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PRELIMINARY EXAMINATION FUNCTION IN STATE ADMINISTRATIVE DISPUTES IN STATE ADMINISTRATIVE COURT

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Abstract

The State Administrative Court is one of the courts within the judiciary's jurisdiction authorized to resolve State Administrative disputes. State administrative disputes, through the State Administrative Court, are settled through ordinary and extraordinary procedures. Extraordinary procedures include checks with short events and checks with quick events. Settlement of state administrative disputes through the State Administrative Court begins with a lawsuit from a person or legal entity against a State Administrative Agency or Official. A preliminary examination will process claims that have been registered (already have a case registration number) before the dispute's subject matter is examined. The preliminary examination consists of deliberative meetings and preparatory examinations. At a deliberative meeting, the Chairperson of the State Administrative Court has the authority to determine, accompanied by reasons, that the claim cannot be accepted. Against the stipulation may be submitted legal remedies in the form of resistance. Short events check resistance. If the Court justifies the resistance, the determination is null and void, and the principal of the lawsuit will be examined in the usual way. If a plaintiff requests the dispute be examined by expedited proceedings, the request shall be determined in a deliberative meeting. Suppose an application for an examination with an expedited procedure is received. In that case, the examination is carried out by a single judge, and the time is expedited without going through a preparatory examination.

Keywords: *Deliberative Meeting; Preliminary examination; Preparatory Examination; Lawsuit; State Administrative Disputes*

INTRODUCTION

The State Administrative Court is one of the courts within the judiciary's jurisdiction.[1]Authorized to resolve state administrative disputes. Disputes on state administration as formulated in Article 1 point 4 of Law Number 5 of 1986 Concerning State Administrative Court:

State Administrative Disputes are disputes arising in State Administration between civil persons or legal entities and State Administrative Agencies or Officials,

[1]Elidar Sari and Hadi Iskandar (ed). (2014). State Administrative Court Procedure Law. Lhokseumawe: PT. BieNa Education. p.4

both at the central and regional levels, due to the issuance of a State Administration Decree, including employment disputes based on statutory regulations applicable.

Settlement of state administrative disputes is carried out in two ways based on statutory provisions, namely through administrative efforts[2] and through the state administrative court. Settlement of disputes through administrative efforts is regulated in Article 48 of Law Number 5 of 1986, which states:

(1) If a state administrative agency or official is authorized by or based on statutory regulations to resolve certain state administration disputes administratively, then said state administration dispute must be resolved through available administrative means.

(2) The new Court can examine, decide and resolve state administrative disputes, as referred to in paragraph (1), if all relevant administrative measures have been used.

This research will focus on the settlement of state administrative disputes through the state administrative court as stipulated in Article 50 of Law Number 5 of 1986: The State Administrative Court has the duty and authority to examine, decide, and resolve State Administrative disputes at the first level.

State Administrative Disputes through the State Administrative Court begin with filing a lawsuit[3], as regulated in Article 53 paragraph (1) of Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning State Administrative Courts:

> "a person or civil legal entity who feels his interests[4]Aggrieved as a result of the issuance of a State Administrative Decision may file a written claim to the competent Court containing a lawsuit so that the disputed state administrative decision is declared null and void, with or without a claim for compensation and/or rehabilitation."

Based on the provisions of Article 53 paragraph (1) above, the object of the dispute is a State Administrative Decision. Thus, in state administrative disputes, the plaintiff (a person or civil legal entity) will face off with the State Administrative Agency or Officials. The position between the plaintiff and the defendant is unequal.

[2]Ibid., p. 33
[3]Ibid., p. 44
[4]Those who have the right to file a lawsuit are individuals or civil legal entities who have a direct interest

The plaintiff is an ordinary citizen (the people) who will face the defendant as the holder of government power.[5]. In such an unequal position, the procedural law of the State Administrative Court is embedded in the principle of judges' activeness and proof of independence.[6].

The principle of active judges (dominus litis). The activeness of the judge is intended to offset the parties' position because the defendant is a state administration official while the plaintiff is a person or civil legal entity. The application of this article in Law No. 5 of 1986, among others, is contained in the provisions of Article 58, article 63 paragraphs (1 and 2), article 80, and Article 85. Meanwhile, the principle of proof is free. The judge determines the burden of proof. This is different from the provisions of Article 1865 BW. This principle follows Article 107 of Law Number 5 of 1986, only limited by the provisions of Article 100[7].

The application of the above principles in the process of resolving state administrative disputes through preliminary examination[8]. There are two types of preliminary examination, namely deliberative meetings (Article 62 of Law Number 5 of 1986) and preparatory examination (Article 6) of Law Number 5 of 1986)

Based on the background described above, this study will examine the preliminary examination's function in resolving state administrative disputes.

