
CRITICAL OF ADMINISTRATION COURT SYSTEM IN INDONESIA THAT IS NOT HARMONIZE YET WITH THE ELEMENT OF GOVERNMENT ADMINISTRATIVE DECISION (BESCHIKKING) BASED ON GOVERNMENT ADMINISTRATION ACT 2014**Fathan Ali Mubiina**University of Indonesia
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<i>Submitted: Dec 14, 2019; Reviewed: May 25, 2020; Accepted: Jun 24, 2020</i>
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Abstract

State administrative law has reformed with a new paradigm. So that the alignment or harmonization of administrative court procedural law becomes important. Because at the Implementation level, harmonization is needed in level of understanding that is reformed in the legislation, especially Act of Republic Indonesia No. 30 of 2014. Therefore, this topic tries to remind the stakeholders in the field of law to understand the object extension of the Government Administrative Decision (beschikking) after Act No. 30 of 2014. So, things that are not in accordance with the new paradigm can be minimized. For this reason, in addition to the Law on Administration Procedural Law, stakeholders are required to improve themselves by looking at Act No. 30 of 2014. Because the expansion of the objects of the Government Administrative Decision as the a quo Law still has a paradigm difference with the Circular of the Supreme Court of the Republic of Indonesia (SEMA) No. 4 of 2016. The difference in paradigm ultimately led to the fact that were confusions and trouble in the implementation which was still ongoing until now. Then in this study using the normative juridical method.

Keywords: *Beschikking; Court of Administration Law; Government Administration***INTRODUCTION**

One form of judicial oversight is carried out by the administrative court through the legal mechanism of the state administration court procedure through a lawsuit over the object of a government administrative decision (BESCHIKKING/*beschikking*) or through a request for a fictive positive to government administrative officer based on Act Number 30 of 2014 about Government Administration in

Indonesia. In essence, the state administration court (PERATUN) is not too different from the duties of the judiciary in general as a forum for public to conduct administrative reviews in order to fight for justice. Then, means of maintaining administration by government is always based on the principle of legality or legal interest (*ipso jure*). However, Lemaire said the development of the legal world in terms is the efforts to achieve goals of the

country as referred as organizing public welfare for the community (*bestuurszorg*).¹ This makes the state administration is not only bound by written law, act or *wet*, but also carry out people's welfare based on the principle of discretion which is make the government be proactive in interfering people's live.²

So that, the Act Number 30 of 2014 responded with reforming state administrative law towards new paradigm, then the law of administrative court procedural has to be harmonious. Because the implementation of the harmonization is an urgent needed, and legal problems are going to arising if there is no clarity regards the harmonization of the Law of State Administrative Court with the Government Administration Act. In other that, Act Number 30 of 2014 about Government Administration requires clear regulation of the orderly administration of the government in running the government such as regulating the authority, types of decisions, systems and models of decision reviews, as well as administrative sanctions and etc. In the context, law enforcement against government administration is also becomes a new foundation for the

state administration court in examining state administrative disputes, especially concerning the expansion of the elements of government administrative decision (*beschikking*) in Article 87 of the Government Administration Act which essentially eliminating the individuality of *beschikking*, then expanding the object of *beschikking* in administration officials in the legislative institution, judicial institution, and other state institutions. As well as concerning the final element paradox in a broad sense. Therefore, the author wants to dissect the development of the State Administrative Court on the side of the *beschikking* which has expanded elements.

IDENTIFICATION OF PROBLEMS

Based on the introduction before that the mains issue is the urgencies of harmonizing definition between Administrative Dispute Procedures and Government Administration Act 2014. Then, there are two questions which related for the issue, such as:

1. What are the differences and the expanding elements of government administrative decision (*beschikking*) based on Republic Indonesia Act Number 30 of 2014?

¹ Diana Halim Koentjoro, *Hukum Administrasi Negara*, (Bogor: Ghalia Indonesia, 2004), Pg. 38.

² Implementation of people's welfare in the field of administrative law has been transitioning from *liberale rechtstaat* into *sociale rechtstaat* (de Haan, ed). Diana Halim Koentjoro, *Ibid.*, Pg. 39.

2. How are the impact that expanding elements of government administrative decision (*beschikking*) in Law of Administrative Dispute Procedures?

