the Civil Court. When a case of illegal acts by the government is transferred to the settlement through the Administrative Court, the transfer itself creates a legal problem; because the absolute competence of the judiciary as stipulated by law is transferred through a Supreme Court Regulation, not by changing the provisions of the law. In addition, the consequences of this transfer of competence also because a number of legal problems that require further research.

Based on PTUN Law and UUAP Law, the basis for judicial review (*toetsingsgrond*) that judges must use in solving cases in the Administrative Court are statutory regulations and General Principles of Good Governance (hereinafter written as AUPB), while Factual actions that cause losses and unlawful acts by the government are tested on the basis of Article 1365 of the Civil Code or the norms of Civil Law. Can Article 1365 of the Civil Code be included in the norms of Administrative Law? Does violation of private legal norms also mean violation of public law norms, and vice versa?

AUPB, as one of the bases for examining government actions, have been qualified by a number of Administrative Law experts as unwritten law (van Wijk, 1995; Donner, 1987; Verstedden, 1984; Berge, 1996), while the application of Article 1365 of the Civil Code in its development, especially after 1919, also included unwritten law as one element of illegal action. In the event that the government's unlawful act is resolved through the Administrative Court, is the examination of the government applied to AUPB, the unwritten law of Article 1365 of the Civil Code, or both?

Based on Article 1 point 2 of PTUN Law, State Administrative Bodies or Officials are Entities or Officials who carry out government affairs. In UUAP Law and Administrative Court jurisprudence there has been an expansion of the meaning of government. According to UUAP Law, State Administrative Bodies and/or Officials include the executive, legislative, judiciary and other state administrators, while based on jurisprudence it includes private legal entities that carry out government functions. After the unlawful act by the government has been resolved through Administrative Courts, does the definition of government in the OOD also experience an expansion in meaning that is correlated with the expansion of the defendant's party?

Expanding the defendant's party in dispute resolution in the Administrative Court is not without problems. These state bodies or institutions carry out activities based on Constitutional Law (*staatsrecht*). The government in the OOD takes factual or civil action (*privaat recht*) and causes losses to other parties. Private bodies have their main function in the private sphere. Meanwhile, the legal process in Administrative Courts principally applies material law in the form of Administrative Law, namely statutory regulations and AUPB. Is it relevant to examine the actions of state organs, legal entities, or certain legal subjects who carry out legal actions (*rechtshandeling*) based on Administrative Law or Civil Law but are then assessed on the basis of Administrative Law norms (*bestuursrecht*)?

Another legal issue related to the resolution of disputes over illegal acts by the government in the Administrative Court is determining the responsible party (*aansprakelijkheid*) to provide compensation (*schadevergoeding*). Although it seems clear that the perpetrator in the OOD is the government and therefore the party responsible for providing compensation is also the government in accordance with the principle of “*schuldaansprakelijkheid*” (responsibility on the basis of error) which underlies Article 1365 of the Civil Code (Lotulung, 1993), in fact it is not easy to make it happen. When the government takes an action, the situation is not similar to the action by human legal subjects (*natuurlijk persoon*). In the action taken by the government, it is related to several aspects and not every action can always be held accountable, even though it causes losses to other parties.

2. Legal Matters

This paper elaborates two legal issues, namely the legal basis for assessment and judicial review illegal acts by the government in the Administrative Justice system and the responsibility and compensation as a result of illegal acts by the government.

3. Method

This paper is a doctrinal legal research that mainly relies on statutes and court cases of illegal acts by the government in the Administrative Justice system as its primary sources of information. It is supported by opinions by legal scholars as a secondary data to justify the analysis. This paper also uses an analytical descriptive approach to examine relevant provisions from statutes and literatures, and to analysis some court cases regarding the concept of unlawful act by the government in the administrative justice system in Indonesia.

