

State Administrative Law Reform in Realizing Good Governance and Legal Certainty in Indonesia

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Abstract. State Administrative Law (HAN) reform is a strategic agenda in realizing the principles of the state of law and good governance. Although Indonesia is constitutionally a state of law, government administration practices still often deviate from the principles of legality, accountability, and legal certainty. This study analyzes the urgency of HAN reform by highlighting the problems of regulatory fragmentation, abuse of discretion, weak supervision, and low compliance with PTUN decisions. With a normative juridical approach, it is found that HAN reform is not enough to be carried out normatively, but needs institutional restructuring, strengthening legal culture, and optimizing supervision. HAN reform needs to be directed at harmonizing regulations, limiting discretion, strengthening administrative courts, and enforcing the execution of PTUN decisions. This effort is the key to upholding the rule of law and building a professional, clean, and fair government system.

Keywords: discretion; regulatory fragmentation; good governance; state administrative law; supervision; PTUN decisions; reform

INTRODUCTION

In the Indonesian constitutional system, the principle of the rule of law (*rechtstaat*) is the main foundation in the administration of government (Asshiddiqie, 2019). The Constitution of the Republic of Indonesia in 1945 explicitly states that Indonesia is a state of law (Article 1 paragraph 3) (Republic of Indonesia, 1945). Consequently, all actions, policies, and decisions made by the government must always be based on the law, not contrary to the principle of legality, and aim to realize social justice for all Indonesian people.

One of the branches of law that plays a vital role in ensuring that the administration of government runs in accordance with the law is the State Administration Law (HAN) (Hadjon, 2015). HAN regulates the relationship between the government and citizens as well as internal mechanisms in the body of government. In the context of the modern state, HAN is also an important part of the control over executive power which tends to be dominant. The function of HAN is not only normative, but also instrumental in forming a transparent, accountable, and responsive government. However, the reality of implementing HAN in Indonesia is still far from this ideal expectation. Many public policies are born without being based on legal certainty, or are contrary to good administrative norms. This creates legal uncertainty, administrative treatment gaps, and injures people's rights as citizens.

One of the main causes of the ineffectiveness of HAN is the fragmentation of regulations that arise from the in synchronization between laws and regulations at the central and regional levels. Regional autonomy, although it is a form of decentralization that is expected to bring the government closer to the people, often becomes a space for the birth of regulations that are not

in line with central regulations, or even contradict each other. As a result, government officials on the ground face confusion in implementation, and the public does not get certainty in accessing public services

In addition to the issue of regulatory fragmentation, one of the major challenges in the practice of State Administrative Law in Indonesia is the abuse of discretion by administrative officials. Discretion is the authority given to officials to make decisions in the absence of regulations or provisions that expressly govern a particular situation. Theoretically, discretion is a form of flexibility in administrative law to respond to rapidly changing social dynamics. However, in practice, discretion is often used arbitrarily without clear signs.

When discretion is not strictly regulated, the opportunity for abuse of authority becomes enormous. In this context, discretion, which should be a means of adaptive policy-making, instead turns into a loophole for violations of the basic principles of the rule of law, such as justice, accountability, and legal certainty. There are many cases where administrative decisions are based on subjective considerations, are not transparent, and do not take into account the general principles of good governance (AUPB), such as the principles of prudence, proportionality, and fair treatment of citizens.

One concrete example of the impact of abuse of discretion is the unfairness in granting business licenses or procurement of goods and services. It is not uncommon for officials to give approval based on certain interests or political pressure, not based on legal principles and objective considerations. This certainly creates an unhealthy government climate, increases the practice of collusion and corruption, and creates legal uncertainty that leads to a decrease in public trust in the state.

Furthermore, the ineffectiveness of internal and external oversight mechanisms exacerbates this situation. Internal oversight institutions such as inspectorates or ministries/agencies often do not have the power to take action against officials who abuse their authority. Similarly, external oversight institutions such as the Ombudsman of the Republic of Indonesia or the State Civil Apparatus Commission (KASN), which often do not have the coercive power or authority to enforce ethical and administrative standards.