METHODS

This article is qualitative research, which to a large extent is based on the technique of desk research which results in a systematic literature review. The systematic literature review which focused on the issues related to administrative court system. The significance of the academic article lays in the application of a good regulation, which conceptualizes a theoretical framework and specifies the underlying aspects regarding regulation.

ANALYSIS AND DISCUSSION

Expanding the Elements of Government Administrative Decision (*Beschikking*) Based on Act of Republic of Indonesia Number 30 of 2014 about Government Administration

The recognition of the nature of the decision (*beschikking*) legal norms is individual-concrete. In according to Philip M. Hadjon who combines the nature of decisions into four types of legal norms such as the general norm and abstract is the act or *wet*, the individual-concrete norm is the government administrative

decision (*beschikking*), the general-concrete norm is the sign of traffic, and the individual-abstract norm is an interruption permit.³ Philipus M. Hadjon divided the decision into five kinds of decisions impact for people by divided into the decisions of restrictions and/or orders (*gebod*), decisions that providing money, decisions that imposing a financial obligation, decisions that giving a position, and decisions of foreclosure.⁴

There is an opinion that law action (*rechtshandelingen*) and decisions in the state administration (*beslissingen*) are divided of four kinds such as the government administration decree (*beschikking*), plan, concrete normgeving, and pseudo legislation (*pseudo-wetgeving*).⁵ The further that is the action of State Administration Law actually creates a legal relationship (*rechtsbetrekkingen*) are like a certain relationship between the authorities and citizens of the public that is not regulated by private law which can be a duty to do or not to do something, or to give a person status.⁶ So its core the derivation of administrative law is a ruling which is an

³ Philipus M. Hadjon, dkk. *Pengantar Hukum Administrasi Indonesia*, (Yogyakarta: Gadjah Mada University Press, 2008), Pg. 125.

⁴ Philipus M. Hadjon, dkk. *Ibid.*, Pg. 126.

⁵ Safri Nugraha, dkk. *Hukum Administrasi Negara*, (Depok: Center for Law and Good Governance Studies (CLGS) Fakultas Hukum Universitas Indonesia, 2007), Pg. 103.

⁶ S. Prajudi Atmosudirdjo, *Hukum Administrasi Negara*, Cet. 10. (Jakarta: Ghalia, 1995), Pg. 93-94.

administrative law that has clarity in its use in connection with state administration dispute procedures. The content of the provision is to include obligations to do, not to do, or to authorize a thing, subsidy, permit, or grant of status.⁷ As such, the effects of a ruling and the burden of the ruling on the people have been motivated by the norms of the government administrative decision (*beschikking*) based on legislation passed from 1986 until the Government Administration Act in 2014 was made.

Regime Republic Indonesia Act Number 5 of 1986 *junto* Act Number 9 of 2004 *junto* The Act Number 51 of 2009 About Administrative Court System

The historical journey of the laws and regulations concerning the object of government administrative decision (*beschikking*) contained in the State Administration Court Law has experienced for the expansion of the definition elements as contained in the Government Administration Act. Then in this case, the object of the state administration dispute is based on Act Number 51 of 2009 concerning the Second Amendment to Act Number 5 of

1986 concerning State Administrative Court that:⁸

- a. The government administrative decision is a written;
- b. Stipulated issued by a governing body or government administration officer;
- c. Which contains government administrative legal actions based on applicable statutory regulations, which are concrete, individual, and final;
- d. Which cause legal consequences for a person or private legal entity.

Not only the elements of the BES-CHIKKING are regulated in the *aquo* act. But also, there are still norms that explain the exceptions of the State Administration Decree be regulated in Article 2 of Act Number 51 of 1986 about State Administration Court, namely:

"Not included in the definition of the government Administrative decision according to this act:

- a. Government administrative decision which is a private law act;
- b. Government administrative decision which is a general regulation;
- c. Government administrative decision which still needs an approval;
- d. Government administrative decision issued based on the provisions of the penal code act or

⁷ A.D. Belinfante Boerhanoedin Soetan Batoeah, *Pokok-Pokok Hukum Tata Usaha Negara*, Cet. 1. (Jakarta: Binacipta, 1993), Pg. 59.