4. Results

4.1 Administrative Justice System in Indonesia

The system is defined as a set of elements that are regularly interrelated to form a totality. The term judiciary is interpreted as a process to provide justice in order to enforce the law (*het rechtspreken*) (Basah, 1985). In Dutch, this court is called *rechtspraak* which consists of two words combined *recht* (law or rights) and *spraak* (discussion). In this context, *rechtspraak* is defined as the law discussed and debated, or rights to be demanded and fought for, including assembly line of judge’s thought as the basis for decisions on certain cases (*de gedachtegang van een rechtscollege als grondslag van de beslissing van ene rechtskwestie*) to the time when the judge reads the court’s decision (*als rechter een vonnis uitspreken*) (Kuipers, 1901). In this study, *rechtspraak* refers to dispute resolution or providing justice at a predetermined place. It is also understood that *rechtspraak* has similar meaning to a court or an organization formed by the state to examine and resolve legal dispute (Fockemma & Andreae, 1951).

According to Sudikno Mertokusumo (1971), judiciary means everything related to the court. Court is defined as not merely a body to judge, but as an abstract meaning as providing justice which is related to the duties of a judge. This defines justice in general meaning. In administrative law, this does not fully apply, especially in dispute resolution through administrative efforts. Providing justice in dispute resolution through administrative measures is not carried out by the judge, but by the government organ that issues the decision or the superior official of the government organ. The settlement of administrative disputes carried out by the judge only occurs when the dispute is submitted to the Administrative Court.

Providing justice is institutionally carried out by the judicial authorities as promulgated in Article 1 number 1 Law no. 48 of 2009 concerning Judicial Power. It is also stated both in Article 24

paragraph (2) of the 1945 Constitution of the Republic of Indonesia and in Article 18 of Law no. 48 of 2009 concerning Judicial Power that 'Judicial power is exercised by a Supreme Court and judicial bodies under it in the General Court, Religious Courts, Military Courts, State Administrative Courts, and by a Constitutional Court'. With the exception of the Constitutional Court, each of these judicial institutions had a tiered system that culminated in the Supreme Court. All judicial institutions are equipped with sub-systems, namely substantive and procedural law, human resources (judges, clerks and administrative staff), facilities and infrastructure, including information systems. Hence, it appears that the Administrative Court is a part of the judicial organs or judicial power, which has the authority to examine, adjudicate, decide and resolve state administrative disputes. Like other courts, the Administrative Court is organized in stages and culminates in the Supreme Court. In carrying out the judicial process, the Administrative Court is also equipped with a sub system in the form of substantive and procedural law, human resources, facilities and infrastructure.

Administrative Efforts is one of the legal efforts in the settlement of state administrative disputes carried out by agencies that issue decisions, actions or other agencies or superior agencies to those issuing decisions and/or actions. It is clearly mention in the original explanation Article 48 PTUN Law that 'in the event that the settlement must be carried out by a superior agency or agency other than the one issuing the decision in question, then the procedure is called administrative appeal. In the case of the completion of the State Administrative Decree it must be carried out by the State Administrative Agency or Official who issuing the decision, the procedure being followed is called an objection. Administrative Effort has been recognized in Indonesia as a part of system in Administrative Court (Sugiharto & Abrianto, 2018) to provide legal protection for citizens harmed by the actions of state administration, as well as for the state administration itself in carrying out its duties and function in accordance with the law (Marbun, 1997).

State administrative or administrative dispute resolution through this Administrative Effort has the following characteristics:

- a. Dispute resolution is carried out by the government organ that issues decisions and/or actions, other government organs, or the superior organ of the government organ that issues decisions and/or actions;
- b. The government organ examining and deciding state administrative disputes can change and/or replace the disputed decision;
- c. Testing of the object of the dispute is carried out both on validity (*rechtmatigheid*) and policy aspect (*doelmatigheid*).

