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LEGAL CERTAINTY IN GIVING COMPENSATION DUE TO UNLAWFUL ACTIONS PERFORMED BY THE BODY AND/OR OR GOVERNMENT OFFICIALS (ONRECHTMATIGE *OVERHEIDSDAAD)*

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Abstract:

The provisions for fulfilling demands for compensation, as a result of unlawful acts by the authorities based on Article 3 PP Number 43 of 1991 concerning Compensation and Procedures for its Implementation in the State Administrative Court have not been eligible so that the compensation decision from the court does does not provide benefits and does not resolve those problems that arise. This research aims to study and analyze the concepts and constructions in providing compensation due to unlawful acts committed by government agencies and/or officials. The method used is normative juridical research through statutory approaches (statute approach), case approach (case approach) and comparative approach (comparative approach). The results of the research indicate that there is a legal vacuum, so that it is necessary to expand the authority of the Administrative Court through revisions to the Law on State Administrative Courts, supplemented by an Act against the law compensation mechanism carried out by the Government .

Keywords: The State Administrative Court, unlawful acts by the authorities, compensation

INTRODUCTION

The issuance of Republic of Indonesia Law no. 30 of 2014 concerning Government Administration is a material law in the state administrative justice system. This has the consequence of expanding the absolute competence of PTUN, testing government actions. However, it will cause problems and obstacles in carrying out the duties and functions of the State Administrative Court as an institution that has the authority to control the actions of the government to deal with these obstacles, so all methods or ways that are carried out in order to provide legal protection to the community must be regulated in statutory regulations. invitation;

Over time, after the issuance of RI Law No. 30 of 2014 concerning Government Administration The Supreme Court has stipulated Supreme Court Regulation (Perma) Number 2 of 2019 concerning Guidelines for the Settlement of Disputes on Government Actions and Authority to Tries Unlawful Acts by Government Bodies and/or Officials (Onrechtmatige Overheidsdaad). The complexity of the differences in the characteristics of civil law (procedure) and administrative law (procedure) indicates the asymmetry of the jurisdiction of the judiciary in adjudicating disputes against acts violating the law of the Ruler between the past and present, of course the Judges here have a special challenge to translate the challenges of disruptive legal challenges that demand adaptation, modification and legal innovation (law discovery) so that specific and distinctive administrative law concepts or principles such as the principle of *erga omnes* , *presumption iustae causa* , provisions for filing lawsuits, administrative effort obligations before litigation efforts, function of position as the subject of the defendant, not as a "barrier wall" but as a "guideline sign".

The shift of authority from the General Courts to the State Administrative Courts in adjudicating disputes on acts violating government law (onrechmatige overheids daad) brings new hope for strengthening the enforcement of administrative justice (administrative justice) in the legal system in Indonesia. The basis for testing Government Actions uses Legislation and AUPB, but it is necessary to pay attention to the differences in character between Unlawful Acts (PMH) in civil and Unlawful Acts of the Government in Peratun, PMH in civil is oriented towards

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compensation while PMHP in Peratun is oriented to assessing the legality of Government Actions where demands for compensation are additional demands. Claims for Compensation and Rehabilitation in Disputes on Government Actions at PTUN and PTTUN include claims for material and immaterial compensation. Claims for material damages take into account the principle of reparation. Claims for immaterial losses are submitted to the judge's discretion;

The problem of claims for compensation in the realm of state administration has been regulated in the provisions of Article 53 paragraph (1) of Law Number 5 of 1986 which has been amended to Law number 9 of 2004 (PTUN Law), which reads:

> *Individuals or civil legal entities who feel that their interests have been harmed by a State Administrative Decision may submit a written claim to the competent Court containing demands that the State Administrative Decision adopted the dispute is declared null and void, with or without a claim for compensation and/or rehabilitation. Those filing lawsuits are individuals or civil law entities, who feel their interests have been harmed as a result of a decision (schiking) issued by TUN bodies or officials both at the central and regional levels.*

In the event that the claim for compensation is granted by the court, the guidelines for state administrative bodies/officials in carrying out the said decision still refer to Government Regulation Number 43 of 1991 concerning Compensation and Procedures for its Implementation in State Administrative Courts.

