Juridical Analysis Of Personnel Dispute Resolution In The State Administrative Court (*Analysis Of Case Decision Number 45/G/2020/Ptun-Jkt*)

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Abstract.

Juridical settlement of personnel disputes according to Law No. 5 of 2014 concerning the State Civil Apparatus is resolved through administrative remedies, consisting of administrative objections and appeals. Personnel dispute resolution is resolved through the State Administrative Court, while in Law No. 5 of 2014, personnel dispute resolution is resolved through administrative efforts consisting of administrative objections and appeals. Based on this, the legal protection provided by Law No. 5 of 2014 against the State Civil Apparatus in dispute reduces the procedural rights of the State Civil Apparatus, because it can no longer defend its rights to the judiciary. Law enforcement carried out by judges in examining and trying case No. 45/G/2020/PTUN-JKT., is in accordance with legal provisions as specified in the PTUN Law. Based on the examination before the court, it was revealed that the legal facts that the defendant had issued a decree on the object of dispute, namely the Decree of the Governor of DKI Jakarta No. 1616 of 2019 concerning the imposition of severe disciplinary punishment in the form of dishonorable dismissal of non-permanent employees on behalf of Susanto at Satpol. PP. not in accordance with the principle of presumption of innocence, the Defendant has also issued a decision on the object of dispute not in accordance with the basic regulations that authorize the Defendant so that in substance the decision of the object of dispute contains juridical reproach. One of the resolutions of disputes according to Islamic law is the courts (Al-qadha). Etymologically, Al-qadha means to decide to establish. While terminologically, Al-qadha is a judicial institution tasked with delivering binding legal decisions. The postulates about qadha' are quite numerous in QS. Al-Baqarah (2) verse 213.

Keywords : *Personnel Dispute, Law No. 5 of 2014 and State Administrative Court.*

I. INTRODUCTION

As one of the legal states, Indonesia adheres to the *Welfare State*, where the government must provide welfare for its citizens. This is in accordance with the purpose of every country, which is to provide welfare and prosperity for its citizens. In order for the goals of the state to be achieved, in its implementation, organs or government devices with their respective functions and authorities are needed. (Jiwantara, F. A.: 2019:34) To achieve national goals as stated in the 4th paragraph of the Preamble to the Constitution of the Republic of Indonesia Year 1945 (UUD 1945), a professional State Civil Apparatus (ASN) is needed, free from political intervention, free from corruption, collusion and nepotism, able to provide public services for the community and able to carry out the role of unifying the unity and unity of the nation based on Pancasila. and the 1945 Constitution. The national goal as stated in the Preamble of the 1945 Constitution is to protect the entire Indonesian nation and all Indonesian bloodshed, promote general welfare, (Sugiharto, H., & Abrianto, B. O.2018"11 educate the life of the nation, and participate in implementing world order based on independence, lasting peace, and social justice. (Marbun, S.F.,2011:17) To realize national goals, civil servants are needed. Civil servants are assigned to carry out public service duties, government duties, and certain development tasks. Public service duties are carried out by providing services for goods, services, and/or administrative services provided by ASN employees. The duties of government are carried out in the framework of carrying out general government functions which include institutional utilization, staffing, and management.

Meanwhile, in the framework of carrying out certain development tasks carried out through nation building *(cultural and political* development) and through economic and social development (economic *and social development*) which is directed at improving the welfare and prosperity of the entire community.To be able to carry out public service duties, government duties, and certain development tasks, ASN employees must have a profession and ASN Management based on the Merit System or a comparison between the qualifications, competencies, and performance required by the position with the qualifications, competencies,

and performance possessed by candidates in recruitment, appointment, placement, and promotion in positions that are carried out openly and competitively, in line with good governance. ASN Management consists of Civil Service Management and PPPK management needs to be regulated thoroughly by applying norms, standards, and procedures. The management of civil servants includes the preparation and determination of needs, procurement, rank and position, career development, career patterns, promotion, mutation, performance appraisal, payroll and benefits, awards, discipline, dismissal, pension and old age security, and protection.Meanwhile, PPPK Management includes determination of needs, procurement, performance appraisal, salary and benefits, competency development, awarding, discipline, termination of employment agreements, and protection.

In an effort to maintain the neutrality of civil servants from the influence of political parties and to ensure the integrity, cohesiveness, and unity of civil servants, and be able to focus all attention, thoughts, and energy on the tasks charged, civil servants are prohibited from becoming members and/or administrators of political parties. To increase productivity and ensure the welfare of civil servants, in this Law it is affirmed that civil servants are entitled to a fair and decent salary in accordance with their workload, responsibilities, and work risks. In addition, civil servants are entitled to social security.In order to determine ASN Management policy, a state Civil Apparatus Commission (KASN) was formed that was independent and free from political intervention. The establishment of this KASN is for monitoring and evaluating the implementation of ASN policies and management to ensure the realization of the Merit System and supervision of the application of ASN principles, codes of ethics and codes of conduct. KASN consists of 7 (seven) members consisting of a chairman concurrently members, a vice chairman concurrently members, and 5 (five) members. KASN in carrying out its duties and authorities is assisted by Assistants and Functional Officers the required expertise.In addition, KASN is assisted by a secretariat headed by a head of the secretariat. The chairman, vice chairman, and members of KASN are appointed and appointed by the President as the head of government for a term of office of 5 (five) years and can only be extended for 1 (one) term.