In contrast to PTUN Law which requires the resolution of state administrative disputes through administrative efforts as long as its basic regulations are provided, both UUAP Law and Perma obliged to resolve state administrative disputes through Administrative Efforts. When the settlement of state administrative or administrative disputes through this Administrative Effort has been taken, but the results do not satisfy the plaintiff, then the plaintiff has the right to file a lawsuit at the Administrative Court. According to Sjachran Basah (1989), the settlement of state administrative disputes through the Administrative Court has the following elements:

- a. The existence of Administrative Law is applied to a problem;
- b. There are concrete legal disputes caused by a written decree of state administration;
- c. At least two parties, and at least one of the parties must be state administration;
- d. The existence of a judicial body, which has the authority to decide disputes;
- e. The existence of procedural law in order to apply the law, finding in concreto law to maintain compliance with substantive law.

By placing the Administrative Efforts as an integral part of a series of state administrative or administrative dispute settlement through the Administrative Court, the elements contained in the administrative judicial process are also the presence of a government organ that examines and decides cases. In contrast to judges whose judicial authority is limited to legal aspects, government organs in examining and deciding state administrative disputes not only assess from the legal aspect (*rechtmatigheid*), but also from the policy aspect (*doelmatigheid*). A lawsuit to resolve the dispute

through the judicial process can be taken as a last resort for justice seekers after non-judicial internal settlement efforts are unsatisfactory (Philipus M. Hadjon (2007))

4.2 Resolution of Disputes on Unlawful Acts by the Government in Administrative Courts

According to PTUN Law, the resolution of state administrative disputes through Administrative Efforts and Administrative Courts is only limited to examining state administrative decisions and personnel disputes. However, after UUAP has been enacted, both legal mechanism has also an authority to examine and assess the factual actions of government organs, check whether there are elements of abuse of power by government officials, test and assess the validity of decisions of legislative, judicial and other state officials, and decide petition by a person or civil legal entity in connection with a fictitious-positive decision within the government or other state officials. The authority of Administrative Court to examine a fictitious-positive decision within the government or other state officials has been deleted after the enactment of Law Number 11 of 2020 concerning Omnibus Law

In this section the discussion will focus on the examination and testing of *onrechtmatige overheidsdaad*. UUAP Law itself does not find the term illegal acts by the government, only factual acts, as stated in Article 87 letter a. The term illegal act by the government is found in Perma. The law violation that can be sued can be in the form of active action (*doen*); doing something that is prohibited, passive or not doing (*niet doen*) something that should be done or omission (latent). In relation to governance, law violations in the form of *doen*, *niet doen* and latent are contrary to statutory regulations and contrary to AUPB.

The following will outline four decisions related to factual acts and/or illegal acts by the government which are examined, tested, and resolved through the Administrative Court, namely; Decision Number: 20/G/2017/PTUN.Mdo, Decision Number: 230/G/TF/2019/PTUN-JKT, Decision Number: 199/G/TF/2019/PTUN-JKT, and Decision Number: 26/G/TF/2020/PTUN.SMG.

4.2.1 Decision Number: 20/G/2017/PTUN.Mdo

This case occurred before Perma. Therefore, even though it is related to factual actions, the case registers have not used the TF code (Factual Actions). This case related to Ronald Asiku's lawsuit against the Governor of North Sulawesi who issued a decision in the form of an asset determination at the Equipment Bureau with Reg.: 11.19.00.04.01.08.011.01 and the factual act of installing a sign "North Sulawesi Provincial Government" on the plaintiff's land.

4.2.2 Decision Number: 230/G/TF/2019/PTUN-JKT

This decision is about the lawsuit by the Alliance of Independent Journalists (AJI) and Southeast Asian Freedom of Expression Defenders (SAFENet) against the Indonesian Minister of Communication and Information as Defendant I and the President of the Republic of Indonesia as Defendant II. The object of the lawsuit is in the form of throttling or slowing access/bandwidth in several areas of West Papua Province and Papua Province on August 19, 2019 from 13.00 WIT (Eastern Indonesian Time) to 20.30 WIT, blocking data services and/or terminating internet access entirely in Papua Province dated 21 August 2019 to 04 September 2019 at 23.00 WIT, and extended the blocking of data services and/or termination of internet access in 4 Cities/Regencies in Papua Province and 2 Cities/Regencies in West Papua Province from 04 September 2019 at 23.00 WIT until September 9, 2019 at 20.00 WIT. The object of the lawsuit is considered to be classified as an unlawful act by Government Agencies and/or Officials (*onrechtmatige overheidsdaad*) and is the authority of the State Administrative Court (PTUN).