Guidelines for imposing the obligation to pay compensation as referred to in Government Regulation Number 43 of 1991 tend to be applied in Decision disputes, therefore determining the amount of compensation in a Government Action dispute is not bound by PP 43/1991 which is limited to a minimum of Rp. 250,000, - a maximum of Rp. 5,000 000, - but it is left to the judge's consideration with due regard to the sense of justice, and must be based on concrete evidence of the losses suffered by the justice seekers;

METHOD

The research method used in this research is normative juridical through statutory approach *(statute approach)* , case approach (*case approach*) and comparative approach (*comparative approach*).

RESULTS AND DISCUSSION

A. Legal certainty in the implementation of compensation by government bodies and/or officials according to statutory provisions **;**

1. Legal certainty theory

Said by Satjipto Rahardjo, that principle Law can be interpreted as the "heart" of legal regulations, so that to understand a legal regulation it is necessary to have legal principles. In other words, Karl Larenz in his book *Methodenlehre der Rechtswissenschaft* says that legal principles are ethical legal measures that provide direction. to formation law . According to Van Apeldoorn, "legal certainty can also mean things that can be determined by internal law concrete matters " . Legal certainty is a guarantee that the law is implemented, that those entitled to it according to the law can obtain their rights and that decisions can be implemented. Legal certainty is a justifiable protection against arbitrary actions, which means that someone will be able to obtain something they hope for in certain circumstances. Grammatically, certainty comes from the word definite, which means fixed, certain and certain. In the Big Indonesian Dictionary, the meaning of certainty is a matter (state) that is certain (is fixed), provision, decree, while the definition of law is a legal instrument of a country which is able to guarantee the rights and obligations of every citizen, so legal certainty is a provision or determination made by a country's legal instruments that are able to provide guarantees for rights and obligations every citizen . Legal certainty refers to the application of law that is clear, permanent and consistent where its implementation cannot be influenced by circumstances of its nature . subjective . Citing the opinion of Lawrence M. Wriedman, a Professor at Stanford University, he believes that to realize "legal certainty" it must at least be supported by the following elements, namely: legal substance, legal apparatus , and culture law . Sudikno Mertokusumo stated that legal certainty is one of the conditions that must be fulfilled in law enforcement, namely that it is justifiable against arbitrary actions, which means that a person will be able to obtain something that is expected in certain circumstances. According to Maria SW Sumardjono, the concept of legal certainty is that "normatively, legal certainty requires the availability of legal regulations that are operational and support its implementation. Empirically, the existence of statutory regulations needs to be

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implemented consistently and consistently by the source Power man supporters ". A regulation is made and promulgated with certainty because it regulates clearly and logically. It is clear in the sense that it does not give rise to doubt (multiple interpretations) and is logical so that it becomes a system of norms with other norms that do not clash or give rise to norm conflicts. Norm conflict arising from rule uncertainty can take the form of norm contention, norm reduction or norm distortion.

