

Dismissal Of Civil Servants Those Who Commit Office Crimes Based On The Court Ruling Which Has Permanent Legal Force

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Abstract: The existence of differences in interpretation of PTDH legal norms for civil servants who commit office crimes based on court decisions that have permanent legal force causes differences in the application of law enforcement in practice, some are dishonorably dismissed, and some are not dismissed. Civil servants who experience PTDH think that they have been punished for their mistakes, so it would be unfair if they had to be given another sanction in the form of PTDH for the same mistake. Therefore, research was conducted with the aim of finding out the PTDH procedures for civil servants and the legal remedies that can be taken by civil servants who experience PTDH. The research method used in this research is a normative legal research method, using a statutory approach and a conceptual approach, analysis of legal materials is carried out in a qualitative juridical manner. The research results show that, First; The PTDH civil servant procedure begins with a temporary dismissal, then if the investigation is stopped or declared acquittal based on a court decision that has permanent legal force (*inkracht van gewijsde*), then the civil servant concerned is reactivated. However, if the civil servant concerned is sentenced to a criminal sentence based on a court decision that has permanent legal force (*inkracht van gewijsde*), then the PTDH of the civil servant is carried out by the Governor as the Civil Service Development Officer. Second; The legal remedy that can be taken by civil servants who have been sentenced to PTDH is to submit an Administrative Appeal to the State Civil Apparatus Advisory Body (BPASN). In the event that the civil servant concerned is not satisfied with the BPASN decision, the civil servant can submit legal action to the State Administrative High Court (PTTUN). Furthermore, if the civil servant concerned cannot accept the PTTUN decision, then the person concerned can submit a cassation legal action to the Supreme Court.

Keywords: Civil Servants, Dismissal Without Respect, Occupational Crimes.

Abstrak: Adanya perbedaan penafsiran atas norma hukum PTDH PNS yang melakukan kejahatan jabatan berdasarkan putusan pengadilan yang berkekuatan hukum tetap menyebabkan terjadinya perbedaan penerapan penegakan hukum dalam praktik, ada yang diberhentikan tidak dengan hormat, dan ada yang tidak diberhentikan. Bagi PNS yang mengalami PTDH menganggap atas kesalahannya mereka telah dijatuhi hukuman, sehingga tidak adil jika harus diberikan sanksi lagi berupa PTDH atas kesalahan yang sama. Oleh karena itu, dilakukan penelitian dengan tujuan untuk mengetahui prosedur PTDH PNS dan Upaya Hukum yang dapat ditempuh oleh PNS yang mengalami PTDH. Metode penelitian yang digunakan dalam penelitian ini adalah metode penelitian hukum normatif, dengan menggunakan pendekatan perundang-undangan dan pendekatan konseptual, analisis bahan hukum dilakukan secara yuridis kualitatif. Hasil penelitian menunjukkan bahwa, Pertama; prosedur PTDH PNS diawali dengan pemberhentian sementara, yang kemudian jika penyidikan dihentikan atau dinyatakan bebas berdasarkan putusan pengadilan yang telah memperoleh kekuatan hukum tetap (*inkracht van gewijsde*), maka PNS yang bersangkutan diaktifkan kembali. Namun jika PNS yang bersangkutan dijatuhkan pidana berdasarkan putusan pengadilan yang telah memperoleh kekuatan hukum tetap (*inkracht van gewijsde*), maka dilakukan PTDH PNS oleh Gubernur selaku Pejabat Pembina Kepegawaian. Kedua; upaya hukum yang dapat ditempuh oleh PNS yang dijatuhi PTDH adalah mengajukan Banding Administratif kepada Badan Pertimbangan Aparatur Sipil Negara (BPASN). Dalam hal PNS yang bersangkutan tidak puas terhadap keputusan BPASN, PNS tersebut dapat mengajukan upaya hukum kepada Pengadilan Tinggi Tata Usaha Negara (PTTUN). Selanjutnya, apabila PNS yang bersangkutan tidak dapat menerima Putusan PTTUN, maka yang bersangkutan dapat mengajukan upaya hukum kasasi ke Mahkamah Agung.