4.2.3 Decision Number: 199/G/TF/2019/PTUN-JKT

This decision relates to Sujono Kusni's lawsuit against the North Jakarta District Attorney. The object of the dispute over this decision is the action of the defendant who did not carry out the decision to reconsider the Supreme Court of the Republic of Indonesia. No. 58 PK/Pid/2018, especially Amar Decision number 5 letter b which reads: stating evidence in the form of: evidence confiscated from Sujono Kusni alias Beni in the form of evidence number 1 to number 10 is returned to Sujono Kusni alias Beni.

4.2.4 Decision Number: 26/G/TF/2020/PTUN.SMG

This decision relates to the lawsuit by 19 residents against the Mayor of Surakarta as Defendant I and the Head of the Surakarta City Police as Defendant II. The 19 residents who complained lived on land that did not belong to him in the Kentu Baru area of Surakarta City. Defendant I and Defendant II were jointly accused and deemed to have committed an illegal act by carrying out acts of eviction and/or forced eviction and/or destruction of houses and/or assisting evictions and/or assisting forced evictions and/or assisting in destroying houses and/or to provide security for eviction and/or to provide security for forced evictions and/or to secure the destruction of houses, all of which were carried out at the expense of the Plaintiffs.

In the four decisions above, it appears that factual actions or unlawful actions by the government take the form of taking action (*doen*) which is prohibited and not doing (*niet doen*) which should be done or neglecting (latent). Legal violation includes both by commission and by omission in nature (Salam, 2018). Meanwhile, the fourth decision is deemed not to be an *onrechtmatige overheidsdaad* as referred to in UUAP Law and Perma, but merely as a dispute over land ownership rights, and therefore the authority to examine and examine is the District Court judge. It is also important to note that the same basis for testing is applied, namely the laws and regulations and AUPB. The basic application of this testing is in accordance with the function of the Administrative Court to examine the actions of government officials to carry out and/or not take concrete actions in the context of administering the government. Even though the same term is used, namely *onrechtmatige overheidsdaad* as used in general courts and tested by Article 1365 of the Civil Code, when examined and tested through the Administrative Court, the basis for testing is statutory regulations and AUPB, not tested by Article 1365 of the Civil Code.

5. Discussion

5.1 Testing of Unlawful Acts by the Government in Administrative Courts

The term *onrechtmatige overheidsdaad* is generally applied on the basis of Article 1365 of the Civil Code. Mertokusumo (1971) said that acts against the law by the government are part of civil law, even recognized as permanent jurisprudence. *Onrechtmatige overheidsdaad* was originally sourced from Article 1365 of Civil Code (Susilo, 2013). In this sense, the legal standing (*rechtspositie*) of government is a private actor (*overheid als particulieren*). Therefore, the case is resolved through civil court by applying Article 1365 of the Civil Code.

It is beneficial to argue that *onrechtmatige overheidsdaad* was private law concept which then used in Administrative Court. In fact, this raised several opinions. Maksum (2020) stated that in the practice of the Administrative Courts and Civil Courts, it is very difficult to determine complete boundaries between administrative decision and non-administrative court decision. Prang (2013) made a classification that government actions that can be sued to the Administrative Court are government actions that are concrete, individual, and final, while those that can be sued by the Civil Court are general-abstract, general-concrete, and individual-abstract actions. If there are factual actions from the authorities or state administrative bodies or officials that violate the law or harm the

interests of a person or civil legal entity, then refer to the provisions of Article 87 of Law no. 30 of 2014 that has now become the absolute competence of administrative court (Tohadi et al., 2019). Sudarsono (2017) argued that the action of government administration is a legal action (*rechtshandelingen*) by the government administration which is intended to carry out a concrete act in the context of administering the government. In relation to the lawsuit against the government's factual actions, Arwanto (2016) concluded that the authority of the Administrative Court is only limited to testing the validity (legality) alone, not to claims on the basis of compensation (Michiels, 2003).