⁸ Article 1 number 9 of Act Number 51 of 2009 about Second Amandements of Act Number 5 of 1986 about State Administration Court.

- the criminal procedure code or other statutory regulations;
- e. Government administrative decision issued on the basis of the results of the examination of judicial bodies based on the provisions of the applicable laws and regulations;
 - f. Government administrative decision concern in the administration of the Armed Forces of the Republic of Indonesia;
 - g. The Election Committee's decision, both at the central and regional levels, regarding the results of the general election. "

Based on the norm of government administrative decision above, it can be understood that there are limitations that are required by lawmakers regarding *beschikking* objects could be reviewed to the State Administrative Court or elements which can be identified as *beschikking* or not. For almost thirty three years the State Administration Court or better known in Indonesia has used the *aquo* act as the basis for the procedural law that applies in the Trial of State Administration in Indonesia.

Regime of Act Number 30 of 2014 about Government Administration

In 2014, the Act on Government Administration was formed. In this law is highlighted the government Administrative decision (*beschikking*) as referred in Act Number 5 of 1986 about State Administration Court as amended by Act

Number 9 of 2004 and Act Number 51 of 2009 expanded based on the provisions of Article 87 of Act Number 30 of 2014 about Government Administration, which contains the words "must be interpreted" as follows:

- a. Written stipulation which also includes factual action;
- b. Decisions of State Administration Agencies and / or Officers in the executive, legislative, judicial, and other state administration circles;
- c. Based on statutory regulations and general principles of good governance (AUPB);
- d. Final in the broader sense;
- e. Decisions that have the potential to cause legal consequences; and / or
- f. Decisions that apply to Citizens.

The scope of Government Administration arrangements based on Article 4 of Act No. 30 of 2014 about Government Administration includes all activities in government agencies and / or offices that carry out government functions within the scope of executive institutions, government agencies and/or offices that carry out government functions within the scope of judicial institutions, government agencies and / or offices that carry out government functions within the scope of the legislative body, and other government agencies

and/or Officials that carry out the government functions is mentioned in the 1945 Constitution of Republic of Indonesia or the other laws below.⁹ Government Administration Arrangements as referred to in Article 4 verse 1 of Act Number 30 of 2014 about Government Administration covers the rights and obligations of government officials, government authority, discretion, administration of government administration, government administrative procedures, government decisions, administrative efforts, fostering and developing government administration, and administrative sanctions.

So it can be understood that there are fundamental differences regarding the elements of the *beschikking* of the two laws, namely the State Administration Court Law and the Government Administrative Law as illustrated in the table on which differences have changed or ex-

⁹ That (1) the scope of Government Administration arrangements in this Law include all activities: a. Government bodies and / or officials who carry out government functions within the scope of executive institutions; b. Government bodies and / or officials who carry out government functions within the scope of the judiciary; c. Government bodies and / or officials who carry out government functions within the scope of the legislative body; and D. Other Government Agencies and / or Offices that carry out the Government Functions mentioned in the 1945 Constitution of the Republic of Indonesia and / or laws. (2) Government Administration Arrangements as referred to in paragraph (1) include the rights and obligations of government officials, government authority, discretion, administration of government administration, administrative procedures, government decisions, administrative efforts, fostering and developing government administration, and administrative sanctions based on Article 4 verse 1 and 2 of Act Number 30 of 2014 about Government Administration,

panded the elements in the *beschikking* in both acts, so that the table is elaborated from the State Administration Court Act and the Government Administration Act.

Table 1.

The Difference in Elements of State Administrative Decree Based on the State Administration Court Act and the Government Administration Act¹⁰

Act of State Administration Court	Act of Government Administration
Written stipulation;	Written stipulation that is encompass factual actions;
Is issued and made by the agency or TUN official are only administrative matters within the executive.	Decisions of State Administration Agencies and / or Officers in the executive, legislative, judicial, and other state administration circles;
Contains legal action of government administrative;	Based on statutory provisions and general principles of good governance;
Concrete, individual, and final; and	Final in the broader sense;
Has legal consequences for a person or private legal enti-	Decisions that have the potential to cause legal conse-

¹⁰ Act Number 5 of 1986 jo Act Number 9 of 2004 jo. Act Number 51 of 2009 about State Administration Court Procedures and Act Number 30 of 2014 about Government Administration.

ty.	quences; and/or
	Decisions that apply to Citizens.