Kata Kunci: PNS, Pemberhentian Tanpa Hormat, Kejahatan Kerja.

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Introduction

To maintain the professionalism, accountability and integrity of civil servants, the Government has provided clear guidelines in Law Number 5 of 2014 concerning State Civil Apparatus, Government Regulation Number 42 of 2004 concerning the Development of Corps Spirit and the Code of Ethics for Civil Servants as well as Government Regulation Number 94 2021 concerning Civil Servant Discipline.¹ To emphasize enforcement of these personnel regulations, Minister of Home Affairs (Mendagri) Tjahyo Kumolo together with Minister for Administrative Reform and Bureaucratic Reform (MenPANRB) Syafruddin and Head of BKN Bima Haria Wibisana signed Joint Decree Number 182/6597/SJ; Number 15 of 2018; Number 153/KEP/2018 concerning Law Enforcement Against Civil Servants Who Have Been Sentenced Based on Court Decisions That Have Permanent Legal Force for Committing Occupational Crimes or Crimes Related to Their Position.

The Joint Decree (SKB) generally orders the dishonorable dismissal of civil servants involved in corruption cases no later than December 2018. The dismissal of ASN through the SKB has a good aim, namely that the Government wants to create a clean and dignified government as a manifestation of the spirit of the Law. -Law Number 28 of 1999 concerning the Administration of a State that is Clean and Free from Corruption, Collusion and Nepotism and to carry out the mandate of the ASN Law, especially Article 87.²

At the level of implementation within the Regional Government of Bengkulu Province, this provision has caused polemics,³ especially towards convicts or former convicts who were convicted for criminal acts of corruption committed before the enactment of Law Number 5 of 2014 concerning State Civil Apparatus. This is because if the dismissal of civil servants is carried out on convicts or former convicts who were sentenced before the enactment of the ASN Law and the SKB, it will violate the principle of legality because it applies retroactively.

Apart from that, if it is related to office crimes then in fact in the decision of a criminal case, apart from the judge being able to impose the main punishment in the form of imprisonment, imprisonment or a fine, the judge can also impose additional punishment in the form of deprivation of certain rights, which in this case is dismissal without respect for civil servant status as regulated in the provisions of Article 87 paragraph (4) letter b of the ASN Law. In other words, the imposition of sanctions in the form of dishonorable dismissal is a form of additional crime in the form of deprivation of certain rights.

So far, in court decisions regarding civil servants who have committed criminal acts of office crimes within the Bengkulu Provincial Government, there has been absolutely no statement regarding the revocation of their rights as civil servants through dishonorable dismissal. Thus, it is difficult to understand that the imposition of sanctions is carried out repeatedly for the same unlawful act, that is, after being given a criminal sanction in the form of imprisonment or imprisonment or a cumulative fine, another sanction is imposed again in the form of dishonorable discharge. This then becomes a dilemma for the Civil Service Development Officer (PPK), namely

¹ Kosasih, Ade. "Penyelesaian Sengketa Kepegawaian Akibat Penjatuhan Hukuman Disiplin." *Jurnal Mizani: Wacana Hukum, Ekonomi, dan Keagamaan* 4, No. 2 (2018): 111-124. <http://dx.doi.org/10.29300/mzn.v4i2.1015>

² Muvariz, Fitri Ramadhani. "Analisis Aspek Keadilan Dari Pemberhentian Tidak Dengan Hormat Sebagai Pegawai Negeri Sipil di Indonesia." *Jurnal Legislasi Indonesia* 16, No. 2 (2019): 192. <https://doi.org/10.54629/jli.v16i2.446>

³ Kosasih, Ade. "Menakar Pemilihan Umum Kepala Daerah Secara Demokratis." *Al Imarah: Jurnal Pemerintahan Dan Politik Islam* 2. No.1 (2018): 37-46. <http://dx.doi.org/10.29300/imr.v2i1.1028>

the Governor, to impose a sanction of dishonorable dismissal, because apart from the absence of a court decision order,⁴ it is also felt to be contrary to the principle of *ne bis in idem*.