METHOD

Methods in the Study of legal science[9]It is very important because it will lead the writer to build a clear and consistent line of thought, making it easier for the reader to understand the researcher/writer's line of thought in Law as a sui generis science.[10]It must be examined according to the characteristics of the science of law. With these characteristics, this study is included in normative juridical studies.[11]Alternatively, doctrinal legal research is legal research that uses more deductive legal logic in studying the legal phenomena that are the problem and the purpose of the research. The approach used is the statutory approach and the

[5]Compare with the provisions of Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia.
[6]The activeness of judges and the principle of evidentiary acquittal is part of the legal principles of the state administrative court proceedings. Philipus M. Hadjon et al. (2005). Introduction to Indonesian Administrative Law Gadjah Mada University Press, Cet. Ninth, p.313.
[7]Law Number 5 of 1986, Article 100 stipulates in a limitative manner evidence, namely, letters or writings; expert testimony; witness statements; confessions of the parties, and knowledge of the judge.
[8]Examination conducted to correct/improve the lawsuit. Compare with Philipus M. Hadjon. Op. Cit. p.342.
[9]See Laurensius Arliman S. (2018). "The Role of Legal Research Methodology in the Development of Law in Indonesia." Sumatra Law Review. 1(1). p. 118
[10]Philipus M. Hadjon. (1994). "Dogmatic (Normative) Legal Studies." Yuridika: Journal of Law, Airlangga University, Surabaya. Number 6 Year IX. p. 1
[11]Paul Hadisuprapto. (2009). Law Science (Study Approach). INNOVATIVE: Journal of Law Science. 2(4) p.14.

conceptual approach. The legal material used is Law Number 5 of 1986 concerning the State Administrative Court and its amendments and implementing regulations.

ANALYSIS AND DISCUSSION

Dispute Examination Process at the State Administrative Court

Starting the discussion on the preliminary examination in resolving state administrative disputes first raises the type of examination that might be carried out in resolving state administrative disputes. If we examine carefully the provisions in Law Number 5 of 1986, it is found that there are ordinary and extraordinary events.[12]. State administrative disputes were initially examined ordinarily, but this extraordinary event may occur.

The series of inspection stages in an ordinary event is carried out as follows:

1. Lawsuit;
2. Administrative inspection;
3. deliberative meeting;
4. panel of judges
5. The trial process includes reading the lawsuit, answering, replicating, duplicating, proving, concluding, and deciding.

The stages of handling disputes with ordinary procedures after being registered with the Court can be grouped as follows:

I. Dismissal procedure (Article 62): administrative examination to determine whether a claim is acceptable or unacceptable.
II. Preparatory Examination (Article 63): This stage is intended to complete claims that need clarification.
III. Examination at court hearings (Article 68 etc.).

The stages of examination, with the usual procedures mentioned above, begin with a lawsuit. A lawsuit is an application that contains a claim against a State Administrative Agency or Officer and is submitted to the Court to obtain a decision (Article 1 number 5 of Law Number 5 of 1986. A lawsuit can be made by the person concerned or someone who is

[12]The difference between ordinary events and extraordinary events because in extraordinary events, there are special characteristics that are carried out in handling cases that are different from ordinary events.

authorized. If a power of attorney makes it, it must be accompanied by a special power of attorney made following the provisions of the law. The lawsuit must meet the following requirements:[13]

1. Date;
2. Name, nationality, residence, and occupation of the plaintiff or their attorney;
3. Defendant's name, position, and domicile;
4. As far as possible, accompanied by disputed State administration decisions or unanswered official requests along with "proof of receipt."
5. clear position;
6. Complete and clear Petitum.

In the practice of drafting a lawsuit, the difficulty encountered by the plaintiff is to decipher in full, especially those related to Article 56 paragraph (1) letter (c), namely the determination of posita and petitum. Posita will break down the arguments that give rise to a certain relationship and become the basis for establishing the petitum. Thus, the relationship between posita and petitum must be well illustrated.

The lawsuit is submitted to the Court through the court secretariat; at this stage, the lawsuit will be examined for administrative completeness, registering the claim by giving the registration number and the registration fee. Claims that have been registered with the Court are examined through a deliberative meeting. The Chief Justice carries out the agenda for the deliberative meeting before appointing a panel of judges to examine the principal case.[14]In line with this, according to Philipus M. Hadjon, the deliberative meeting is carried out by judges and clerks chaired by the Chairperson of the State Administrative Court (first level), where the result can be acceptance or rejection of the lawsuit filed.[15]At this stage, an examination is carried out regarding the contents of the lawsuit, which is principally related to two matters, namely:

[13]Compare this with the provisions of Article 56 of Law Number 5 of 1986.