Implications of *Beschikking* Expansion of the State Administration Judicial System

The legal basis for justice in Indonesia lies in Article 24 of the 1945 Constitution, viz:

- (1) Judicial power is an independent power to administer justice to uphold law and justice.
- (2) Judicial power shall be exercised by a Supreme Court and the judiciary below it in the general court, religious court environment, military court environment, state administrative court environment, and by a Constitutional Court.
- (3) Other bodies whose functions are related to judicial authority are regulated in the laws.

Based on this it was revealed in the legislation regarding Judicial Power, namely Act Number 14 of 1970 jo. Act Number 48 of 2009 concerning Judicial Power. While specifically related to the State Administrative Court is stated in the PERATUN Procedural Law contained in Act Number 5 of 1986 jo. Act Number 9 of 2004 jo. Act Number 51 of 2009 About State Administration Court. Then con-

cerning the normative definition of State Administration is regulated in Article 1 number 1 of Act Number 5 of 1986 is the state administration which carries out the function to carry out government affairs both at the center and in the regions. So based on number 2 that is as a consequence of the State Administration, the State Administration Agency or Official carries out government affairs based on the applicable laws and regulations as a form of legal attribution of legislation.

The Decision of the State Administrative (*beschikking*) according to the Law on State Administration Court is a written stipulation issued by the State Administration Agency or Officer which contains the legal action of the State Administration based on applicable laws, which are concrete, individual, and final, which are cause legal consequences for a person or legal entity. And in the event of a dispute at Trials of State Administration, such dispute arises in the field of State Administration between a person or private legal entity and the State Administration Agency or Official, both at the Center and in the regions, as a result of the issuance of a government administrative decision (*beschikking*), including staffing disputes

based on legislation in force in Indonesia.¹¹

Based on the provisions regarding State Administration disputes referred to above, that there are elements of State Administration disputes that must be fulfilled for parties who wish to submit a review of the objects of State Administration disputes. The elements are:¹²

- a. Subjects that can dispute are a person (*natuurlijk persoon*) or a private legal entity (*recht persoon*) on one party and state administration bodies or officials on the other.
- b. The object in dispute is a decision or decree (*beschikking*) issued by the State Administration agency or official.

It is quite interesting that in the object of the State Administration dispute concerning *beschikking*, it underwent fundamental changes and expansion of the following elements, there were three points that were underlined for criticism, namely the loss of individual and concrete elements, the expansion of government administrative decision on state administration in the legislative and judicial en-

vironment, and the obscurity of the final element in a broad sense.

The expansion of the *beschikking* element in Act Number 30 of 2014 about Government Administration makes paradoxical in the application of norms especially Article 87. In addition to the explanation of the article in the a quo law, the sentence is written "quite clearly", that this is not informative in terms of interpreting the contents of the article by law enforcers. Whereas already since 2016, Act Number 30 of 2014 can already be implemented, but until 2019 there is no Government Regulation as a form of delegation to the president to form legislation below it. A series of elements of the validity of Act Number 30 of 2014 is still a record in the law enforcement process (law enforcement), especially in interpreting the expansion of elements in Article 87 of Act Number 30 of 2014 in its implementation of the administrative justice system in Indonesia. Whereas the State Administrative Court already has its own event law which refers to Act Number 5 of 1986 jo. Act Number 9 of 2004 jo. Act Number 51 of 2009 about State Administration Court. Nevertheless in Article 87 of Act Number 30 of 2014 concerning Government Administration alludes to the *beschikking* element in the State Admin-

¹¹ Article 1 Act Number 5 of 1986 jo Act Number 9 of 2004 jo. Act Number 51 of 2009 about State Administration Court.

¹² Baharudin Lopa and Andi Hamzah, *Mengenal Peradilan Tata Usaha Negara*, Cet. 1. (Jakarta: Sinar Grafika, 1991), Pg. 47.

istration Court Law with the phrase "must be interpreted as". This makes the paradox for the State Administrative Court system in Indonesia, because one element to another is in conflict with the *beschikking* element in State Administration Court regulations.