One of the institutions that has an important role in enforcing administrative law is the State Administrative Court (PTUN). The PTUN is tasked with adjudicating disputes between citizens and administrative officials over decisions that are considered unlawful. However, in practice, the effectiveness of the PTUN as an enforcer of the rule of law in the administrative realm also faces serious challenges. Many PTUN decisions are not implemented by the defendant, namely government officials or institutions who lose the case.

Non-compliance with the PTUN decision is an indication of the weak legal culture in the bureaucratic environment. As part of the state apparatus, every official should have the awareness and moral responsibility to respect and implement court decisions. However, the absence of strict administrative sanctions and a strong execution mechanism makes PTUN decisions often only a formal document that has no real impact on improving public services or restoring citizens' rights.

This situation directly hurts the principle of good governance and damages public trust in the legal system. When court decisions are not respected, the principle of the rule of law becomes empty. In the context of the rule of law, the rule of law requires that all state administrators, including executive institutions, submit to and obey the law, including court decisions.

The problems that have been described earlier, regulatory fragmentation, abuse of discretion, weak internal and external supervision, and ineffective implementation of PTUN decisions, all point to one crucial point: the need for comprehensive and sustainable reform of the State Administrative Law system. This reform cannot stop at normative revision of laws

and regulations alone, but also concerns the improvement of the institutional system, the culture of bureaucratic law, and the integrity of public administration officials.

First, harmonization of regulations between the central and regional governments is a must. The government needs to develop a more effective regulatory synchronization mechanism, avoid overlapping rules and clarify the hierarchy of laws and regulations as stipulated in Law Number 12 of 2011 concerning the Formation of Laws and Regulations. This harmonization also includes clarity in the division of administrative authority between agencies and between levels of government, so as not to cause conflicts of authority or gaps in norms.

Second, the restriction of discretion through technical regulations is very important to ensure legal certainty. The government needs to establish standard operating procedures (SOPs) regarding the use of discretion, as well as objective assessment indicators that can be tested by the supervisory mechanism. The regulation of discretion must also be subject to the general principles of good governance (AUPB), as stipulated in Law Number 30 of 2014 concerning Government Administration.

Third, it is necessary to strengthen administrative judicial institutions, especially the State Administrative Court, both in terms of authority and effectiveness of the implementation of decisions. One of the strategic efforts is to encourage revisions to the provisions of the PTUN procedural law that clarify the stages of execution and establish sanctions for officials who do not implement the decision. In addition, there needs to be an active role from the President as the head of government in supervising the compliance of state officials with court decisions, as a form of executive responsibility in the system of checks and balances.

Fourth, legal education and strengthening the capacity of government apparatus are also integral parts of HAN reform. Without a deep understanding of the principles of the state of law and ethics of public administration, regulatory changes will only become legal rhetoric that has no impact. In this framework, strengthening the ASN training curriculum, cultivating bureaucratic integrity, and transparency in recruitment and promotion of positions is very necessary.

All of these reform agendas are closely related to efforts to realize good governance, which is a government system that upholds transparency, accountability, public participation, effectiveness, and the rule of law. Good governance is not only a normative ideal, but also a prerequisite for the creation of public trust and sustainable development. On the other hand, legal certainty is the main pillar in creating administrative stability and ensuring the protection of citizens' rights.

Theoretically, the idea of HAN reform can be supported by Gustav Radbruch's version of the state of law theory which emphasizes three important elements: justice (*gerechtigkeits*), legal certainty (*rechtssicherheit*), and utility (*zweckmäßigkeit*) (Radbruch, 1950). In this context, HAN reform must be able to balance all three: not only guarantee the certainty of norms, but also be fair and beneficial to the people. Thus, this background shows that the reform of the State Administration Law is an urgent need to strengthen the foundation of the rule of law in Indonesia. Without these reforms, the administration of government will continue to be overshadowed by irregularities, injustice, and crises of public trust.

METHOD

This research uses a normative juridical approach with a focus on the analysis of laws and regulations related to State Administrative Law, good governance, and legal certainty. The data is sourced from primary legal materials (the 1945 Constitution, the Government Administration Law, the PTUN Law, and the Law on the Formation of Regulations), as well as secondary and tertiary materials such as books, journals, and legal dictionaries. Data collection

is carried out through literature studies and qualitatively analyzed using descriptive-analytical methods to examine legal norms in state administrative practices. The goal is to identify HAN problems and formulate reform solutions that are in accordance with the principles of the state of law.