[14]SF Marbun in Dezonda R. Pattipawae. (2015). "The Function of Dismissal Examination in the State Administrative Court." Sasi Journal. 2(1). p. 43

[15]Ibid, p.43

1. Regarding the terms of the lawsuit
2. The interests of the plaintiff relate to the dispute process.

Regarding the terms of the lawsuit

The deliberative meeting will examine the absolute competence of the State Administrative Court, namely whether the object of the dispute is included in the competence or authority of the State Administrative Court.[16]. In this case, it is important to unravel so that it is illustrated that the object of the dispute (State Administrative Decision) being sued fulfills the elements of a State Administrative Decision and becomes the absolute competence of the judiciary. The absolute competence of the State Administrative Court can be understood through the following scheme.[17]:

After the enactment of Law Number 30 of 2014 concerning Government Administration Article 53 paragraph (4) adds/gives a different meaning to State Administration Decisions as referred to in Article 3 (positive exception), which gave birth to fictitious negative State Administrative Decisions to become positive fictitious, and after the enactment of Law Number 11 of 2020 concerning Job Creation and finally the Government Regulation in place of Law Number 2 of 2022 concerning Job Creation which has been stipulated to become a Law through Law Number 6 of 2023, the

[16]Ridwan et al. (2018). "Expanding the Absolute Competence of the State Administrative Court in the Law on Government Administration." Journal of Law Ius Quia Iustum Islamic University of Indonesia. 25(2). p. 344

[17]Philipus M. Hadjon et al, Op.cit, p. 318.

authority of the State Administrative Court over positive fictitious State Administrative Decisions is eliminated.

Regarding the grace period, Article 55 of Law Number 5 of 1986 stipulates 90 (ninety) days. For the addressee, 90 days are calculated from the receipt of the State Administrative Decision, and interested third parties 90 days from when it is known. The matter of interest, as referred to in Article 53 paragraph (1) of Law Number 9 of 2004, must be direct, meaning that the result of the issuance of the disputed State Administrative Decree causes direct loss to the plaintiff. Regarding the reason for filing a lawsuit, the State Administrative Decision violates the provisions of laws and/or general principles of good governance. In the letter of complaint referred to, it must indicate certain articles and what principles in the general principles of good governance have been violated. The link between the article and the violated principle must be explained properly. A good description of the basis for the lawsuit will impact the petitum of the lawsuit.

Concerning the Interests of the Plaintiff Relating to the Dispute Process

In the process of state administrative disputes, there is an urgent interest from the plaintiff conveyed in the lawsuit. For example, asking the Court to postpone the implementation of the disputed State Administrative Decision until a court decision has permanent legal force or asking the Court to process the examination of the dispute through a speedy trial, as referred to in Article 98 and Article 99 of Law No. 5 of 1986.

There is a large loss that the plaintiff will suffer if the State Administrative Decision is implemented immediately, or it is difficult to restore a situation to its original state if the State Administrative Decision

is implemented, which can be used as an excuse for the plaintiff to submit a request to the Court so that the dispute examination is processed through the quick event. Requests for examination utilizing expeditious acceptance or rejection shall be decided in a deliberative meeting. The procedural law of the State Administrative Court applies the principle of presumption of rechmatig (vermoeden van rechtmatigheid), where this principle is contained in Article 67 paragraph (1) of Law Number 5 of 1986. The lawsuit does not delay or hinder the implementation of the State Administrative Decision being sued. In addition to checking with fast events, examining State Administrative disputes is also known as the inspection process with a brief procedure. Even though there is a fundamental difference between an examination using a quick procedure and a brief procedure, the two inspection processes are referred to as extraordinary examination, which is different from an ordinary procedure.

Preliminary examination

It has been explained above that the state administrative dispute begins with filing a lawsuit to the state administrative court. In Article 53, paragraph (1) of Law Number 9 of 2004, it is stated:

> "A State Administrative Decision has harmed civil legal persons or entities who feel their interests may submit a written claim to the competent Court containing demands for the disputed State Administrative Decision to be declared null and void, with or without a claim for compensation and/or or rehabilitation."

The written suit must be properly drafted to reflect the plaintiff's interests fully. The posita underlying the lawsuit must be clearly described so that it appears to be related to the petitum of the lawsuit. In the procedural law of the State Administrative Court, every lawsuit that has been registered will be examined through a preliminary examination.