To channel aspirations in the context of coaching and professional development of civil servants, civil servants gather in the professional corps of civil servants of the Republic of Indonesia which aims to maintain the professional code of ethics and professional service standards of civil servants and realize the soul of the civil servant corps as a glue and unifier of the nation. In order to ensure the efficiency, effectiveness, and accuracy of decision making in ASN Management, an ASN Information System is needed. ASN Information System is a series of information and data about ASN Employees that is compiled systematically, comprehensively, and integrated with technology-based which is held nationally and integrated.Personnel Disputes are disputes / disputes that arise as a result of the stipulation of State Administration decisions in the field of personnel by authorized Agencies or Officials regarding the position, obligations, rights and guidance of Civil Servants. Personnel disputes are one part of State Administrative disputes (TUN) and decisions / determinations in the field of personnel are the object of the State Administrative Court (PERATUN).In Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning the State Administrative Court, it is stated that personnel disputes occur if a Public Servant who receives a decree, feels that he has suffered losses as a result of the issuance of the decree, in this case the person concerned will position himself as a plaintiff. Personnel management is indeed very prone to the problem of Personnel Disputes, because it is related to the issuance or determination of State Administrative Decisions in the Field of Personnel, among others, in the form of:

Decision of appointment as a Civil Servant Candidate (CPNS), Decision of appointment as a Civil Servant (PNS), Decision of appointment in rank (for promotion), Decision of appointment in structural positions and functional positions, Decision of temporary dismissal as Civil servant, Decision on imposing disciplinary punishment, and Decision on dismissal as a civil servant. (Ida Ayu Sri Dewi, 2005:73) Disputes between the two parties are difficult to resolve without assistance from third parties, namely through impartial and biased judicial institutions. If one party is not satisfied with the decision of the punitive authority, it can file if it has not obtained what is expected, then it can take the path of filing an objection to a higher judicial body, namely filing an objection through the Civil Service Advisory Board, State Administrative Court or

submitting Cassation to the Supreme Court.One example of an employment dispute case is in case Number: 45/G/2020/PTUN-JKT, where Susanto at the Civil Service Police Unit of the Special Capital Region of Jakarta, with the Decree of the Governor of the Special Capital Region of Jakarta Number 1616 of 2019 dated November 19, 2019 concerning Dishonorable Dismissal of the Civil Service Police Unit, has resulted in the Plaintiff suffering losses. Susanto filed a lawsuit with the State Administrative Court.

II. METHODS

The research method used in this writing consists of Normative Juridical and Empirical Juridical research. This is formulated as follows: Normative Juridical, Research in this writing uses or refers to legal norms contained in laws and regulations. Government regulations, governor regulations and court decisions and jurisprudence. Empirical Juridical, This study looks at or examines in Indonesian society and other countries and what is desired by the community related to the resolution of personnel disputes in the State Administrative Court. In addition, the author uses qualitative research methods, the author first takes the following steps: (Dion Kurniadi Sitorus, 2022: 27-28) This research is included in the type of empirical research, namely research on law in its implementation, this internal research itself when related to the theme / concept is normative in the processes, principles, and procedures used. However, basically this research is not entirely normative considering the cases to be discussed in this writing occur in the actual scope.This research is descriptive analysis, by describing the applicable laws and regulations and associated with legal theories, in practice its implementation [37] related to the problems to be examined through this method will also describe and describe the facts that actually occur as a guarantee of the implementation of laws and regulations and legal principles associated with legal theories and its implementation practice in resolving personnel disputes in the State Administrative Court.

III. DISCUSSION

Juridical Settlement of Personnel Disputes According to Law Number 5 of 2014

Settlement of personnel disputes before the enactment of Law Number 5 of 2014 concerning the State Civil Apparatus is carried out through:

Administrative Appeals at the Civil Service Advisory Board (BAPEK) After waiting for more than 11 years since the enactment of Law No. 43 of 1999 concerning Personnel Matters, finally the Government Regulation on the Personnel Advisory Board can be stipulated through Government Regulation Number 24 of 2011.This Government Regulation on the Personnel Advisory Board (BAPEK) is mandated by Article 35 paragraph (1) of Law No. 43 of 1999 which orders further regulation of BAPEK through a Government Regulation.Within that 11-year period practically the specific regulation regarding BAPEK still refers to the old regulation, namely Presidential Decree Number 67 of 1980 concerning the Personnel Advisory Body, as amended by Presidential Decree Number 71 of 1998 concerning Amendments to Presidential Decree Number 67 of 1980 concerning Personnel Advisory Board. With the enactment of PP No. 24 of 2011, Presidential Decree No. 67 of 1980 as amended by Presidential Decree No. 71 of 1998 is revoked and declared invalid. The Government Regulation on BAPEK is important for every civil servant to know, because it is an integral part of efforts to resolve disputes in the field of personnel as stated in Article 35 paragraph (2) of Law No. 43 of 1999 which states that "Employment disputes as a result of violations of Civil Servant disciplinary regulations are resolved through administrative appeals to the Civil Service Advisory Board." Based on Article 35, several important elements can be drawn that underlie BAPEK's role in resolving personnel disputes, namely:

1. That personnel disputes that can be resolved through BAPEK are limited to the scope of disputes regarding violations of employee discipline regulations regulated in PP No. 53 of 2010. Meanwhile, personnel disputes outside of what is regulated in PP No. 53 of 2010 are resolved through the State Administrative Court (Article 35 paragraph (1) of Law No. 43 of 1999).
2. That dispute resolution through BAPEK is an administrative appeal. The definition of administrative appeal is an administrative remedy that can be taken by civil servants who are dissatisfied with disciplinary punishment in the form of dismissal with respect not at their own request or dismissal not with honor as a

civil servant imposed by an official authorized to punish, to the Civil Service Advisory Board (Article 1 point 8 PP No. 53 of 2010). Based on this understanding, an administrative appeal can only be filed if a civil servant is sentenced to discipline:

1. Dismissal is not with respect as a civil servant is not at his own request.

1) Dishonorable dismissal as a civil servant imposed by a punitive official.