According to this study, Maksum (2020) stated the difficulty to determine complete boundaries between administrative decision and non-administrative decision was incorrect since the boundaries were very clear. Prang's (2013) classification is also not correct that the general-abstract, general-concrete, and individual-abstract are the absolute authority of the Civil Court. This classification applies to government actions that are regulatory (*regeling*), and this is the competence of the Supreme Court. Sudarsono's (2017) formulation of the government administration's action to carry out a concrete action is not entirely correct because the concrete action (*feitelijk handeling*) is only one of several kinds of government administrative actions. Based on the concept of Administrative Law, factual actions are real or concrete actions that are part of government routines and are not legal actions, but legal facts (*rechtsfeiten*).

Hence, Berge (1995) argued that there are a number of areas of government activity that often result in claims for redress. Most of the activities that result in claims for compensation are in the context of the development of the physical environment – road construction, environmental management, official work, and so on, in which it is possible for parties to be harmed (Andriansyah et al., 2021). Therefore, Arwanto's (2016) conclusion is not correct if the legality of the factual action is tested. The government's factual actions as routines that are not legal actions do not require legality. When the factual action causes harm to another party, the legal problem is only the loss that must be replaced.

In the context of UUAP Law and Perma which places factual action (*onrechtmatige overheidsdaad*) as the authority of the Administrative Court, the object of action and lawsuit occurs in the realm of public law, namely the legal standing of the government *als zodanig* and private parties as government (*particulieren als overheid*) as well as in carrying out public affairs or government affairs. This is also in line with the formulation of the definition of government administrative action as stated in Article 1 point 8 of UUAP Law that the actions of government officials or other state administrators to take and/or not take concrete actions in the context of government administration.

The best term for unlawful acts by the government in the public sector is *onjuist besturen* (wrong or deviant government). The term consists of the administration of government that is not in accordance with the law (*het onrechtmatig besturen*) and is not in accordance with the policy or purpose for which the authority is given (*het ondoelmatig besturen*). The government's action is *onrechtmatigheid* when the action is contrary to the law (*strijdig is met het recht*), and the government's action is not in accordance with the policy, and it is also not in accordance with the objectives to be achieved (Goede, 1986).

The mention of factual actions in the UUAP Law and the granting of authority to the Administrative Court to examine and resolve *onrechtmatige overheidsdaad* and to determine that the Civil Court has no authority to judge, as stated in Perma, must be interpreted in the sense of factual actions and/or illegal actions that cause such losses in relation to government administration. This is for two reasons; First, the Administrative Court is established and the Administrative Effort is provided to resolve disputes that occur between government organs and citizens or civil legal entities as a result of government actions of a public nature; Second, the basis for examining government actions, both in Administrative Efforts and in the Administrative Court, is the legislation and AUPB. The laws and regulations and AUPB are the norms of government (*bestuursnorm*), which form the basis for government organs or private parties as government (*particulieren als overheid*) in carrying out government affairs, so that testing their actions against the laws and regulations and AUPB is

appropriate and relevant.

With regard to Decision Number: 199/G/TF/2019/PTUN-JKT, for some people it may raise questions; Is it true that the silence or non-action (*niet doen*) of the North Jakarta District Attorney is in the context of running the government? Of course, silence or not doing a such act is not in the context of government administration. In fact, in this case the significance of Decision Number: 199/G/TF/2019/PTUN-JKT will appear. Based on the norms of Administrative Law, public officials who are given the task of carrying out state or governmental affairs cannot remain silent when there are legal obligations that must be carried out, such as cannot take action when there is no basis for their authority. Public officials meet the qualifications of *onrechtmatige overheidsdaad* or *onjuist besturen*, when they are silent about an obligation that must be carried out or do an act that is legally prohibited.

Factual actions taken by government organs, such as the installation of name boards, blocking data services and/or terminating internet access, the silence of public officials, must have the basis of statutory regulations and must be in accordance with AUPB. Both are governmental norms (*bestuursnorm*) that must be considered and obeyed in the administration of government affairs based on law (*rechtmatigheid van bestuur*).