The preliminary examination is typical in the procedural law of the State Administrative Court, which distinguishes it from the Civil Procedure Code. The preliminary examination consists of deliberative meetings and preparatory examinations.

Deliberative Meeting

This deliberative meeting is called a preliminary examination because it is held before the dispute is examined in Court. This deliberative meeting is regulated in Article 62 of Law Number 1986. In paragraph (1), it is stated:

In a deliberative meeting, the Chief Justice has the authority to decide with a decision accompanied by considerations that the lawsuit filed is declared unacceptable or baseless in the case of:

a. The subject matter of the lawsuit is not within the authority of the Court;
b. the conditions for the lawsuit, as referred to in Article 56, are not fulfilled by the plaintiff even though he has been given a year and given a warning;
c. the lawsuit is not based on proper reasons;
d. what is demanded in the lawsuit has been fulfilled by the State Administrative Decree being sued;
e. the claim is filed prematurely or has expired.

If, in a deliberative meeting, the lawsuit is declared accepted, the head of the State Administrative Court will appoint a panel of judges; otherwise, if it is not accepted, a dismissal decision will be issued.[18]The stipulation, as referred to in paragraph (1), is pronounced before both parties (Article 62 paragraph (2) letter a). Against the refusal referred to in paragraph (1), the plaintiff can submit an objection to the Court within 14 (fourteen) days after it is said and the objection referred to is filed following the provisions of Article 56 (Article 62 paragraph

[18]Indroharto. (1993). "Efforts to Understand the Law on State Administrative Court (Book II)." Jakarta: Rays of Hope. p.76

(3)). The resistance, as referred to in Article 62 paragraph (3), is examined and decided by the Court in a brief procedure (paragraph 4); if the Court justifies the resistance, then the determination, as referred to in paragraph (1) is null and void by law and the main claim will be examined, decided resolved according to the usual agenda (paragraph 5). Against a decision regarding resistance, legal remedies cannot be taken (paragraph 6).

Suppose there is an urgent interest of the plaintiff, which is concluded from the reasons in the lawsuit so that expedited proceedings examine the lawsuit. In that case, the head of the Court shall issue a stipulation regarding whether the said application is granted within 14 (fourteen) days. Legal remedies cannot be used against such a determination (Article 98). The decision to grant or not grant the request for examination is quickly decided at a deliberative meeting.

Suppose the request for an examination by expedited proceedings is granted. In that case, within 7 (seven) days after the decision has been issued, the Chief Justice has determined the day, place, and time of the trial without going through the preparatory examination procedure referred to in Article 63. The time limit for answers and evidence is 14 (fourteen) days at maximum. Examination by the fast procedure is examined by a single judge (Article 99).

From the description of the deliberative meeting stated above, it was found that 3 (three) types of examination processes could occur in state administrative disputes: examination with ordinary procedures, examination with fast proceedings, and examination with brief procedures. To make it easier to understand the differences between the three types of examination procedures referred to, they will be presented in the following scheme:

Differences between regular event checks and quick events:

Ordinary Events Article 68 etc	**Quick Events** Articles 98, 99
a. Started with a preparatory inspection b. A panel of judges: 3 people c. -	a. There is no preparatory check b. Single judge c. Time sped up

Difference check between the quick event with the short event:

Quick Events (versnelde behandeling)	**Short Event** (shortcut)
Urgent importance Resolving the main dispute Final form: verdict (sentence)	- Resistance (ps. 62 (4)) - Postponement of the implementation of State Administration (Article 67 (2,3,4)) Not to resolve the principal dispute. Final form: designation

The existence of a preliminary examination through a deliberative meeting is to realize the principle of speedy justice and low cost, remind the plaintiff to be careful in preparing the lawsuit, and protect the plaintiff from large losses due to the implementation of the State Administrative Decision being sued.

Preparatory Check

Preparatory examination in the process of state administrative disputes is the implementation of the principle of active judges as one of the principles underlying the procedural law of the State Administrative Court. This principle balances the position between the plaintiff (a civil legal person or entity) and the defendant as a State Administrative Agency or Official. This preparatory examination is unique to the procedural law of the State Administrative Court and distinguishes it from civil procedural law. This preparatory examination occurs when disputes are handled through an inspection process with the usual procedures. Preparatory checks are not performed in quick events and short events.

Before examining the main dispute, the Judge must hold a preparatory examination to complete an unclear lawsuit (Article 63 paragraph (1) of Law Number 5 of 1986. In the preparatory examination referred to in paragraph (1), the Judge:

a. Obliged to advise the plaintiff to improve the lawsuit and complete it with the necessary data within thirty days;
b. may request an explanation from the relevant State Administrative Agency or Official.