With the enactment of PP No. 24 of 2011 concerning BAPEK, it is expected to be a breath of fresh air for the resolution of disputes over violations of civil servant discipline, especially when filing administrative appeals. At least the main matters contained in this regulation such as aspects of position, duties, administrative appeal mechanisms at BAPEK and the power of decisions become clearer. Thus, this regulation can be a guideline that makes it easier for any employee involved in employee discipline disputes but is not satisfied with the decision and intends to file an administrative appeal.In accordance with Presidential Decree Number 71 of 1998, one of Bapek's duties is to examine and make decisions regarding objections raised by civil servants with the rank of Supervisor of room group IV / b and below, regarding disciplinary punishments imposed on him based on Government Regulation Number 30 of 1980, as far as disciplinary punishment is concerned, dismissal with respect not at his own request and dismissal not with respect as a civil servant.Bapek's membership consists of the Minister of PAN as chairman concurrently member, the State Civil Service Agency as secretary concurrently member, Minister of State Secretary as member, Attorney General as member, Head of State Intelligence Agency as member, Director of Law and Legislation of the Ministry of Law and Human Rights as member, Chairman of Korpri central board as member.Bapek conducts the conference at least once a month. Bapek must resolve and make decisions on objections raised by civil servants no later than 6 (six) months after the response and completeness materials are received. In the event that the response and materials received from the punishing authority are not implemented, Bapek may take a decision on the objections raised from the civil servant concerned.

The completeness of the file submitting objections to the disciplinary decision to Bapek must be attached:

1. disciplinary punishment decree.
2. Request from the civil servant concerned or his legal representative.
3. Response from punitive authorities.
4. A valid copy of the disciplinary punishment decision.
5. A certified copy of BAP/LHP/Other required consideration materials.

The receipt of Bapek's decision is binding and must be enforced by all parties concerned. However, these efforts can still be appealed through the applicable legal and statutory mechanisms, namely through the State Administrative Court. During the process of submitting objections to Bapek, the person concerned is still a civil servant. Based on the letter of the Head of BAKN Number K.99-6 / V.5-55 dated August 30, 1988, it was confirmed that civil servants who were sentenced to discipline in the form of dismissal as civil servants and filed objections to Bapek, the salary and rights of the employees concerned still had to be paid.In accordance with Law Number 9 of 2004 amending Law Number 5 of 1986 concerning State Administrative Court, it is stated that the resolution of personnel disputes can only be carried out if all administrative efforts have been taken as stipulated in article 48 of the Law on State Administrative Court and against individuals or legal entities related to personnel issues within the scope of State Administration.Persons or civil law entities who feel that their interests are harmed by a State Administrative decision may file a lawsuit in writing with the court authorized to adjudicate containing a claim that the disputed State Administrative decision be declared void or invalid, with or without a claim for compensation or rehabilitationThe State Administrative Court in resolving, determining and deciding a case must uphold the principle "Legislation of a lower degree shall be subject to legislation of a higher degree and later legal provisions override previous legal provisions" based on the principle of "*Lex a posteriori derogate, lex a priori*". As the basis for the authority of judges of the State Administrative Court in determining and deciding cases of personnel disputes is Article 14 of Law Number 4 of 2004 concerning Judicial Power, the Court may not refuse to examine and try a case submitted under the pretext that there is nothing or less clear, but is obliged to examine and try it.

2) Court Verdict

Only court decisions that have acquired permanent legal force can be enforced. The judge's decision has permanent legal force, if there are no other legal remedies that can still be applied. If the lawsuit is granted, then in the court decision can be determined the obligations that must be carried out by the State Administration agency or official who issued the decision, namely in the form of revocation of the disputed decision by issuing a new decision. This obligation can be accompanied by the imposition of compensation, if this decision is regarding employment issues, then in addition to the obligation to impose compensation is also accompanied by the obligation to carry out rehabilitation. This rehabilitation is a restoration of the plaintiff's rights in his ability, position, dignity and dignity as a civil servant as before there was a disputed decision. In the event that the personnel regarding a position has been filled by another official, then the person concerned can be appointed in another position at the same level as the original position. If this is not possible, then the person concerned will be reappointed at the first opportunity after there is formation in a position at the same level or other provisions can be taken in accordance with the laws and regulations in force in the field of personnel. In addition, the law also regulates coercive efforts against judgments that have been decided, orders to pay forced money, administrative sanctions and notices in local print media. Within 4 (four) months after the court decision has obtained permanent legal force and the defendant does not implement the court decision, the disputed State Administrative decision automatically or automatically has no legal force anymore. If both parties cannot agree on the court's decision, the plaintiff or defendant can file a cassation with the Supreme Court for redetermination, and the decision of the Supreme Court must be obeyed by both parties.