Theoretically, the purpose of punishment itself according to retributive theory is an absolute consequence that must exist as retribution to the perpetrator of a criminal act for the actions he has committed,⁵ and according to the integrative theory, punishment is directed towards guidance as a general form of community protection.⁶ Thus, the punishment of someone who has committed a criminal act that has been committed is not only retaliatory in nature to erase the perpetrator's mistakes but also to improve the behavior of the perpetrator of the criminal act so that he becomes a better person.⁷ So the relevance of imposing additional sanctions in the form of dishonorable dismissal of civil servants who commit official crimes without going through a court decision, even though they have previously been sentenced to a crime, needs to be reviewed, both from the aspect of legal justice and legal certainty.

Method

This research uses the Normative-Empirical Legal Research method which is exploratory and descriptive. Primary data was obtained from interviews with several predetermined informants, while secondary data was sourced from primary legal materials, namely statutory regulations and secondary legal materials sourced from books, journals, scientific articles and others obtained through literature studies. These data were then processed and analyzed using qualitative juridical analysis methods.

Results and Discussion

Dismissal of civil servants can be classified into three forms of dismissal, namely honorable dismissal, dishonorable dismissal and temporary dismissal. Respectful dismissal due to death, at one's own request, reaching the retirement age limit, organizational downsizing or government policy which results in early retirement or physical and/or spiritual incompetence so that one cannot carry out one's duties and obligations.⁸

One of the reasons for dishonorably dismissing civil servants is according to the provisions in Article 87 paragraph (4) letter b of Law no. 5 of 2014, namely being sentenced to prison or confinement based on a court decision that has permanent legal force for committing a crime of office or a crime related to office and/or a general crime.⁹

Before a dishonorable dismissal is carried out, a civil servant who is being "detained" in a case alleged to be a criminal act of office crime, receives the consequences of temporary dismissal.¹⁰ If the investigation by the authorities has been completed or there has been a court decision which has permanent legal force and it turns out that the civil servant concerned is innocent, then the civil servant is rehabilitated starting from the time he or she

⁴ Mahdi, Imam, Ade Kosasih, and Aneka Rahma. "Analysis of Fiqh Siyash on a Local Government's Policy About the Making of a Religious and Happy Society in Bengkulu." *1st Raden Intan International Conference on Muslim Societies and Social Sciences (RIICMuSSS 2019)*. Atlantis Press, (2020): 249-252. [10.2991/assehr.k.201113.047](https://doi.org/10.2991/assehr.k.201113.047)

⁵ Sudira, I Ketut. "Mediasi Penal." Yogyakarta: UII Press, 2016, P. 29.

⁶ Sudira, I Ketut. "Mediasi Penal." P. 34.

⁷ Masril, Masril, and Ade Kosasih. "Keberlakuan Asas Ne Bis In Idem Terhadap Putusan Pengadilan Adat Dalam Tata Hukum Indonesia." *Al Imarah: Jurnal Pemerintahan dan Politik Islam* 4. No. 1 (2019): 49-56. <https://dx.doi.org/10.29300/imr.v4i1.2167>

⁸ Mardan, Nur Tanachi, Jemmi Jefry Pieterz, and Yohanes Pattinasarany, "Keabsahan Pemberhentian Tidak Dengan Hormat Bagi PNS yang Melakukan Tindak Pidana Korupsi." *Jurnal Tatohi* 1, No. 2 (2021): 146. <https://doi.org/10.47268/tatohi.v1i2>

⁹ Harahap, Nurmalita Ayuningtyas. 2018. "Revitalisasi Manajemen Aparatur Sipil Negara Melalui Pemberhentian Tidak Dengan Hormat Bagi Pegawai Negeri Sipil Yang Terlibat Tindak Pidana Korupsi." *Jurnal Panorama Hukum* 3 (2):155-70. <https://doi.org/10.21067/jph.v3i2.2737>.