DISCUSSION

The Urgency of State Administrative Law Reform in the Framework of the State of Law

State Administration Law (HAN) is a branch of public law that has a central role in ensuring the legality of government actions, protecting the rights of citizens, and ensuring that state power is exercised accountably and responsibly. In the context of Indonesia as a state of law as affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, every government action must be based on the law, and uphold the principles of due process of law, justice, and legal certainty (Azzahra, 2020).

The urgency of HAN reform arises from the fact that state administrative practices often do not reflect the basic values of the state of law. Many public policies are arbitrary, administrative decision-making lacks participation and transparency, and weak implementation of administrative judicial decisions. This condition indicates a gap between normative legal principles and the reality of administrative practice on the ground.

One of the indicators of the importance of HAN reform is the fragmentation of regulations. Many regulations at the central and regional levels overlap, are not synchronized, and even contradict each other. This creates legal uncertainty for the community and the government apparatus itself. Regional autonomy, although it aims to bring public services closer, is often a gap in the birth of local regulations that deviate from the national legal framework (Mahfud, 2007).

In addition, the abuse of discretion by public officials is a serious threat to democratic governance. Discretion that should be a policy space in extraordinary situations is often used to justify actions that do not obey the law. In practice, many administrative decisions are made based on political, economic, and even external pressures, not based on the principles of justice and service efficiency. In fact, weak internal and external oversight mechanisms also exacerbate this problem. Institutions such as the Inspectorate General, the Ombudsman, and the State Civil Apparatus Commission (KASN) do not yet have optimal authority and coercion. As a result, many administrative violations are not strictly acted upon, creating a culture of impunity and public distrust of the government.

The urgency of HAN reform is also closely related to the effectiveness of administrative courts, especially the State Administrative Court (PTUN). Although the PTUN plays an important role in providing legal protection to the public from arbitrary actions of officials, the reality shows that many PTUN decisions are not implemented by defendant officials. This tarnishes the authority of the law and weakens the principle of the rule of law.

Within the framework of legal theory, HAN reform does not only concern technical changes in laws and regulations, but also includes improvements to the institutional structure and legal culture of bureaucracy. Referring to Gustav Radbruch's version of *Rechtsstaat* theory cited in (Nahak, 2023), good law must meet three main conditions: justice (*gerechtigheit*), legal certainty (*rechtssicherheit*), and utility (*zweckmäßigkeit*). Therefore, HAN reform must be directed to balance the three.

State Administrative Law reform measures cover various strategic aspects that are interrelated. One of the main priorities is to harmonize regulations between the central and regional governments to prevent conflicts of legal norms and clarify the limits of the authority

of each level of government. In addition, restrictions on the use of administrative discretion need to be implemented through the preparation of clear operational procedures (SOPs) and legal parameters, so that their implementation can be effectively supervised. This reform also demands strengthening the supervisory mechanism by expanding the authority of external supervisory institutions and strengthening the accountability system of public officials. Furthermore, the effectiveness of the State Administrative Court (PTUN) needs to be increased through strengthening the authority to execute decisions and the imposition of administrative sanctions for officials who do not carry out legal decisions. No less important, administrative legal education for state civil servants must be intensified to form a bureaucracy that is legally aware, professional, and has high integrity.

All of these reforms boil down to efforts to form good governance based on law, ethics, and the principles of fair public service. From a national development perspective, a strong and responsive HAN will create legal stability, encourage community participation, and strengthen the country's legitimacy in the eyes of its people.

Obstacles in the Implementation of PTUN Decisions

The State Administrative Court (PTUN) as a judicial institution designed to supervise government actions and protect the rights of citizens from arbitrary administrative decisions, normatively has binding legal force. However, in practice of implementation, many PTUN decisions are not implemented by the defendant, especially by state administrative officials. This phenomenon raises serious concerns about the effectiveness of legal protection and the rule of law in the field of state administration. Obstacles in the implementation of PTUN decisions can be analyzed through three key aspects: the lack of clarity of the execution mechanism, the weak legal culture of public officials, and the lack of an active role of the courts in enforcing judgments.