In terms of supporting the application of Article 87 of Act Number 30 of 2014 concerning Government Administration is the existence of the principle of *lex posterior derogate legi priori* where newer laws override older laws. If following this principle, the juridical consequence is a paradoxical occurrence in the concept of a decision or stipulation (*beschikking*) in the State Administration Law. Because in the concept described by Philipus M. Hadjon that *beschikking* or State Administrative Decree is individual and concrete.¹³ This is related to the authority scheme obtained by the office that originates from attribution, delegation and mandate, thus giving birth to authority (*bevoegdheid*, legal power, or competence) in connection with public law acts.¹⁴

Before criticizing any elements that are paradoxical in applying to the State Administrative Court in this case regarding the application of Article 87 of Act Number 30 of 2014. In this case this paper

tries to approach a comparative law (comparative law approach) with the Netherlands through its Administrative Law, the Government Administrative Law Act of the Netherlands (GALA), which has changed *de wer administratieve rechtspraak overheidsbeschikkingen* (AROB) namely Article 1 verse 1;¹⁵

2. *The following authorities, persons and bodies are not deemed to be administrative authorities: (a) the legislature; (b) the First and Second Chambers and the Joint Session of the States General; (c) independent authorities established by law and charged with the administration of justice; (d) the Council of State and its divisions; (e) the General Chamber of Audit; (f) the National Ombudsman and Deputy Ombudsmen; (g) the chairmen, members, registrars and secretaries of the authorities referred to at (b) to (f), the Procurator General, the Deputy Procurator General and the Advocates General to the Supreme Court, and committees composed of members of the authorities referred to at (b) to (f).*

3. *An authority, person or body excluded under subsection 2 is none-*

¹³ Philipus M. Hadjon, dkk, *Op. Cit.*, hlm. 139.

¹⁴ Philipus M. Hadjon, dkk, *Ibid.*, hlm. 140.

¹⁵ Article 1verse 1, *General Administrative Law Act of Netherlands* (GALA).

theless deemed to be an administrative authority in so far as it makes orders or performs acts in relation to a public servant not appointed for life as referred to in 1 of the Central and Local Government Personnel Act, his surviving relatives or his successors in title.”

Based on the contents of the article of the GALA mentioned above, it can be understood that the authority of persons and entities which are not administrative authorities in the Dutch Administrative Law system is legislative and judicial. But in part 3 there are exceptions in terms of public services and decision making or decrees, administrative authority is still permitted in the legislative and judicial bodies. This is in line with the idea of expanding *beschikking* elements in Article 87 of Act Number 30 of 2014.

In addition, in Germany the term used is *dezesionismus* introduced by Carl Schmitt that legislative, executive and judicial duties are included in *Weimarer Verfassung* (German Constitution after World War II) and the government is organized in *Weimarer Verfassung*.¹⁶ Whereas in Holland it is known as *beschikking* which was later introduced by Van der Pot and Van Vollenhoven, then

brought into Indonesia through Prins. A different term used in France is *administrative acte*. Then it became known in Indonesia as a decision or decisions commonly used by the government before the existence of the State Administration Court Law.¹⁷ On the other hand Prins also gave his opinion on the definition of a decision namely a legal action that is unilateral in the field of government, carried out by a government body based on its authority.¹⁸ Then the definition given is elaborated with three elements that need to be criticized from Article 87 of Act Number 30 of 2014 concerning Government Administration.

Loss of Individual-Concrete Characteristics in *Beschikking* (Government Administration Act)

In terms of finding out about the reasons for the loss of a concrete individual nature in the Academic Paper, the Government Administration Bill and the Elucidation of Article were not found. However, this is quite fundamental in terms of interpreting a *beschikking* based on the views of Philipus M. Hadjon in which the Government Administrative Decision is certainly an individual and

¹⁶ Safri Nugraha, dkk, *Op. Cit.*, hlm. 107.

¹⁷ Kuntjoro Purbopranoto, *Beberapa Catatan Hukum Tata Pemerintahan dan Peradilan Administrasi Negara*, (Bandung: Alumni, 1985), Pg. 45.