¹⁰ Nikmat, Mezi, Ade Kosasih, and Masril Masril. "Analisis Yuridis Pengangkatan dan Pemberhentian Kepala Polisi Republik Indonesia Menurut Undang-Undang Nomor 2 Tahun 2002 tentang Kepolisian Republik Indonesia dan Siyash Dusturiyah." *Al Imarah: Jurnal Pemerintahan dan Politik Islam* 6. No. 2 (2021): 218-236. <https://dx.doi.org/10.29300/imr.v6i2.4937>

is subject to temporary dismissal. However, if the civil servant concerned is proven to have committed an official crime, he or she will receive criminal legal consequences in the form of imprisonment or imprisonment or administrative sanctions in the form of dishonorable dismissal.¹¹

Dishonorable dismissal of civil servants is not seen based on the length of prison or imprisonment, as long as the crime committed is an official crime. The office crime referred to is a criminal act of corruption that is detrimental to state finances and/or the state economy. Meanwhile, criminal acts that are related to position are criminal acts committed by civil servants not in their ASN position but because they carry out additional duties or tasks in another position given by authorized officials. Based on this arrangement, dishonorable dismissal of civil servants who commit crimes against their position or crimes related to their position is a form of clear legal consequence.¹² Further consequences of dishonorable dismissal for civil servants who commit crimes against their position or crimes related to their position are not only termination of their employment relationship, but the civil servant concerned will lose their pension rights. This is because dishonorable dismissal is a form of serious administrative sanction. The polemic regarding the dishonorable dismissal of civil servants who commit criminal acts of office crimes arises from the perspective of civil servants who have undergone punishment, because the punishment they have served does not erase mistakes from the administrative side so that sanctions in the form of dishonorable dismissal are still imposed. According to W. Riawan Tjandra, the accumulation of external sanctions can be justified and does not violate the principle of *ne bis in idem* because the nature and purpose of administrative sanctions are different from criminal sanctions.¹³

The difference between administrative sanctions and criminal sanctions can be seen from the purpose of imposing the sanctions themselves.¹⁴ Administrative sanctions are aimed at the violation so that it does not have a bad impact or reoccur, while criminal sanctions are aimed at the offender by giving a punishment of suffering.¹⁵ Administrative sanctions are intended to stop the violation. Administrative law enforcement is different from criminal law enforcement. The imposition of administrative sanctions is carried out directly by government agencies/officials without having to go through a court process, while the enforcement of criminal sanctions is carried out by the courts.¹⁶

On the other hand, dishonorable dismissal does not conflict with the aspects of legal expediency (*doelmatigheid*) and legal certainty (*rechtmatigheids*).¹⁷ The imposition of administrative sanctions in the form of dishonorable dismissal aims to provide legal benefits (*doelmatigheid*) in the form of legal education in order to create a state civil apparatus that has integrity,¹⁸ morals, cleanness and professionalism. Apart from that, if viewed from the aspect of legal certainty (*rechtmatigheids*), the imposition of administrative sanctions in the form of

¹¹ Kosasih, Ade. "Studi Komparasi Pengembalian Aset Negara Hasil Korupsi Menurut Konvensi Anti Korupsi 2003 dan Undang-Undang Tipikor." *Jurnal Surya Keadilan: Jurnal Ilmiah Nasional Terbitan Berkala Fakultas Hukum Universitas Muhammadiyah Bengkulu* 2. No.2 (2018): 393-408.

¹² Kosasih, Ade. "Studi Komparasi Pengembalian Aset Negara Hasil Korupsi Menurut Konvensi Anti Korupsi 2003 dan Undang-Undang Tipikor."

¹³ Tjandra, W. Riawan. "*Hukum Administrasi Negara*." Jakarta: Sinar Grafika, 2018, P. 225.

¹⁴ Himayasari, Neng Dewi, Arif Rijal Anshori, and Ira Siti Rohmah Maulida. "Legal Effectiveness of The Supreme Court Regulation on Sharia Economic Dispute Settlement in West Java Religious Court." *Mizan: Journal of Islamic Law* 6.1 (2022): 77-88. <https://doi.org/10.32507/mizan.v5i3.1072>

¹⁵ Tjandra, W. Riawan. "*Hukum Administrasi Negara*." P. 225-226.