Unclear Execution Mechanism

The absence of an operational and binding execution mechanism is the main structural obstacle in the implementation of the PTUN decision. Law No. 5 of 1986 concerning the State Administrative Court, which has later been amended by Law No. 9 of 2004 and Law No. 51 of 2009, has indeed provided space for the imposition of administrative sanctions against officials who do not implement the ruling. However, the regulation on the implementation of these sanctions is still very minimal and tends to be not applicable in the reality of government bureaucracy.

Unlike the civil justice system, which has stages of execution through a bailiff or police assistance, the PTUN does not have adequate tools to compel administrative officials to obey decisions that have permanent legal force. As a result, the implementation of PTUN decisions depends entirely on the good faith of the officials concerned. This results in many decisions only becoming symbols of legal formalities without real coercive power. In these conditions, the rule of law risks being replaced by political power or other practical considerations that are often contrary to the principles of due process of law.

Weak Legal Culture Among Administrative Officials

The next obstacle is related to the cultural dimension, namely the weak legal culture among state officials. Although as the organizer of executive power, public officials should be an example in obeying the law, in many cases it is found that they are actually ignoring court decisions. As stated by (Azzahra, 2020), the low level of compliance with PTUN decisions shows a permissive attitude towards violations of administrative laws among bureaucrats.

Worse, there is a tendency that public officials will only implement PTUN decisions if there is political pressure, media attention, or if 171 Muksalmina, et.all." State Administrative Law Reform..." its implementation is personally or institutionally beneficial. This kind of practice creates a bad precedent and encourages systemic defiance of the law. When court

decisions are no longer seen as orders to be obeyed, the spirit of the rule of law is degraded, and public trust in the judicial system is eroded.

In addition, weak supervision and the absence of strict sanctions also aggravate this situation. Administrative reprimands, which are often the only sanction for officials who disobey the PTUN decision, are considered insufficient to have a deterrent effect. In some cases, serious violations of court decisions do not even cause any career consequences, thus creating a culture of impunity in the bureaucratic environment. Reforms in the sanction structure and enforcement of civil servant discipline are very urgent to change this orientation (Sunge, 2009).

Lack of Active Role of the Court in the Execution Process

Structurally, the role of the PTUN in ensuring the implementation of its own decisions is also very limited. In contrast to civil courts which are equipped with judicial execution tools, the administrative justice system in Indonesia is not equipped with legal instruments that allow judges to take direct action against dissenting officials. The law only provides a limitation that the implementation of decisions is voluntary, without mechanisms of coercion or continuous monitoring.

This condition causes the PTUN decision to be only effective declaratively but not implementively. In fact, in the principle of *rechtsstaat*, the effectiveness of court decisions is a fundamental element in ensuring legal protection. Without the ability to ensure that the decision is actually implemented, the presence of the PTUN becomes symbolic and loses its function as a controller of executive power. Institutional reform is needed so that administrative courts can actively oversee the execution process, for example by giving judges the authority to issue enforcement orders, set deadlines, and impose additional sanctions for non-compliant officials (Suhariyanto, 2019)

Recommendations to Improve the Effectiveness of the Implementation of PTUN Decisions

The implementation of the State Administrative Court (PTUN) decision which is still weak and inconsistent shows that the rule of law in the field of state administration has not been fully rooted in the bureaucratic practices of the Indonesian government. Therefore, strategic and systematic steps are needed to strengthen the position of the PTUN as the front line in protecting citizens' rights from arbitrary actions by administrative officials. The following policy recommendations are prepared based on the regulatory, institutional, cultural, and strategic dimensions of the President in consolidating legal compliance among state apparatus. (Suhariyanto, 2019).

Establishment of Technical Regulations for the Execution of PTUN Decisions

One of the main causes of the low level of implementation of PTUN decisions is the absence of concrete and binding technical regulations. Currently, although Law No. 5 of 1986 and its amendments have contained general provisions regarding administrative sanctions, there is no standard operational procedure that explains how the decision must be executed, for how long, and what sanctions are imposed if officials do not comply. Therefore, it is very urgent for the government to immediately formulate implementing regulations in the form of Government Regulations or Presidential Regulations that expressly regulate the mechanism for implementing PTUN decisions after they have permanent legal force (*inkracht*). These regulations must include setting deadlines for the implementation of decisions, preparing stages of execution in stages—ranging from administrative reprimands, progressive fines, deductions of benefits, to dismissal of non-compliant officials—and the appointment of agencies responsible for overseeing its implementation, including the involvement of internal audit units. With these technical arrangements, the legal loophole that has been used by

administrative officials to ignore or delay the implementation of PTUN decisions on the grounds of the absence of a mechanism will be closed.