3) Appellate Level Examination

Decisions of the State Administrative court that are not accepted by the plaintiff or defendant, by the interested parties can be requested for an appellate hearing. The appeal shall be submitted in writing by the applicant or his attorney to the State Administrative Court which handed down the decision within a grace period of 14 (fourteen) days after the decision of the State Administrative Court is validly notified to the plaintiff or defendant. The plaintiff or defendant may submit the appeal memory and/or counter appeal memory, accompanied by a certificate and strong evidence. If a party has expressed good acceptance of the decision of the State Administrative Court, it cannot revoke the statement even though the time period for filing an appeal has not been exceeded. Decisions that have been determined by the State Administrative Court can be submitted for cassation to the Supreme Court.No. 5 of 2014 concerning the State Civil Apparatus is not in accordance with what is contained in Article 1 paragraph (10) of Law No. 51 of 2009 concerning the State Administrative Court which states that: State Administrative Disputes are disputes arising in the field of State administration between persons or civil law entities and State administrative bodies or officials, both at the center and in the regions, as a result of the issuance of State administrative decisions, including personnel disputes based on applicable laws and regulations.The article states that personnel disputes include State administrative disputes whose resolution is through the State Administrative Court, while the State Civil Apparatus Law stipulates that the resolution of personnel disputes is carried out by administrative efforts.

Article 129 paragraph (5) of Law No. 5 of 2014 concerning the State Civil Apparatus stipulates among others that administrative efforts will be regulated in a Government Regulation, but until now the Government Regulation in question has not been issued. To anticipate a legal vacuum, Law No. 5 of 2014 concerning the State Civil Apparatus, Article 139 stipulates that at the time this Law comes into force, all laws and regulations which are implementing regulations of Law No. 8 of 1974 which have been amended by Law No. 43 of 1999 concerning Personnel Matters, are declared to remain in force as long as they do not conflict and have not been replaced under this Law, So that the settlement of personnel disputes still uses the old methods and regulations. The State Civil Apparatus Law does not designate a forum for resolving personnel disputes after administrative efforts have been taken, nor does Government Regulation No. 53 of 2010 concerning Public Servant Discipline designate a dispute resolution forum after the decision of administrative efforts, therefore article 48 yo article 51 of the Law on Administrative Affairs which specifies that the High Administrative Court is authorized to resolve personnel disputes that have gone through all

efforts administrative. Thus, there are actually several flows of personnel dispute resolution as follows:

The flow of dispute resolution according to article 48 jo article 51 of Law No. 5 of 1986 which has been amended and updated by Law No. 9 of 2004 jo Law No. 51 of 2009 concerning State Administrative Court is an attempt to object submitted to the official who issued the State Administrative Decision, if it has not been able to accept the results of the objection decision then, can file an administrative appeal submitted to the superior official who issued the State Administrative Decision or to other agencies / agencies and if still unable to accept the results of administrative efforts then, according to article 51 of Law No. 5 of 1986 can file a lawsuit to the High Administrative Court as a court of first instance.The Supreme Court in 1991 issued Supreme Court Circular / SEMA No. 2 of 1991 which also regulates the settlement of State Administrative disputes in which there are administrative remedies as follows, objection efforts are submitted to the Officer who issued the State Administrative Decision, if they cannot accept the results of the objection and administrative appeals are not provided, they can immediately file a lawsuit with the State Administrative Court. If an administrative appeal is provided, after an objection effort and cannot accept the results of the objection attempt, an administrative appeal is submitted to the superior official who issued the State Administrative Decision or to other Agencies / Agencies, if unable to accept the results of the administrative appeal, the lawsuit is submitted to the High Administrative Court as the court of first instance.Legal Protection of the State Civil Apparatus According to Law Number 5 of 2014 when Compared to Law Number 8 of 1974 jo.

Law Number 43 of 1999 Legal protection is required by State Civil Apparatus Employees in all fields including in the resolution of personnel disputes. Therefore, State Civil Apparatus employees need a clear legal protection if their interests are harmed by a legal action of the State Administrative Agency or Officer.There are two legal systems in the world, namely the Continental European legal system or civil law system and Anglo Saxon or common law system. Countries with a Continental European system recognize the existence of two judicial institutions, namely the general court and the administrative court, while the Anglo Saxon system state only recognizes one court, namely the *"ordinary court"*. Besides these two systems.With the aim of providing legal protection for justice seekers, the State Administrative Court Law was enacted, namely Law No. 5 of 1986 which has undergone two recent amendments with Law No. 51 of 2009. Thus, currently legal protection for justice seekers, including State Civil Apparatus Employees for acts or actions of Agencies or officials, can be provided.The principle of legality is one of the main principles that is used as a basis in every administration of government and statehood in every legal country, especially for legal states in the continental legal system. At first the principle of legality was known in the collection of taxes by the state. In the UK it is known in the collection of taxes by the state in the form of *"no taxation without representation*". This means that tax collection can only be done after the country enacts laws related to tax collection. The principle of legality is also known in criminal law as "*nullum delictum sine praevia lege poenali*" meaning there is no law without law.