¹⁶ Hadjon, Philipus M. et.al. "*Hukum Administrasi dan Tindak Pidana Korupsi*." Yogyakarta: Gadjah Mada University Press, 2012, P. 8.

¹⁷ Kosasih, Ade. "Analisa Kritis Gugatan Voluntair Terhadap Praktik Maladministrasi Di Bidang Pelayanan Publik." *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi, dan Keagamaan* 3. No. 1 (2018): 111-120. <http://dx.doi.org/10.29300/mzn.v3i1.1022>

¹⁸ Kosasih, Ade. "Challenges and Prospects on Higher Legal Education In Creating Professional and Integrity Law Enforcement." *Proceeding Book of the Internasional Conference*. 2023. P. 6-20.

dishonorable dismissal is a form of administrative law enforcement and is in line with the principle of the rule of law, namely the administration of government based on law (*rechtmatigheids van bestuur*).

Based on Law Number 5 of 2014 concerning State Civil Apparatus and Government Regulation Number 32 of 1979 concerning Dismissal of Civil Servants and is linked to the existence of a Joint Decree (SKB) of the Minister of Home Affairs, the Minister of State Apparatus Empowerment and Bureaucratic Reform, and the Head of BKN Number 182/6597/SJ; Number 15 of 2018; Number 153/KEP/2018 concerning Law Enforcement Against Civil Servants Who Have Been Sentenced Based on Court Decisions That Have Permanent Legal Force for Committing Occupational Crimes or Crimes Related to Their Position, has synchronization and harmony with Law Number 5 of 2014 concerning State Civil Servants and Government Regulation Number 32 of 1979 concerning Dismissal of Civil Servants.

If you look closely at the intent and purpose of the issuance of SKB 3 (three) Ministers mentioned above, it is to provide legal certainty through the enforcement of applicable laws and regulations (in this case Law Number 5 of 2014 concerning State Civil Apparatus and Government Regulation Number 32 of 2014). 1979 concerning Dismissal of Civil Servants) which so far has not gone well, because many civil servants have been found to have committed criminal acts of office crimes or crimes related to their position but have not been dishonorably dismissed as civil servants by the Civil Service Supervisory Officer.

This means that the SKB 3 (three) ministers does not give birth to new legal norms, but only emphasizes the obligations of Personnel Development Officers and Authorized Officials to optimize supervision and increase the role of Government Internal Supervisory Apparatus (APIP), and impose sanctions on civil servants who commit criminal acts. office crimes or crimes related to office. Personnel Management Officers and Authorized Officials who do not carry out their obligations will be subject to sanctions.

Viewed from the aspect of legal benefit, if the SKB 3 (three) ministers are implemented consistently, it will be able to cleanse the government bureaucratic environment of civil servants who have a corrupt mentality in accordance with the objectives of Law Number 5 of 2014 concerning State Civil Apparatus which requires the realization of civil servants. a country that has integrity, professionalism, neutrality and is free from political interference and free from practices of corruption, collusion and nepotism.

Against dishonorable dismissal, the civil servant concerned can defend himself, because basically the right to defend legal interests is a form of human right that every person/group of people has,¹⁹ in this case the right of civil servants who are dishonorably dismissed as civil servants to file legal action. This is in line with the concept of a rule of law (*rechtstaat*) where the state determines how human rights are protected.²⁰ Therefore, the state must provide a legal dispute resolution channel, namely through the Administrative Court. So in the concept of *rechtstaat* legal state as proposed by F.J. Stahl, the existence of Administrative Justice is an element of the rule of law that cannot be eliminated.²¹

In resolving disputes in the field of personnel which are included in state administrative disputes, administrative efforts are known. In the context of resolving State Administrative (TUN) disputes through administrative means, State Administrative Bodies or Officials have the authority, apart from canceling the decision that caused the dispute, they can also revoke and simultaneously issue a new decision.²²

¹⁹ Hartini, Sri, and Tedi Sudrajat. "*Hukum Kepegawaian di Indonesia*", Jakarta: Sinar Grafika, 2017. P. 195.