Strengthening the Executive Authority of the State Administrative Court

PTUN as a judicial institution in the field of state administration, should ideally not only be a normative judge, but also a substantive supervisor of the implementation of its decisions. Currently, the PTUN does not have the tools or mechanisms to ensure the direct execution of decisions. Therefore, legislative reforms need to be carried out immediately to strengthen the role of the State Administrative Court (PTUN) in effectively enforcing administrative justice. This reform must include giving the PTUN the authority to impose daily fines (*dwangsom*) on officials who do not implement the decision, as well as the authority to coordinate executions with law enforcement officials such as the Police or the Prosecutor's Office. In addition, it is necessary to establish a decision implementation monitoring unit within the PTUN that is tasked with auditing the level of compliance of institutions and public officials with the law. With this strengthening, the PTUN no longer only functions as a forum for formal administrative dispute resolution, but also becomes an effective instrument in ensuring the rule of law in the field of state administration.

Revitalization of Legal Culture and Compliance of Government Apparatus

The main problem in the implementation of PTUN decisions does not only lie in technical aspects, but also stems from cultural issues. The low legal culture that supports compliance, permissive attitudes towards legal disobedience, and the erroneous view that PTUN decisions are optional, are serious challenges that must be overcome immediately. One of the concrete steps that can be taken is to integrate administrative legal materials and officials' responsibilities for court decisions into the training curriculum for state civil servants (ASN). In addition, it is necessary to organize mandatory legal coaching programs for echelon officials, especially those who hold discretionary authority. On the other hand, the reward and punishment system also needs to be strengthened by emphasizing obedience to PTUN decisions as an indicator of performance, for example through the provision of incentives or administrative awards for officials who implement decisions in a timely manner. This approach aims to encourage the internalization of *rechtstaat* values in the mindset and behavior of state apparatus, as the foundation of law-based governance.

Optimizing the President's Role as a Legal Compliance Supervisor

The President, as the head of government, plays a central role in shaping a culture of legal compliance in the bureaucratic environment. However, until now, this role still tends to be normative and has not been optimized operationally. For this reason, concrete steps can be taken through the issuance of a Presidential Instruction (Inpres) on the Obligation to Implement PTUN Decisions which are binding on all ministries and institutions. In addition, it is necessary to develop a legal compliance reporting system that is integrated into the performance evaluation of public officials, so that compliance with court decisions becomes part of the performance assessment benchmark. In the event of violations, the President also needs to encourage the imposition of direct administrative sanctions, such as removal from office, suspension, or blocking promotions for officials who are proven to ignore PTUN decisions. By paying strategic attention to legal compliance in the bureaucratic system, the President not only restores the dignity of state administrative law, but also strengthens public trust in the government.

CONCLUSION

State Administrative Law (HAN) reform is an urgent need in order to realize the principle of a true state of law in Indonesia. Although normatively affirmed in the constitution, the practice of government administration still faces various fundamental problems such as

regulatory fragmentation, abuse of discretion, weak supervision, and low compliance with PTUN decisions. The unclear execution mechanism and weak legal culture of the apparatus show that the rule of law in state administration has not been effective. PTUN, as a pillar of citizens' legal protection, is still faced with structural and cultural obstacles that limit the reach of justice.

Based on this, HAN reform must be carried out comprehensively through a regulative, institutional, and cultural approach. Harmonization of regulations, restrictions on discretion, strengthening the execution of PTUN decisions, and increasing legal awareness of state apparatus must be priorities. Optimizing the President's role as the highest supervisor of the bureaucracy is also needed to ensure accountability and compliance of public officials. HAN reform aimed at achieving good governance will strengthen the state's legitimacy and ensure legal certainty for the community, while building a fair, professional, and law-based government system.

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