¹⁸ W.F. Prins, *Pengantar Ilmu Hukum Administrasi Negara*, (R. Kosim Adisapoetra), (Jakarta: Pradnja Paramita, 1978), Pg. 42.

concrete element.¹⁹ Unlike the case with Prayudi which explains that *beschikking* is a unilateral legal act of state administration which is carried out by an official or agency (state) that has special authority and authority for it, then Prayudi reinforces it with the norms contained in Article 1 number 3 of Act Number 5 of 1986 concerning one of them concrete, individual, and final.²⁰

This will be a problem is the loss of individual-concrete nature, then there will be confusion about the nature of *beschikking* mixed with general-abstract nature. And it is difficult in the trial process at State Administration Court to test the general-abstract nature. So far the State Administration Court still uses the provisions in the State Administration Court Law in this case *beschikking* which is associated with Article 87 of Act Number 30 of 2014. And do not explicitly use Article 87 of the Government Administration Act separately.

Widespread State Administrative Decree on State Administration in the Legislative and Judicial Environment

Something similar happened to this element, namely *beschikking* is interpret-

ed to extend to government in a broad sense in the judiciary and legislative environment. This fact is not contrary to Article 2 of Act Number 5 of 1986 jo. Act Number 9 of 2004 that the Government Administrative Decision which does not enter the definition of *beschikking* is one of the results of the examination of the judicial body. Whereas in the case of judicial and legislative institution disparity, it is in accordance with the expansion that also occurred at the Dutch GALA. However, the problem is when there is a dispute concerning *beschikking* in the judiciary, for example in terms of staffing and procurement, will the judge in State Administration Court be able to act fairly and proportionally in examining *beschikking* objects produced by his own institution. Thus, according to the Ministry of Law and Human Rights, the potential for disputes at State Administration Court as a consequence of the expansion of *beschikking* will be more numerous.²¹

The obscurity of the final elements in the broad sense

Then another fundamental thing that changed was regarding the emergence of

¹⁹ Philipus M. Hadjon, etc., *Op. Cit.*, Pg. 139.

²⁰ S. Prajudi Atmosudirdjo, *Hukum Administrasi Negara*, Cet. 10. (Jakarta: Ghalia, 1995), Pg. 93-94.

²¹ Anonim, <http://ditjenpp.kemenkumham.go.id/hukum-adm-negara/2942-undang-undang-administrasi-pemerintahan-terhadap-peradilan-tata-usaha-negara.html> is accessed at 22 April 2019, 20.45 WIB

the final element in a broad sense. In this case, it can be seen in the Elucidation of Article 87 of Act Number 30 of 2014, which is meant by "final in the broadest sense" includes decisions taken by the competent superior officer. Supreme Court Circular Letter (SEMA) Number 4 of 2016 concerning the Imposition of the Formulation of the 2016 MA Room Plenary Meeting Results as a Guide to Implementing Duties for the Court. This SEMA defines the phrase 'final in the broadest sense' contained in Article 87 of the Government Administration Act as a decision that has caused legal consequences although it still requires approval from the supervisory agency or other agencies. For example, environmental permits, and investment permits from the Investment Coordinating Board (BKPM).

While the final phrase in the broad sense is defined through SEMA No. 4 of 2016 is incompatible, because the definition given by SEMA is actually contrary to Article 2 of Act Number 5 of 1986 jo. Act Number 9 of 2004, which does not include the understanding of *beschikking*, one of which still requires approval. Therefore, it is necessary to adjust the definition between Law No. 30 of 2014 with the definition established by the institution

of the Supreme Court (Mahkamah Agung).

CONCLUSION

State administration justice aims to ensure equality of position of citizens in law. Specifically, it aims to guarantee the maintenance of harmonious, balanced and harmonious relations between the apparatus in the field of state administration and the citizens. One of the main problems in the study of the basics of administrative law is the study of the existence or recognition of various kinds of control or supervision that can be carried out on the government. In essence, the expansion of the *beschikking* element contained in Article 87 of Act Number 30 of 2014 concerning Government Administration changes a significant paradigm in terms of the definition of *beschikking*. The elements that have changed are the factual actions that coincide with the written stipulation element, *beschikking* issued by the legislature and the judiciary is included in the *beschikking* element which must be elaborated with *beschikking* provisions in the State Administrative Court system, based on statutory provisions and The General Principles of Good Governance, is final in a broader sense, decisions that have the potential to cause legal consequences, and

/ or decisions that apply to Community Members.