As for Wirjono's opinion which stated that "Article 1365 BW since 1924, starting with the decision of the Dutch Supreme Court (Ostermann-arrest), is interpreted by jurisprudence in such a way that the government is responsible for all actions of its equipment, not only those violated by Civil Law, but also Public Law, including the Administrative Law", appears to be unfair and irrelevant. The government organ in carrying out government affairs bases its actions on government norms (*bestuursnorm*), and when it violates this legal norm, Article 1365 of the Civil Code is then applied, of course it is unfair (Prodjodikoro, 1967). As unfair as someone who takes legal action on the basis of Civil Law, then is tested and judged based on Administrative Law.

Thus, the term *onrechtmatige overheidsdaad* which is based on Article 1365 of the Civil Code and has produced a lot of jurisprudence in the judicial process at the general court, when used in the dispute resolution process in Administrative and Administrative Courts it must be interpreted in the context of public law (*onjuist besturen*) and assessed based on the norms of Administrative Law, namely the laws and regulations and AUPB. In other words, the examination of factual actions carried out by the government and/or *onrechtmatige overheidsdaad* is not the "appropriateness, thoroughness and caution that one should have in associating with fellow citizens or other people's objects", as an *ongeschreven recht* in the context of Article 1365 of the Civil Code, but with AUPB which is an *ongeschreven recht* in governance based on law (*rechtmatigheid van bestuur*). This is in line with the existence of Administrative and Administrative Courts as a means of resolving disputes that occur between citizens or civil legal entities as a result of decisions and/or actions of the government or private parties who have the authority to be involved in government administration (*particulieren als overheid*).

5.2 Assignment of Responsibility and Indemnity in Administrative Courts

In accordance with the provisions that factual actions and/or the occurrence of *onrechtmatige overheidsdaad* who are sued at the Administrative Court are acts of government officials or other state administrators to take and/or not take concrete actions in the context of administering government, then this means that the official's actions are for and in the name of a position (*ambtshalve*) or a position order (*ambtelijk bevel*).

Position is an institution with its own scope of work which is established for a long time and to which it is assigned tasks and authorities (Algra & Janssen, 1992). The duties and authorities attached to the position are carried out by means of equipment or organs, namely people or groups of people who are authorized to represent legal entities (or positions) based on laws or articles of association to engage in legal relations. Through the mediation of officials, the duties and authorities attached to the position can be realized. An official is a deputy (*vertegenwoordiger*) of office, who acts for and on

behalf of the position (Stroink & Steenbeek, 1985).

In connection with factual actions or government actions carried out by the government or private parties who have the authority to be involved in the administration of the government for and on behalf of the position (*ambtshalve*), in principle the burden of responsibility is placed on the position. However, theoretically, the responsibility could be borne by government officials who made subjective mistakes or committed maladministration and caused losses to other parties.

The government's obligation to take responsibility for factual actions and/or illegal acts is, in principle, directed at returning to its original condition as before the occurrence of an unlawful act, known as reparatory sanction, namely sanctions applied in reaction to violation of norms, aimed at restoring in its original state or placed in a legal situation (Nicolai et al., 1991). However, if efforts to restore to its original condition or *herstel in de vorige toestand* cannot be made, the government will be burdened with the obligation to provide compensation.

In the settlement of the *onrechtmatige overheidsdaad (onjuist besturen)* dispute in the Administrative Court, the claim for compensation is an additional demand, as is the case for the settlement of state administrative disputes in general. As an additional claim, its existence depends on the main demand, meaning that the claim for compensation is granted or not depending on whether the main demand is granted or not. According to Effendi (2010), this claim for compensation is not absolute. In a lawsuit the claim for compensation may or may not be included.