The principle of legality is used in the field of administrative law and has the meaning "that the government is subject to the law". The principle of legality dictates that all provisions binding on citizens must be based on law. The principle of legality is the principle of the rule of law which means that every government legal action, both in carrying out regulatory functions and service functions, must be based on the authority granted by applicable laws and regulations.Normatively, every government action must be based on laws and regulations or based on the authority adopted in each country. However, the application of the principle of legality in practice differs from one country to another. That is, there are countries that are so strict in applying the principle of legality, but there are also those who are not too strict in applying the principle.Government authority derived from laws and regulations is obtained through 3 (three) ways, namely: attribution, delegation, and mandate.

1. attribution is the granting of governmental authority by lawmakers to government organs;
2. Delegation is the delegation of government authority from one government organ to another government organ, meaning that the government organ that handed over authority loses its authority. Thus, if a dispute arises due to abuse of authority by the recipient of authority, the person who can be sued is the recipient of the authority and not the authorizer.A mandate occurs when a government organ allows its authority to be

exercised by another organ on its behalf, meaning there is no transfer of authority. In the mandate there is no transfer of authority, thus the mandate recipients (mandans) are fully responsible for the implementation of the duties performed by the mandate giver.The existence of administrative justice has a very important role in shaping *good governance* in realizing the rule of law, namely as a control or supervisory institution for government legal actions to remain within the corridors of the law and to protect the rights of the community against abuse of authority by the ruler.

Furthermore, the responsibility of government in the field of administrative law has 4 (four) possible causes, namely due to the actions of the ruler:

1. produce decisions that are contrary to laws and regulations;
2. abuse of authority;
3. arbitrary;
4. contrary to the general foundations of a decent/good government.

The above opinion reminds all law enforcers that the administrative judiciary has the authority to decide in advance whether the actions taken by the government have resulted in decisions that are contrary to laws and regulations, or there has been an abuse of authority, or contrary to the general principles of good governance. Thus, if the administrative court has proven that the government's actions have given rise to decisions that are contrary to the laws and regulations, then criminal law enforcement is used as a last resort. This means that criminal law is only given after attempts to settle the law with administrative, civil or other laws are made. This is in line with the principle of subsidiarity in criminal law. Furthermore, if the state apparatus does not implement the Decision of the State Administration Court, it can be punished according to the applicable Procedural Law.In addition to the existence of an administrative judicial institution that controls government actions or actions, related to government legal acts can also be carried out through the right of judicial review. Every product of legislation under the law can be tested materially in the Supreme Court and the Constitutional Court to test the law.

1. Principles of legal protection

Based on the consideration of Law Number 8 of 1981 concerning the Code of Criminal Procedure, especially in chapter considering letter a it is stated that the Republic of Indonesia is a state of law based on Pancasila and the 1945 Constitution which upholds human rights and which guarantees all citizens their equal position in law and government and is obliged to uphold the law and government with no exception. The statement includes the state apparatus. This means that the government protects the right to the private life of every state apparatus and citizen.

2. Asas subsidiaritas (*ultimum remedium*).

The principle of subsidiarity is that criminal law enforcement is only carried out as a last law enforcement effort, after first civil and administrative law enforcement efforts. Thus, criminal law enforcement is the last legal remedy, if administrative, civil and other alternative solutions are considered to be able to solve the problem. However, this provision can be set aside if the level of culpability of the perpetrator is relatively severe, the act is relatively large, or the act causes public unrest. To prove whether the basic requirements of subsidiarity are met or not, there must be a written statement from the relevant agency official through consultation and coordination and cannot be determined by the public prosecutor alone.

3. Civil Servant Discipline Regulations in accordance with Government Regulation Number 53 of 2010.

In order to realize reliable, professional, and moral civil servants as government administrators who apply the principles of *good governance*, civil servants as elements of the state apparatus are required to be loyal to Pancasila, the Constitution of the Republic of Indonesia Year 1945, the Unitary State of the Republic of Indonesia, and the Government, be disciplined, honest, fair, transparent, and accountable in carrying out their duties.

This Government Regulation expressly regulates the types of disciplinary punishments that can be imposed for a disciplinary violation. This is intended as a guideline for officials who are authorized to punish and provide certainty in imposing disciplinary punishments. Likewise, the limits of authority for officials who have the authority to punish have been specified in this Government Regulation. The imposition of punishment in the form of light, moderate, or severe disciplinary punishment in accordance with the severity

of the offense committed by the civil servant concerned, taking into account the background and impact of the violation committed.The authority to determine dismissal decisions for civil servants who commit disciplinary violations is carried out based on this Government Regulation. For civil servants sentenced to discipline, they are given the right to defend themselves through administrative efforts through lawsuits in accordance with the applicable legal mechanism, namely through the State Administrative Court (PTUN), so that arbitrariness in imposing disciplinary punishments can be avoided. To prove the presence or absence of government actions or decisions that are contrary to laws and regulations, abuse of authority, arbitrary, or contrary to the general principles of proper / good government as stated above must be done through a supervisory mechanism from the direct supervisor of the employee concerned as well as internal supervision in each government agency.