Because legal principles contain ethical demands, legal principles can be said to be a bridge between legal regulations and social ideals and the ethical views of society. In the realm of law, in fact there are many principles that form the basis for forming legal regulations, for juridical certainty in the formation of legal rules, the main principle is built in order to create clarity about legal regulations, this principle is legal certainty. Based on the thinking as described above, legal science is equated with an exact/natural science, related to legal certainty as a characteristic of modern law with the intention that the law provides predictability. There are four things related to the meaning of legal certainty (Satjipto Rahardjo), including: 1. That law is positive, meaning that it is legislation. 2. That the law is based on facts, not a formula regarding an assessment that will be judged later, such as "good will", "decency". 3. That the facts must be formulated in a clear manner so as to avoid misunderstandings in spelling, besides that they are also easy to implement. 4. Positive law must not be changed frequently. For Fuller to describe the law there are eight criteria, and these must meet eight criteria which if not met, then the law fails to be called a law. The eight criteria are 1. A legal system consisting of regulations, not based on ad hoc decisions for certain matters 2. The regulations are announced to the public. 3. It does not apply retroactively, because it will damage the integrity of the system. 4. Made in a formulation that is understood by the public. 5. There must be no conflicting regulations. 6. Must not demand an action that exceeds what can be done. 7. Should not be changed frequently. 8. There must be conformity between regulations and daily implementation. The law must be written, which is a characteristic of modern law as well as for the sake of guaranteeing legal certainty, is actually a separate weakness because it will not be able to keep up with the times that are always changing from time to time, so that the written law will always be behind what should be guarded by law, thus Even the meaning of justice contained in written law will not be able to keep up with changes in the meaning of justice which also continues to develop. Gustav Radbruch describes this very precisely through three basic legal values, namely justice, benefit and legal certainty which are not always in a harmonious relationship with each other, but instead face, contradict, argue with each other. Justice can collide with expediency and legal certainty, demands for expediency can collide with justice and certainty and so on. If legal certainty is discussed as statutory certainty, then it means that we have entered the realm of human behavior and other factors that can influence how positive law is implemented. As explained above, the problem of legal certainty in our legislation is characterized by a European centricity shrouded by an individualistic liberal dimension. In a liberal culture and liberal legal system, legal tasks are completed when the law is made. Liberal legal certainty completely ignores the reality that society is full of differences and inequalities in life. Someone with disadvantaged economic conditions will be the target of "no resistance" in enforcement law .

According to Bagir Manan, there are at least five components that influence legal certainty, namely:

1. Legislation;
2. Bureaucratic services;
3. Judicial process;
4. political uproar;
5. Social uproar.

One of the legal problems that arises from the antinomies of decisions between the PTUN and the District Court is the failure to achieve one of the legal objectives, namely legal certainty for those seeking justice. Of course, this phenomenon will be collaborated with the theories of legal objectives above, so it can be seen that the objectives of the law are to provide certainty. This is in line with the aims and objectives of the principle of legal certainty, which ensures that justice seekers can use a law that is certain, concrete and objective, without the involvement of speculation or subjective views.

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In essence, unlawful acts by the government are no different from the teachings of unlawful acts in general. The arguments regarding Unlawful Acts are generally regulated by Article 1365 of the Civil Code which states "every act that violates the law which causes harm to another person, requires the person who, through his fault, caused the loss, to compensate for the loss". The elements of an unlawful act in Article 1365 of the Civil Code are that there must be an act, the act is unlawful, the perpetrator must be guilty, the act causes loss, and there is causality between the act and the loss caused. In terms of administrative law, decisions or factual actions carried out unlawfully by the government can certainly harm society. Even though unlawful acts are committed by parties who hold power, legal protection for the injured party is a reasonable urgency. In line with this, Ridwan HR also agrees by stating that the burden of responsibility and demands for compensation or rights are directed at every legal subject who commits a violation regardless of whether the legal subject is a person, legal entity, or government. From the start, in a State Administrative Dispute, it is possible to combine several lawsuits by demanding that the decision issued be annulled or declared invalid so that it becomes the basis for the imposition of compensation as regulated in Article 53 Jo. Article 97 paragraph (10) UUPTUN.20 Then, after it is firmly stated by UUAP that the factual actions of Agencies/and/Officials fall within the meaning of State Administrative Decrees, then unlawful acts committed by the government are part of the authority of the State Administrative Court. The problem currently encountered is the absence of a clear mechanism for implementing claims for compensation against onrechtmatige overheidsdaad. Even though there have been many lawsuits from the public demanding compensation for losses. The legal basis for implementing the decision is the provisions of article 116, 119 *Jo* 120 Law number 5 of 1986 concerning State Administrative Courts;

The State Administrative Court is an institution of judicial power that carries out judicial functions, not an executor . Likewise in the PTUN, the limit of dispute resolution is to determine the validity of a decision. In Law Number 5 of 1986, it is determined who has the right to file a claim for compensation at the State Administrative Court. This has been regulated in the provisions of Article 48 and Article 53 paragraph (l) of Law Number 5 of 1986 concerning State Administrative Courts. In the provisions of this article it has been determined that those entitled to prosecute which may be accompanied by demands for compensation are individuals or civil legal entities whose interests have been harmed by a decision of the State Administration. So if the State Administrative Decision which is detrimental is personalijke (individual) in nature, then those who are entitled to file a claim for compensation are the person or civil legal entity that directly suffers the loss. However, if the State Administrative Decision is of a zekelijke (material) nature, then those who can file a claim for compensation are those who are entitled, namely the heirs or civil legal entities. Furthermore, it has also been stipulated in the provisions of Article 97 paragraph 8, paragraph 9, paragraph 10 which states that in the case of a lawsuit being granted, then the Court's decision can stipulate obligations that must be carried out by the State Administrative Agency or Official who issues a State Administrative Decree where the Obligation as intended in paragraph (8), the decision can be in the form of:

a. Revocation of the relevant State Administrative Decision; or
b. Revocation of the relevant State Administrative Decree and issuing a new State Administrative Decree; or
c. The issuance of State Administrative Decisions in the event of a lawsuit is based on Article 3.

Of the three obligations as referred to in paragraph (9) can be accompanied by the imposition of compensation, this can be seen in the Decree of the Minister of Finance regarding compensation which has previously been spelled out, in fulfillment of this compensation what is meant by Payment of Compensation is the payment of an amount of money to a person or heirs or civil legal entities because of a decision of the State Administrative Court which has permanent legal force, which burdens compensation to the State Administrative body or officials, and those entitled to are persons or heirs or civil legal entities that the State Administrative Court the lawsuit was granted.

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'Irfan Fachruddin said that due to the lack of existing rules regarding Compensation in the implementation of State Administrative Decisions, and to provide a sense of justice to the community, the Judge handling this dispute must have the courage to make legal breakthroughs for the sake of creating justice itself, as we all know that in fulfilling this compensation, the court is required to provide or cover losses suffered due to a decision, if in its course later the court cannot fulfill the corrective function of justice to obtain compensation then it is hoped that the decision will be remedial in nature which builds trust or helps solving the problems and difficulties of justice seekers, without focusing only on anti-loss;

The State Administrative Court in deciding on compensation of course cannot release the Spirit or Legal *Principles* attached to the Claim for Compensation itself which refers to article 1365 of the Criminal Code, and in analyzing the problem of course it cannot be separated from the existence of elements of unlawful acts by authorities such as , interferes with the rights of others, is contrary to legal obligations, the principles of decency and the principles of propriety;

Another thing that is very important is how the Judge builds a legal construction in describing the problem to give a final decision , then Irfan Fachruddin , gives description legal constructions that can be used by judges as dispute resolution,

1. Analogy (argumentum per analogiam) is a legal discovery method in which judges look for a more general essence of a legal event or good legal action that has been regulated by law or that has not been regulated.
2. Across Regimes/Legal Institutions (aims to seek fairness and decency to produce justice
3. Rechtsvervijning (Law discovery)
4. Argumentum a Contrario (interpretation based on the conflict of understanding between concrete events and statutory events.)
5. Judicial review (statutory principle) (testing existing laws against higher laws in law enforcement)
6. Dialectics (discourse between two thoughts between two people or more different _ view about something tree discussion but want to enforce truth through argument reasonable . _
7. Judicial activism (new things that are not contained in legal regulations, this is obtained because of the judge's policy in making breakthroughs in existing law because the existing law is considered not enough to provide legal awareness to the public;)

One example of a case that the author describes here is how a judge provides a legal analogy to obtain legal certainty for society;

- The plaintiff is Esalon II of BPOM Surabaya Staff, honorably dismissed at the age of 58, until at the Cassation Level of Examination the dismissal is justified; then the Plaintiff conducted a review of the government's actions, which disputed the Plaintiff's position as echelon II who should have been dismissed at the age of 60 based on the position obtained not as an ordinary employee. This reason was justified and stated that the dismissal decision letter received by the plaintiff was flawed, then both appealed in the same case, and at this level confirmed the decision as administratively flawed and declared Inkrach.
- What's interesting is that at this execution stage, the Chairman of the Jakarta Court implements the results of the Decision by calculating all the losses suffered by the Plaintiff due to negligence on the part of the Defendant, including paying the amount of salary that should still be received by the Plaintiff, as is the legal basis used by the Jakarta KPTUN at that time it was Article 117 of law number 5 of 1986 concerning State Administrative Justice;