Referring to the provisions of Article 63 paragraph (2) above, the main ideas that can be put forward are:

1. active judge;
2. There is an opportunity for the plaintiff to correct/complement the lawsuit;
3. Correction of the lawsuit within thirty days.

The elucidation of Article 63, paragraph (1) states:

> "This provision is specific in examining State Administrative disputes. The Judge is allowed to hold a preparatory examination before examining the subject matter of the dispute. On this

occasion, the Judge may ask for an explanation from the relevant State Administrative Agency or Official for the completeness of the data required for the lawsuit. The judge's authority is to offset and overcome a person's difficulties as a plaintiff in obtaining the necessary information or data from a State Administrative Agency or Officer, bearing in mind that the plaintiff and a State Administrative Agency or Official are not of the same position.

In compiling a lawsuit, the plaintiff sometimes faces difficulties due to the lack/absence of data or the State Administrative Decision, which is the object of the dispute is not available to the plaintiff (a third party with interest); in such circumstances, the Judge requests the State Administrative Agency or Official to provide an explanation or request that the State Administrative Decision being sued be submitted to the Judge. The judge's authority to request data or ask for an explanation from the State Administrative Agency or Officials is an order of the Law. Therefore, if the State Administrative Agency or Officer submits data or provides an explanation to complete/perfect the claim, it will result in the plaintiff not correcting/performing the claim within thirty days, and the claim will be rejected.

The State Administrative Court is a means of legal protection for the people against the authorities' actions that are detrimental to the interests of the community (the people).[19]The State Administrative Court is a place to test the legitimacy of actions/Decisions of State Administrative Agencies or Officials.[20]Law Number 5 of

[19]Murtiningsih and Adi Kusyandi (2021), "The Existence of Administrative Courts as a Form of Legal Protection for Citizens from the Attitudes of State Administrative Actions." Yustisia Journal. 7(2) p.245

[20]Sofyan Hadi and Tomy Michael. (2017). "Principle of Defense (Rechtmatigheid) in Decision Standing of State Administration." Journal of Law Cita UIN Jakarta. 5(2). p. 398

1986 explains the function of the State Administrative Court to protect the community, so this Law provides convenience for members of the public who seek justice, including those who are not good at reading and writing, assisted by court clerks to formulate lawsuits.[21]

Suppose a State Administrative Agency or Official has submitted data or has explained as requested by the Judge to help the plaintiff improve/perfect his lawsuit. However, within thirty days, the plaintiff needs to correct his claim. In that case, the judge declares in a decision that the lawsuit cannot be accepted (niet ontvankelijk verklaard). The decision stating that the lawsuit was not accepted is correct because the plaintiff was not serious about repairing/perfecting his lawsuit even though he had been allowed to do so. Against this Judge's decision cannot be taken legal action, but the plaintiff has the right to file a new lawsuit.

There are similarities and differences if the deliberative meeting is compared with the preparatory examination. Both are preliminary examinations. Both at a deliberative meeting and at a preparatory examination, there is room for the Judge to advise the plaintiff to improve his lawsuit. The difference is that the deliberative meeting does not specify a time limit for resolving a lawsuit (Article 62 paragraph (1) letter b), while in a preparatory hearing, a grace period for resolving a lawsuit is determined, namely thirty days (Article 63 paragraph (1) letter b). Another difference is, at a deliberative meeting, moderate resistance can be made at a preparatory examination against a decision, there are no legal remedies, but the plaintiff can file a new lawsuit.[22].

CLOSING

The State Administrative Court is one of the judicial bodies within the jurisdiction of the judiciary, which functions as a means of legal protection for members of

[21]The general explanation of the number 5 letter a.

[22]Philipus M. Hadjon et al. Op. cit p. 344-345.

the public whose interests have been harmed due to the issuance of a State Administrative Decree. The State Administrative Court has the task of resolving State Administrative disputes.

State Administrative Disputes begin with a lawsuit filed by a civil legal person or entity to the Court. In a State Administration dispute, the position between the plaintiff and the defendant is unequal because the plaintiff is a community citizen. In contrast, the defendant is a State Administrative Agency or official.

Every claim filed with the Court must undergo a preliminary examination, describing an active judge who aims to balance the plaintiff and the defendant. The Preliminary examination allows the judge to advise the plaintiff to improve or complement his claim.

A good/complete lawsuit will create legal protection for the people, realize the principle of speedy trial and low cost, remind the plaintiff to be careful in preparing the lawsuit, and protect the plaintiff from large losses due to the implementation of the State Administrative Decision being sued.

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