The government has actually established an internal supervision agency through the establishment of a Government Regulation. Internal supervision is the entire process of auditing, reviewing, evaluating, monitoring, and other supervisory activities on the implementation of the duties and functions of the organization in order to provide adequate assurance that activities have been carried out in accordance with established benchmarks effectively and efficiently for the benefit of leaders in realizing good governance.One of the internal supervisory bodies established by the government is the Inspectorate General. The Inspectorate General or another name that functionally carries out internal supervision is the government's internal supervision apparatus that reports directly to the ministers/heads of institutions. Thus, internal supervision is one part of internal control activities that functions to conduct an independent assessment of the implementation of the duties and functions of Government Agencies. The scope of internal supervision arrangements includes institutional, scope of duties, human resource competencies, code of ethics, audit standards, reporting, and peer review. Consultation and coordination between government agencies are needed so that a good working relationship with Government Agencies is obtained related to the existence of a mutual test mechanism between relevant Government Agencies.With the enactment of Law Number 5 of 2014 concerning the State Civil Apparatus, brought changes in personnel management in force in Indonesia, where almost 14 (fourteen) years of Law Number 43 of 1999 concerning Personnel Matters.

One of the changes in Law Number 5 of 2014 concerning the State Civil Apparatus, and is very welcomed by State Civil Apparatus Employees is the guarantee of legal aid protection as stipulated in Article 106. Legal assistance for State Civil Apparatus Employees in the form of providing legal assistance in cases faced in court related to the implementation of their duties.So far, the provision of legal assistance or protection to State Civil Apparatus Employees is still vague or has not been clearly regulated in law, so that many State Civil Apparatus who face legal problems in carrying out their duties, principals, and functions, have not received legal protection and assistance from the Government.The guarantee of legal aid protection for State Civil Apparatus Employees is seen as an implementation that the State of Indonesia is a state of law where everyone's right to get equal treatment before the law, as well as guarantees for everyone to get access to justice (justice *for all* and access *to justice*).The problem now, in accordance with the mandate of Law Number 5 of 2014 concerning the State Civil Apparatus, the Government and Local Governments must provide a budget for legal assistance for State Civil Apparatus Employees who are facing legal cases in carrying out their duties, principals and functions as State Civil Apparatus Employees.Legal aid comes from the word "help" which means help without expecting anything in return and the word "law" which contains the overall understanding of the rules (norms) of values regarding an aspect of community life with the intention of creating peace. According to Law Number 16 of 2011 concerning Legal Aid, it is explained that legal assistance is legal services provided by Legal Aid Providers free of charge to Legal Aid Recipients.

In Law Number 18 of 2003 concerning Advocates, it explains that legal assistance is legal services provided by Advocates free of charge to clients who cannot afford it. Another definition related to legal aid, legal aid is the service of providing assistance by acting as a defense of someone involved in a criminal case or as a power of attorney in a civil or administrative case before the court (litigation*) and or giving legal advice outside the court (*non litigation*).* In addition, there are also those who provide the understanding of legal aid is a concept to realize equality before the *law (Equality before the law) and* the provision of legal services and legal defense *(access to legal counsel)* within the framework of justice for all people *(justice for*

all). It can be explained the legal basis for providing legal assistance for State Civil Apparatus Employees, consisting of:

1. Constitution of the Republic of Indonesia Year 1945, Article 27 paragraph (1) "Every citizen is equal in law, and government and is obliged to uphold the law and government without exception. Every citizen has an equal position before the law without exception which includes the right to be defended (*access to legal counsel*), treated equally before the law (*equality before the law*), justice for all (*justice for all*).
2. Law Number 39 of 1999 concerning Human Rights, in Article 4 regulates *"The right to life, the right not to be tortured, the right to personal freedom, thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person and equality before the law, and the right not to be prosecuted*"
3. Law Number 18 of 2003 concerning Advocates, Article 22 paragraph "*Advocates must provide free legal assistance to indigent justice seekers.”*

The Code of Criminal Procedure (Law Number 8 of 1981), in Article 54 provides: "*For the purposes of defense, suspects or defendants are entitled to legal assistance from one or more legal counsel during the time and at each level of examination, according to the procedures prescribed in this law*". Furthermore, Article 55 stipulates: *"To obtain such legal counsel in Article 54, the suspect or defendant has the right to choose his own legal counsel*". In addition, it is also emphasized in Article 56 paragraph 1 which reads: "In *the event that a suspect or defendant is suspected or charged with a criminal offense punishable by death or a penalty of fifteen years or more or for incapacitated persons who are threatened with a sentence of five years or more who do not have their own legal counsel, the officials concerned at all levels of examination in judicial proceedings shall appoint legal counsel for them.*"

Law Number 48 of 2009 concerning Judicial Power, Article 56 regulates:

1. Everyone involved in a case has the right to legal assistance.
2. The state bears the costs of the case for indigent justice seekers.

In the old Civil Service Law, it has actually also been provided and given legal protection because it provides efforts that can be taken by Civil Servants who experience adverse actions from the Agency or Officials to the level of a lawsuit to the administrative court. One thing that is quite unfortunate is that the State Civil Apparatus Law has reduced the prosedeural rights or the right to file a lawsuit owned by employees to the State Administrative Court as stipulated in article 129 of the State Civil Apparatus Law which states that the settlement of personnel disputes is resolved administratively, in contrast to the previous Civil Service Law where the settlement of personnel disputes was resolved administratively and if unable to receive an administrative settlement, employees can claim their rights through the State Administrative Court and are given the right to legal remedies up to the cassation level.