²⁰ Mashudi. "Negara Kesejahteraan dan Hukum Administrasi Negara." in the SF. Marbun et.al, Ed., "*Dimensi-Dimensi Hukum Administrasi Negara*." Yogyakarta: UII Press, 2004, P. 64.

²¹ Syaifuddin, Syaifuddin, and Ade Kosasih. "Reorientasi Arah Kebijakan Pendidikan Tinggi Hukum Dalam Upaya Membentuk Penegak Hukum Profesional." *Al Imarah: Jurnal Pemerintahan dan Politik Islam* 3.2 (2018): 155-166. <http://dx.doi.org/10.29300/imr.v3i2.2149>

²² Ridwan dan Nuralita Ayuningsih Harahap. "*Hukum Pegawaian*." Yogyakarta: UII Press, 2018, P. 110.

Civil servants who are dishonorably dismissed and cannot accept the dismissal decision can take legal action in accordance with the provisions of the applicable laws and regulations. The legal measures that must be taken before filing a lawsuit with the State Administrative Court (PTUN), namely Administrative Efforts (Administratief Beroef). Administrative efforts are procedures specified in a statutory regulation to resolve TUN disputes carried out within the government itself (not by an independent judiciary) consisting of Objection procedures and Administrative Appeal procedures.²³

The existence of this Administrative Effort is intended to enable direct communication between people who feel their interests have been harmed and the State Administrative Official who issued the decision. In this communication, the official who issued the decision can explain the purpose/purpose of issuing the decision. Likewise, if it is an Administrative Appeal, the State Administrative Official who adjudicates the Administrative Appeal is expected to be able to assess whether the State Administrative Official's decision is wise or not in order to protect the rights of the community.²⁴

In today's modern law enforcement, resolving legal issues through the courts is always sought as a last resort. Modern society tries to avoid dispute resolution patterns through litigation.²⁵ When conflicts and disputes occur, what is put forward are persuasive efforts in the form of mediation, dialogue and negotiation.²⁶ Even in the current judicial system, especially civil and religious cases, mediation efforts are always emphasized first. Settlement of disputes or conflicts using non-litigation mechanisms has actually become a trend and tendency recently.²⁷

In the context of administrative law disputes, administrative law is also placed as the last resort in resolving disputes. Even though in the State Administrative Court Procedure Law the term mediation or peace is not known as a non-litigation effort, efforts to resolve disputes outside of court are based on internal government organs themselves.²⁸

One of the keys to resolving administrative disputes outside of court is the availability of an administrative dispute resolution system in every government institution. State Administrative Officials as instruments of government must have a pattern of administrative resolution, both in the form of objections and administrative appeals when citizens feel disadvantaged by a government decision. This administrative effort will encourage a settlement first before entering the realm of litigation, namely court (*ultimum remedium*).²⁹

The administrative measures regulated/available in the Law on State Administrative Courts, the State Civil Apparatus Law and the Government Administration Law are in principle the same, namely Administrative Objections and Appeals.³⁰ Apart from that, the administrative measures available must absolutely be taken first before filing a lawsuit with the PTUN. The purpose of the available administrative measures is that if a dispute resolution requires an Administrative Objection and/or Appeal (Objections only, Appeals only, or Administrative Objection and Appeals) then these efforts must be taken first, this is as regulated in the provisions of Article 48

²³ Indroharto. *"Usaba Memahami Undang-Undang tentang Peradilan Tata Usaba Negara."* Jakarta: Sinar Harapan, 2003, P. 51.

²⁴ Tjandra, W. Riawan. *"Teori dan Praktik Peradilan Tata Usaba Negara."* Yogyakarta: Universitas Atma Jaya, 2010, P. 39-40.

²⁵ Mahdi, Imam, Ade Kosasih, and Etry Mike. "Model Resolusi Konflik Hak Ulayat dalam Pendekatan Restorative Justice (Studi Kasus Konflik Tanah Ulayat Suku Semende Di Taman Nasional Bukit Barisan Selatan Kabupaten Kaur)." Bengkulu: Zara Abadi, 2022, P. 46.