  "Within thirty days after receiving the notification as intended in paragraph (1) the plaintiff can submit an application to the Chairman of the Court who has sent the decision. The court has obtained permanent legal force so that the defendant is burdened with the obligation to pay the amount of money or other compensation he desires. (3) After receiving the request as intended in paragraph (2), the Chairman of the Court orders both parties to summon each party to reach an agreement on the amount of money or other compensation that must be

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charged to the defendant. (4) If, after trying to reach an agreement, an agreement cannot be reached regarding the amount of money or other compensation, the Chairman of the Court, by a decision accompanied by sufficient considerations, determines the amount of money or other compensation in question."

- On this legal basis, they received a response from the Food and Drug Administration and the State Personnel Administration Agency, which then fulfilled the obligations imposed by the Defendant to pay this amount of money.
- The reason why the chairman of the Court did not use the basis of Government Regulation number 43 of 1991 for compensation was because the amount was insufficient and did not meet the demands of the times, for the costs of going to court and attorney's fees alone were greater than the value stated in the Government Regulation.

The author raises this case, as a comparison, that the existing government regulations are no longer in accordance with the existing conditions and these regulations are issued to answer the problems of all state administrative decisions that are the object of dispute in court accompanied by demands for compensation or payment of a sum of money.

2. Implementation of Provision of Compensation by Government Agencies and/or Officials According to Statutory Provisions .

The promulgation of Law Number 30 of 2014 concerning Government Administration (UU AP) on 17 October 2014 was a very enlightening step in government administration reform. This is a form of state and government responsibility to ensure fast, comfortable and cheap administration of government and public services. The AP Law is one of the pillars of administrative reform. Every unlawful act that causes loss to another person requires that the person who wrongly caused the loss must compensate for the loss. Meanwhile, in the general explanation of Law no. 30 of 2014 concerning Government Administration The fifth paragraph explains: Citizens can also file lawsuits against decisions and/or actions of government bodies and/or officials to the State Administrative Court, because this Law is the material law of the State Administrative Court system. In Article 1 point 8, what is meant by Action (Handeling) is: Government Administrative Action, hereinafter referred to as Action, is the action of a Government Official or other state administrator to carry out and/or not carry out concrete actions in the context of administering government. Then, if we look closely at Article 87 of the Government Administration Law, it is found that Factual Actions are also included in the definition of KTUN in the Law. Factual Actions carried out without a written KTUN can be sued for compensation from PERATUN through an OOD lawsuit.

This is in line with the MA RI Circular No. 4 of 2016 SEMA which in Dictum E in the State Administrative Chamber section point 1 states as follows: Changes in the paradigm of proceedings in the State Administrative Court after the enactment of Law Number 30 of 2014 concerning Government Administration (UU AP): 1. Administrative Court Competence Country a. Authority to adjudicate cases in the form of lawsuits and requests. b. Has the authority to adjudicate unlawful acts by the government, namely unlawful acts committed by government power holders (Government Agencies and/or Officials) which are usually called onrechtmatige overheidsdaad (OOD). Based on this, a claim for compensation for damages resulting from factual actions (Feitelijk Handelingen) can be carried out in the State Administrative Court.

This is also based on the provisions in the Government Administration Act, especially Article 85:

(1) Submission of a lawsuit for a Government Administration dispute that has been registered at a general court but has not yet been examined, with the coming into force of this Law, is transferred and resolved by the Court.

(2) Submission of a lawsuit for a Government Administration dispute that has been registered at the general court and has been examined, with the enactment of this Law still being resolved and decided by a court within the general court environment.

(3) The court decision as referred to in paragraph (2) is carried out by the general court that decides. As well as Article 76 paragraphs (3) and (4): (3) In the event that a Community Citizen does not accept the settlement of an appeal by a Superior Official, the Community Citizen can file a lawsuit with the Court.

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(4) Completion of Administrative Efforts as intended in Article 75 paragraph (2) relates to the annulment or invalidity of Decisions with or without accompanying claims for compensation and administrative claims.