Legal Analysis of PTUN Decisions

Panel of Judges Case No. 45/G/2020/PTUN-JKT. after examining, paying attention and studying all the arguments of the parties related to all the facts and evidence revealed at trial, finally decided this case on June 22, 2020 which basically granted part of the Plaintiff's claim. The Jakarta Administrative Court, in its ruling, stated, that:

1. Granted part of Plaintiff's claim

The object of the lawsuit in the state administrative dispute (*object van geschil*) in Case No. 45/G/2020/PTUN-JKT is: Decree of the Governor of the Special Capital Region of Jakarta Number 1616 of 2019 concerning the Imposition of Severe Disciplinary Punishment in the form of Dishonorable Dismissal to Non-Permanent Employees on behalf of Susanto NPTT 09.12139 at the Civil Service Police Unit of the Special Capital Region of Jakarta. The basis for the panel of judges in testing and the basis for cancellation of the decision of the state administration that is the object of dispute in accordance with the provisions of article 53 paragraph (2) and the explanation of Law Number 9 of 2004 parameters are:

1. The decision of the state administration that was sued is contrary to applicable laws and regulations.

a. The challenged state administrative decision is contrary to the general principles of good governance.

The panel of judges identifies the regulations on which the issuance of the object of dispute is based as

mentioned in the juridical consideration of the decision letter of the object of dispute, including:

1. Article 25 paragraph (5) of Law Number 48 of 2009 concerning Judicial Power, which states: The state administrative court as referred to in paragraph (1) has the authority to examine, adjudicate, decide, and resolve state administrative disputes in accordance with the provisions of laws and regulations.
2. Article 47 of Law Number 5 of 1986 concerning State Administrative Court as amended by Law Number 9 of 2004 and Law Number 51 of 2009 which states that the State Administrative Court is an actor of judicial power who is tasked and authorized to examine, decide and resolve state administrative disputes, where according to the provisions of Article 1 number 10 of Law Number 51 of 2009, What is meant by state administrative disputes is disputes arising in the field of state administration between persons or civil law entities and state administrative bodies or officials, both at the central and regional levels as a result of the issuance of state administrative decisions including personnel disputes based on applicable laws and regulations.The partial approval of the plaintiff's claim in this case is based on the evidence of letters and confessions of the parties, so that the evidence has met the minimum requirements of proof. The lawsuit and the answer in this case show the parties' recognition of the truth of the object of dispute and are supported by valid evidence submitted before the court which basically supports each other a fact about disrespectful dismissal of the plaintiff, which dismissal is later proven to be contrary to laws and regulations and also with the general principles of good governance, especially the principle of accountability.

Regarding evidence, Article 100 paragraph (1) of Law Number 5 of 1986 stipulates that: Evidence is: a. letter or writing; b. expert information; c. witness statements; d. acknowledgement of the parties; e. knowledge of the Judge. (2) Circumstances that are publicly known need not be proven. Article 101 paragraph (1) of Law Number 5 of 1986 stipulates that: Letters as evidence consist of three types, namely: a. authentic deeds, namely letters made by or in the presence of an official, public, who according to laws and regulations is authorized to make the letter with the intention to be used as evidence about the events or legal events contained therein; b. deed under hand, which is a letter made and signed by the parties concerned with the intention to be used as evidence about the event or legal event contained therein; other papers that are not deeds.

1. Declaring void the Decree of the Governor of the Special Capital Region of Jakarta Number 1616 of 2019, dated November 19, 2019, concerning the imposition of severe disciplinary punishment in the form of dishonorable dismissal to non-permanent employees on behalf of Susanto NPTT 09.12139 at the Civil Service Police Unit of the Special Capital Region of Jakarta Based on the evidence, the violation of disciplinary punishment by the Plaintiff has been held by the direct supervisor/SKPD/UKPD personnel officer concerned, and based on the results of the examination, on November 19, 2019, the Head of Satpol PP DKI Jakarta submitted a letter requesting temporary release of duty for a number of PTTs suspected of being involved in money laundering and/or Bank DKI break-ins to the Defendant. Furthermore, the Defendant issued a decision on the object of dispute on November 19, 2090 with consideration, among others, that the plaintiff was suspected of committing a criminal act of theft and/or transfer of funds and/or money laundering that occurred in Jakarta using a Bank DKI ATM card through a Shared ATM Machine, but the decision of the object of dispute issued by the Defendant was not determined based on a proposal from the Head of SKPD which had been processed by the BKD and the Control Division BKD staffing as referred to in Article 18 of the Governor's Regulation on PTT;

Based on all the above considerations, the Defendant is proven to have published the object of the dispute not in accordance with the governing legal procedures as outlined above.Based on Article 15 of the DKI Jakarta Governor's Regulation on Non-Permanent Employees, it can be interpreted that basically a PTT is dismissed if he commits a criminal act with the status of a suspect or commits disciplinary actions and performance weaknesses concerned.The imposition of severe disciplinary punishment on the Plaintiff is based on the reasons included in the group of committing criminal acts but until now the Plaintiff is still a witness to the guilt inflicted on him, not yet as a suspect, thus the action of the Defendant to impose punishment on the Plaintiff is still premature and does not reflect the principle of accuracy or legal certainty. Because in accordance with Article 28D paragraph (1) of the 1945 Constitution it is determined as follows: "Everyone has the right to recognition, guarantee, protection, and fair legal certainty and equal treatment

before the law". In line with that, Article 8 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power is determined as follows: "Every person suspected, arrested, detained, prosecuted, or faced before a court must be presumed innocent before a court decision stating his guilt and has obtained permanent legal force". Likewise, Article 105 paragraph (3) letter d of the ASN Law: "Termination of the PPPK employment agreement is carried out not with respect because: sentenced to imprisonment based on a court decision that has permanent legal force for committing a crime that is threatened with imprisonment for a minimum of 2 (two) years or more and the crime is carried out with planning".