Then there are elements that can cause problems in the level of implementation for the conduct of trial hearings in State Administration Court namely the absence of individual-concrete elements in the *beschikking* in the Government Administration Law, *beschikking* issued by the legislative and judiciary bodies is included as an element of *beschikking*, and final in the broad sense . The two elements that have changed significantly have the potential to increase the level of filing a lawsuit to State Administration Court System, which until now there is no Government Regulation concerning the enforcement of Act Number 30 of 2014. Then, one element that is final in the broad sense still lacks a clear definition. And even SEMA Number 4 of 2016 has a different paradigm with Act Number 30 of 2014, which will have juridical consequences for the confusion in the application of the phrase. SEMA Paradigm No. 4 of 2016 interprets the final phrase in the broad sense that it still needs approval but already has a legal impact. These things actually contradict each other, especially contrary to Article 2 of the State Administration Court Law System in Indonesia.

SUGGESTION

1. Actually in Act Number 30 of 2014 there are already norms that explain the necessity in terms of forming Government Regulations as a form of delegation to the president to form Government Regulations.
2. There needs to be a clear mechanism in terms of changes and expansion of the *Beschikking* paradigm that is regulated in Act Number 30 of 2014 through the establishment of legislation that clearly explains the definition of the *beschikking* elements that are elaborated with the examination procedures in the State Administration Court Law System in Indonesia.

REFERENCES

Books

- Atmosudirdjo, S. Prajudi. *Hukum Administrasi Negara*. Cet. 10. Jakarta: Ghalia. 1995.
- Batoeah, A.D. Belinfante Boerhanoedin Soetan. *Pokok-Pokok Hukum Tata Usaha Negara*. Cet. 1. Jakarta: Binacipta. 1993.
- Hadjon, Philipus M. dkk. *Pengantar Hukum Administrasi Indonesia*. Yogyakarta: Gadjah Mada University Press. 2008.

- Koentjoro, Diana Halim. *Hukum Administrasi Negara*. Bogor: Ghalia Indonesia. 2004.
- Lopa, Baharudin dan Andi Hamzah. *Mengenal Peradilan Tata Usaha Negara*. Cet. 1. Jakarta: Sinar Grafika. 1991.
- Nugraha, Safri, dkk. *Hukum Administrasi Negara*. Depok: Center for Law and Good Governance Studies (CLGS) Fakultas Hukum Universitas Indonesia. 2007.
- Prins, W.F. *Pengantar Ilmu Hukum Administrasi Negara*. R. Kosim Adisapoetra. Jakarta: Pradnja Paramita. 1978.
- Purbopranoto, Kuntjoro. *Beberapa Catatan Hukum Tata Pemerintahan dan Peradilan Administrasi Negara*. Bandung: Alumni. 1985.
- Regulations**
- Act Number 5 of 1986 about State Administration Court System, State Gazette years 1986 Number 77, Additional State Gazette Number 3344.
- Act Number 9 of 2004 about First Amendments of Act Number 5 of 1986 about State Administration Court System, State Gazette Years 2004 Number 35, Additional State Gazette Number 4380
- Act Number 51 of 2009 about Second Amendments of Act Number 5 of 1986 about State Administration Court System, State Gazette Years 2009 Number 160, Additional State Gazette Number 5079.
- Act Number 30 of 2014 about Government Administration, State Gazette Years 2014 Number 292, Additional State Gazette Number 5601.
- General Administrative Law Act of Netherlands (GALA).
- Supreme Court Circular Letter (*Surat Edaran* Mahkamah Agung/ SEMA) Number 4 of 2016 about Enforcement of the Formulation of the Results of the 2016 Mahkamah Agung Room Plenary Meeting as a Guide to Implementing Duties for the Court.
- Website**
- Anonim, [http:// ditjenpp. kemenkumham. go. id / hukum- adm- negara/ 2942- undang- undang- administrasi- pemerintahan- terhadap- peradilan- tata- usaha- negara. html](http://ditjenpp.kemenkumham.go.id/hukum-admin-negara/2942-undang-undang-administrasi-pemerintahan-terhadap-peradilan-tata-usaha-negara.html), is accessed at 22 April 2019, 20.45 WIB