The paradigm in this Law on Government Administration requires a lawsuit Onrechtmatig overheidsdaad (OOD) or PMH by the authorities is submitted to the Administrative Court, no longer to civil judges. In fact, all OOD / PMH disputes by the authorities in the General Courts (civil judges) that have not been examined must be transferred to the PTUN based on Article 87 of the Government Administration Law.

If the lawsuit against the KTUN as stated in the Administrative Court Law is to state that the KTUN made by the TUN Officer/Body is invalid, and can be accompanied by compensation (Article 97 paragraph (10) of Law No. 5 of 1986), then the OOD lawsuit in this Administrative Court is to state that the factual actions carried out by the TUN Officer/Body are invalid and therefore the Plaintiff is entitled to a number of compensation.

Because the provisions of the Transitional UUAP do not mention the authority to adjudicate onrechmatige overheidsdaad cases and the legal provisions for dispute settlement procedures for government actions have also not been regulated, the Supreme Court stipulates guidelines for resolving disputes on government actions and the authority to adjudicate cases of unlawful acts by government agencies and/or officials in a court regulation . Agung Number 2 of 2019, compiled as a response to the affirmation of the authority of the State Administrative Court in adjudicating and deciding Unlawful Actions by the Government. In contrast to other special State Administrative disputes, which have shorter stages and quicker timeframes, and are also stipulated in the Supreme Court Regulations, the substance of the Supreme Court Regulation Number 2 of 2019 basically contains definitive sections and limitations on Acts Against Laws by Government Agencies and/or Officials. Meanwhile with regard to the stages of the examination, the time period, and other related mechanisms, it is emphasized in the Supreme Court regulation that it still refers to the inspection mechanism with the usual procedures in Law Number 5 of 1986 and its amendments.

Regarding the compensation requested by the plaintiff in filing his lawsuit at the State Administrative Court accompanied by compensation, the compensation obtained by the plaintiff is limited because the amount of compensation that can be obtained at the State Administrative Court has been determined in a limited manner in government regulations and such compensation paid due to material losses suffered by the plaintiff. In Article 120 paragraph (1) a copy of the court's decision containing the obligation to pay compensation is sent to the plaintiff and the defendant within three days after the court's decision obtains permanent legal force and paragraph (2) states a copy of the court's decision containing the obligation to pay compensation as referred to in paragraph (1), paragraph (3) of Law Number 5 of 1986 states that the amount of compensation and the procedures for implementing the provisions referred to in Article 97 paragraph (10) are further regulated by Government Regulation. Government regulations governing compensation in the State Administrative Court which is the implementation of Article 120 paragraph (3) of Law Number 5 of 1986 is Government Regulation Number 43 of 1991 (PP No. 43/1991) concerning Compensation and Procedures for its Implementation at the State Administrative Court. In Article 1 point 1 of Government Regulation Number 43 of 1991, it is stated that compensation is the payment of a sum of money to a person or civil legal entity at the expense of the State Administrative Body based on the Decision of the State Administrative Court due to material losses suffered by the plaintiff. Furthermore, in article 3 it is also stated that the amount of compensation that the plaintiff can obtain is at least Rp. 250,000,- (two hundred and fifty thousand rupiah) and a maximum of 5,000,000,- (five million rupiah) taking into account the actual circumstances. The amount of compensation that has been determined in the decision of the State Administrative Court is fixed and does not change even if there is a time lag between the date of the decision and the payment of compensation. This provision means that even though there is a grace period between the time the PTUN decision is made and the payment of compensation, this does not affect

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the amount of compensation that has been decided by the PTUN Judge. Thus, it is not possible to charge interest on the amount of compensation in addition to the amount of compensation. From the provisions of the two articles above, it can be seen that the plaintiff is limited and compensation is only given for material losses. So *immaterial losses* that may be suffered by the plaintiff cannot be obtained in the State Administrative Court. In addition, the plaintiff will not receive full compensation for the losses he has suffered, which are sometimes greater than the maximum limit on the amount of compensation set by the State Administrative Court. Technically, this is a burden from the APBN, this can be seen in the Decree of the Minister of Finance Republic of Indonesia Number 1129/KMK.0l/1991 concerning Procedures for Payment of Compensation for Implementation of State Administrative Court Decisions;