The compensation is in the meaning as stated in Article 1 number 1 PP No. 43 of 1991 concerning Compensation and Procedures for Its Implementation, namely the payment of an amount of money to a person or civil legal entity at the expense of the State Administrative Court based on the decision of the Administrative Court due to material losses suffered by the plaintiff. The definition of rehabilitation is as stated in the Elucidation of Article 121 of PTUN Law, that is, rehabilitation is the restoration of the plaintiff's right to the ability of his position, dignity, and dignity as a civil servant to the same level as before, before a decision is disputed. The restoration of these rights includes rights arising from the capacity and dignity of civil servants.

Based on Article 2 paragraph (1) and (2) PP. 43 of 1991 concerning Compensation and Procedures for Its Implementation at the Administrative Court, which is the implementing regulation of Article 120 paragraph (3) of the PTUN Law, states that "Compensation which is the responsibility of the Central State Administrative Body, is borne in the State Revenue and Expenditure Budget (APBN)", and "Compensation which is the responsibility of the Regional State Administration Agency, borne by the Regional Revenue and Expenditure Budget (APBD)". The amount of compensation is determined in Article 3, namely at least IDR 250,000 (two hundred and fifty thousand rupiah) and a maximum of IDR 5,000,000 (five million rupiah).

Furthermore, the procedure for payment of compensation is regulated by Decree of the Minister of Finance No. 1129/KMK.01/1991 concerning Procedures for Payment of Compensation for the Implementation of Decisions of the State Administrative Court. It is stated that the payment of compensation is the payment of an amount of money to a person or heir or a civil legal entity due to a decision of the State Administrative Court which has permanent legal force, which imposes compensation on the entity or State Administration official.

The compensation mentioned in Article 120 of the PTUN Law, PP No. 43 of 1991, and Decree of the Minister of Finance No. 1129/KMK. 01/1991 is actually compensation in relation to the object of dispute over State Administrative Decree (KTUN) based on the PTUN Law. The nominal amount of the compensation seems too small, especially with the current conditions, and is very likely not balanced with the real loss suffered by a person or civil legal entity. In addition, based on the Decree of the Minister of Finance, it took very long process, tortuous, and timeless. Hence, Enrico stated that apart from not complying with the principles of fast, simple and low-cost justice, the disputed journey has been long and tortuous for many years (Simanjuntak, 2019).

So far, claims and claims for compensation due to factual actions and/or *onrechtmatige overheidsdaad* have been pursued through the Civil Court. There have been quite a number of decisions by civil court judges in this *onrechtmatige overheidsdaad* case. Of course, there is no

problem of absolute competence or a basis for testing in the resolution of the *onrechtmatige overheidsdaad* dispute through the General Court because Article 1365 of the Civil Code is applied, which can indeed be applied to factual actions or government actions.

When this *onrechtmatige overheidsdaad* was transferred to the absolute competence of the Administrative Court through Perma, of course raises legal problems, especially regarding the basis of testing and issues of compensation. In other words, although the same term is used, namely *onrechtmatige overheidsdaad* as resolved through the General Court so far, however, when the settlement is transferred through the Administrative Court, as stated above, it can only be interpreted in the context of public law (*onjuist besturen*) and assessed based on public norms in accordance with the absolute competence of Administrative Courts. Likewise, in relation to compensation, it cannot be interpreted the same as compensation in the context of civil action.

On that basis, when an Administrative Court judge gives the main demand accompanied by a claim for compensation, the determination of compensation is based on the considerations above, especially seeking and finding a balance between the public interest and the factual losses suffered by citizens. On that basis, the provision of compensation through the Administrative Court does not need to determine nominal limits or these limits are interpreted and adapted to the context, namely left to the discretion (*wijsheid*) of the Administrative Court judges by considering the interests of the state, real losses experienced by citizens, and factual conditions when making decisions.

6. Conclusion

The basis for assessing and examining factual actions and/or *onrechtmatige overheidsdaad* in the Administrative Justice system is still in the form of legislation and AUPB or government norms. In connection with the factual actions and/or *onrechtmatige overheidsdaad* (*onjuist besturen*) that occur in relation with the actions of government officials or other state administrators to take and/or not take concrete actions in the context of running the government, the burden of responsibility and compensation is placed on the public position.

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