The Court is of the opinion that in addition to the Defendant issuing the decision of the object of dispute is not in accordance with the principle of presumption of innocence, the Defendant has also issued a decision on the object of dispute not in accordance with the basic regulations that authorize the Defendant so that in substance the decision of the object of dispute contains juridical reproach;Regarding the ongoing investigation process at the Special Criminal Investigation Directorate of Metro Jaya Regional Police, before there is a court decision that has permanent legal force, the claim for rehabilitation from the Plaintiff is not relevant to consider.Based on all the above considerations, the decision of the object of dispute is contrary to the laws and regulations and general principles of good governance as described above because the object of dispute proved to be juridical in terms of procedure and substance, so that legally the Plaintiff's claim was declared partially granted and rejected for the rest in the subject matter;

1. Requiring the Defendant to revoke the Decree of the Governor of the Special Capital Region of Jakarta Number 1616 of 2019, dated November 19, 2019, concerning the imposition of severe disciplinary punishment in the form of dishonorable dismissal of non-permanent employees on behalf of Susanto NPTT 09.12139 at the Civil Service Police Unit of the Special Capital Region of Jakarta Because it has been proven that the Governor's Decree Number 1616 of 2019 concerning the imposition of severe disciplinary punishment in the form of disrespectful dismissal to non-permanent employees on behalf of Susanto NPTT 09.12139 at the DKI Jakarta Provincial Civil Service Police Unit has contradicted the general principles of good governance, especially the principles of Accuracy, the principle of legal certainty and prudence, it is legally reasonable if the object of the dispute, declared void and obligated the Defendant to revoke it.

However, not all defeated parties were willing to voluntarily carry out the judge's decision. In criminal and civil cases, law enforcement officials who will carry out the execution of the verdict can ask security forces for assistance. It is different from the execution of the decision of the State Administrative Court. Rozali Abdullah, firmly stated that in the execution of the decision of the State Administrative Court there was no possibility of coercive efforts using security forces. Specially, the President as the head of government may intervene in the implementation of the decision of the State Administrative Court. (Rozali Abdullah,2005:98)

The decision of the State Administrative Court that has permanent legal force, in line with Article 97 paragraph (8) and paragraph (9) of the Law on State Administrative Court, can basically be:

1. Void or invalid the State Administrative Decision that causes a dispute and determines the State Administrative Agency/Officer who issued the decision to revoke the said State Administrative Decision.

Paul Effendi Lotulung called it an automatic execution. If the decision of the State Administration is not obeyed, the State Administrative Decision has no legal force anymore, there is no need for other actions or remedies from the court such as a warning letter.(R. Wiyono, 2009: 234)

2. The implementation of the court decision referred to in Article 97 paragraph (9) point b, which requires the State Administration official not only to revoke but also issue a new State Administrative Decree.

3. In addition, there is also a ruling that requires State Administrative officials to issue a State Administrative Decree as referred to Article 3 of the State Administrative Court Law. Article 3 deals with negative fictitious decisions.

The framer of the law expects the State Administrative Agency/Officer to implement the decision voluntarily. However, the successful implementation of the ruling depends heavily on the authority of the court and the legal awareness of officials.[69]If the decision that has the force of law is still not carried out as well, then the State Administrative Court Law provides a mechanism in the form of administrative sanctions

from the superior of the relevant State Administrative Agency/Officer. Through the threat of sanctions, the superior officials who issued the State Administrative Decree are basically making coercive efforts.Other mechanisms referred to in the Law on State Administrative Court are the imposition of forced money and announcements through the mass media. Article 116 paragraph (5) of the Law on the State Administrative Court states that officials who do not implement the Court's decision are announced in the local print mass media by the clerk since the 90-working day deadline is not fulfilled.

IV. CONCLUSION

Based on the description in the previous chapters, the following conclusions are presented which are answers to the problems in this study as follows:

1. Juridical settlement of personnel disputes according to Law Number 5 of 2014 concerning the State Civil Apparatus is resolved through administrative remedies, consisting of administrative objections and appeals. The objection shall be submitted in writing to the superior of the punishing official containing the reasons for the objection, and a copy shall be submitted to the official authorized to collect; while the appeal is submitted to the ASN advisory body. Legal protection of the state civil apparatus according to Law No. 5 of 2014 when compared to Law No. 8 of 1974 jo. Law No. 43 of 1999 is the guarantee of legal aid protection as stipulated in Article 106. Law enforcement carried out by judges in examining and trying case No. 45/G/2020/PTUN-JKT., is in accordance with legal provisions as specified in the PTUN Law.
2. Law enforcement carried out by judges in examining and trying case No. 45/G/2020/PTUN-JKT., is in accordance with legal provisions as specified in the PTUN Law. Based on the examination before the court, it was revealed that the legal facts that the defendant had issued a decree on the object of dispute, namely the Decree of the Governor of DKI Jakarta No. 1616 of 2019 concerning the imposition of severe disciplinary punishment in the form of dishonorable dismissal of non-permanent employees on behalf of Susanto at Satpol. PP. not in accordance with the principle of presumption of innocence, the Defendant has also issued a decision on the object of dispute not in accordance with the basic regulations that authorize the Defendant so that in substance the decision of the object of dispute contains juridical reproach.

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