2. Compensation Payment Process in the State Administrative Court

   If the compensation is the responsibility of the State Administration Agency or Official then the method of payment is further regulated by the Minister of Finance (vide Article 2 paragraph 1 and Article 4 paragraph 1 of Government Regulation Number 43 of 1991) whereas if the compensation is the responsibility of the Agency or official Regional State Administration, then the compensation in question is charged to the APBD and the payment procedures are further regulated by the Minister of Home Affairs (vide Article 2 paragraph 2 and Article 4 paragraph 2 of Government Regulation Number 43 of 1991). Decree of the Minister of Finance of the Republic of Indonesia has been issued Number 1129 /KMK.0l/1991 concerning Procedures for Payment of Compensation for Implementation of Decisions of the State Administrative Court. Meanwhile, the regulations referred to in article 4 paragraph (2) of Government Regulation Number 43 of 1991 have not yet been issued by the Minister of Home Affairs. So compensation is charged to the APBD, the payment procedure is carried out by the relevant Regional State Administration Agency or Official. As for the procedure for granting compensation in deciding and resolving a State Administrative dispute, the State Administrative Judge will make a decision which may contain an obligation for the State Administrative Body or Official that issued the disputed State Administrative Decision to pay compensation to the plaintiff. . The decision containing the obligation to provide compensation is sent to the parties by the PTUN which determines the decision. The request for implementation of the court decision is submitted by the party concerned to the State Administrative Body. According to the provisions of Article 2 paragraph (1) of the Decree of the Minister of Finance Number 1129/KMK.0l/1991 by attaching the court decision. The chairman of the local PTUN, upon request, has the right to submit an application for the provision of funds to the Minister cq. The Secretary General or head of the institution concerned is subject to compensation. The person entitled is the person or heir or civil legal entity whose lawsuit the PTUN has granted (see Article 1 letter b Decree of the Minister of Finance Number 1129/KMK.0l/1991). Based on the request of the Chairman of PTUN, Minister cq. The Secretary General or Head of the Institution concerned, submits a request for the issuance of an Authorization Decree (SKO) to the Minister of Finance cq. The Director General of Budget is accompanied by the PTUN Decision which is the basis for his request (vide Article 2 paragraph 2 of the Decree of the Minister of Finance Number 1129/KMK.0l/1991).

   Based on the Authorization Decree, those entitled to apply for payment of compensation to the State Treasury and Treasury Office (KPKN) through the local State Administration Agency, by attaching;

   a. Authorization Decree (SKO)
   b. Original and copy, photocopy of excerpt of PTUN decision (vide Article 3 paragraph 1 of Decree of the Minister of Finance Number 1129/KMK.01/1991) of the said State Administrative Body,
   c. Submitting a Direct Payment Order (SPPLS) to the paying KPKN (vide Article 3 paragraph 2 of the Decree of the Minister of Finance Number 1129/KMK.0l/1991.
   d. The State Treasury and Treasury Office (KPKN) issues a Direct Payment Order (SPPLS) to those entitled to the original excerpt of the PTUN decision, after being stamped that the payment has been made by the KPKN is returned to those entitled (vide Article 4 paragraph

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1 and 2 of Minister of Finance Decree No. 1129 /KMK.0l/1991).

e. Finally, a State Administrative Officer who due to his mistake or negligence causes the state to pay compensation may be subject to administrative sanctions based on the applicable laws and regulations;

B. Construction of Provision of Compensation Due to Unlawful Act Claims Committed by Equitable Government Agencies and/or Officials ?

Based on the provisions of article 79 of the Supreme Court Law of the Republic of Indonesia, the Supreme Court has the authority to make regulations as a complement to fill the legal vacuum, which regulates procedures for resolving a problem that has not been regulated in law at all, the provisions of article 79 of the Supreme Court Law give the power to make limited regulations that are complementary for the smooth running of the judicial process, the form of this regulation is divided into 2 forms, namely Perma, which is a form of rule that contains provisions regarding procedural law, this is based on the decision of the chairman of the Supreme Court number 57/KMA/SK/1V/2016 concerning guidelines drafting policy Supreme Court , while the Sema is a circular letter originating from the Chief Justice of the Supreme Court which is given to all courts under the Supreme Court which is guidance that is more administrative in nature.

How to fulfill compensation in Government Action Disputes. For claims for immaterial losses, it is best to leave it to the discretion of the Judge to assess the amount of real compensation experienced by the Petitioner. Guidelines for imposing obligations to pay compensation as intended in Government Regulation Number 43 of 1991 tend to be applied in decision disputes, therefore determining the amount of compensation in disputes over Government Actions is not bound by PP 43/1991 which is limited to a minimum of IDR 250,000, - a maximum of IDR 5,000 ,000,- but is left to the judge's consideration by taking into account the sense of justice and the real losses suffered by the plaintiff who submitted a claim for compensation. This is in line with the formulation of the State Administrative Chamber and then applied in the form of the Sema, explaining that in adjudicating disputes over government actions/acts that violate the law by government bodies and/or officials. Supreme Court Regulation Number 2 of 2019 concerning Guidelines for Dispute Resolution. Government Actions and the Authority to Adjudicate Unlawful Acts by Government Agencies and/or Officials *(onrechtmatige overheidsdaad)* the maximum amount of compensation claims is not limited as regulated by Government Regulation Number 43 of 1991 concerning Compensation and Procedures for Its Implementation at the State Administrative Court with the following reasons:

- The provisions of Government Regulation Number 43 of 1991 concerning Compensation and Procedures for Its Implementation in State Administrative Courts cannot be applied to disputes over actions of government agencies and/or officials because in a limited way Government Regulation Number 43 of 1991 only applies to disputes regarding written decisions from agencies and/or government officials (State Administrative Decree).
- The amount of the claim for compensation is based on the actual/real losses experienced by the plaintiff, which must be formulated in detail and clearly in the lawsuit posita and the amount and form contained in the petitum
- The amount of compensation that can be granted by the State Administrative Court depends on the facts of the trial and the judge's wisdom in deciding a case;

The absence of a legal umbrella for compensation mechanisms in cases at PTUN makes the public only able to sue without being able to follow up through a judge's decision. Therefore, to guarantee legal certainty and protect the public from tyranny committed by the Government, regulations must be formed to fill this legal ambiguity. Referring to existing legal developments, the Expansion of the Authority of the Administrative Court should be set forth in the form of revisions to the Law on State Administrative Courts accompanied by complete provisions regarding mechanisms for compensation for unlawful acts committed by the Government, which are better known today as Government Actions.

CONCLUSION

a. The public needs legal certainty regarding the implementation of court decisions *in kracht* , as well as the government also needs guidelines and instructions on how to implement compensation,

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because the principle of implementing compensation is that government officials are required to pay compensation, so the court also needs regulations regarding application of compensation. Therefore, to guarantee legal certainty and protect the public from injustice committed by the Government, regulations must be formed that fill this legal ambiguity to fulfill the authority of the State Administrative Court which covers unlawful acts by government officials. The expansion of this authority was preceded by the establishment of a law - Law number 30 of 2014 concerning government administration was then followed up by the Supreme Court of the Republic of Indonesia with the formation of PERMA which is binding for the Judicial Power. This development must be balanced with the existence of supporting regulations for the benefit of implementing compensation due to PMH by government officials which is now known as Factual Action. which have a detrimental effect on society. The absence of a legal umbrella for compensation mechanisms in cases at the PTUN means that people can only make demands without being able to follow up through a judge's decision. Looking at the real conditions in society, the development of existing law should expand the authority of the Administrative Court in the form of a revision of the Law on State Administrative Courts with complete provisions regarding the compensation mechanism for Unlawful Acts committed by the Government, which is better known now. with the term factual action.

b. There is a legal vacuum due to the fact that Government Regulations and Implementing Regulations regarding compensation have not yet been made, so a legal regulation is urgently needed that is able to bridge the authority of the State Administrative Court in providing compensation for compensation due to the expansion of the authority of the State Administrative Court by submitting proposals to the Legislative and executive institutions. whether the DPR or the Minister of Finance should follow up by immediately forming a Government Regulation regarding the compensation payment mechanism to ensure legal certainty for the people seeking justice;

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