²⁶ Kosasih, Ade, and A. Majid Ali. "Analisis Kritis Kewenangan Kementerian Hukum dan Hak Asasi Manusia dalam Penyelesaian Sengketa Perundang-Undangan Melalui Mediasi." *Al Imarah: Jurnal Pemerintahan dan Politik Islam* 6. No. 1 (2021): 104-121. <http://dx.doi.org/10.29300/imr.v6i1.4160>

²⁷ Mawardi, Irvan. *"Paradigma Baru PTUN: Respon Peradilan Administrasi Terhadap Demokrasi."* Yogyakarta: Thafa Media, 2016, P. 174.

²⁸ Mawardi, Irvan. *"Paradigma Baru PTUN: Respon Peradilan Administrasi Terhadap Demokrasi."* P. 175.

²⁹ Mawardi, Irvan. *"Paradigma Baru PTUN: Respon Peradilan Administrasi Terhadap Demokrasi."* P. 175-176.

³⁰ Permana, Tri Cahya Indra. *"Catatan Kritis Terhadap Perluasan Kewenangan Mengadili Peradilan Tata Usaba Negara"*, Yogyakarta: Genta Press, 2016, P. 5.

paragraph (2) Law Number 5 of 1986 concerning State Administrative Courts which states: "The new court has the authority to examine, decide and resolve State Administrative disputes as intended in paragraph (1) if all relevant administrative efforts have been used."³¹

The administrative measures available in resolving employment disputes regarding dishonorable dismissal are as regulated in the provisions of Article 3 of Government Regulation Number 79 of 2021 concerning Administrative Efforts and the State Civil Apparatus Advisory Board which reads:

(1) ASN employees may submit objections to:

- a. PPK decisions other than dismissal as civil servants or other than termination of employment agreement as PPPK; And
- b. Official Decision.

(2) Objections as intended in paragraph (1) letter a are submitted to the PPK.

(3) Objections as intended in paragraph (1) letter b are submitted to the Official's superior.

The provisions of Article 3 are then reaffirmed in Article 10 which reads: "ASN employees can file an Administrative Appeal against PPK Decisions in the form of: a. dismissal as civil servant; and b. termination of employment agreement as PPPK". Based on the provisions above, it is clear that the administrative remedy available in resolving employment disputes regarding dishonorable dismissal as a civil servant is only an Administrative Appeal. It seems that the Administrative Appeals institution in this government regulation is very selective, because not every employee who is affected by a punishment can file an Administrative Appeal, because it all depends entirely on the type of punishment.³²

Administrative appeals in employment disputes are submitted to the State Civil Apparatus Advisory Body (BPASN).³³ This is as regulated in the provisions of Article 1 point 7 of Government Regulation Number 79 of 2021 concerning Administrative Efforts and the State Civil Apparatus Advisory Body which reads: "The State Civil Apparatus Advisory Body, hereinafter abbreviated to BPASN, is the body that has the authority to receive, examine and make decisions regarding Administrative Appeal." Thus, before filing a lawsuit with the PTUN, civil servants who feel aggrieved due to dishonorable dismissal as civil servants must first submit an Administrative Appeal to the State Civil Apparatus Advisory Body (BPASN).³⁴

BPASN decisions can strengthen, lighten, aggravate, change or cancel PPK decisions.³⁵ This is different from the State Administrative Court Decision, because the examination carried out by BPASN is comprehensive in nature both from a legal perspective (*rechtmatigheids*) and from a policy perspective (*doelmatigheids*) in which the decision is issued.³⁶ Meanwhile, examinations carried out by courts within the State Administrative Court regarding state administration disputes are not comprehensive in nature, but are limited only from a legal perspective

³¹ Kosasih, Ade, John Kenedi, and Imam Mahdi. *"Dinamika Hukum Administrasi Indonesia (Mengetahui Konstruksi Baru Hukum Administrasi Pasca Terbitnya Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan)." Bengkulu: Vanda, 2017, P. 137.*

³² Triatmodjo, Sudibyo. *"Hukum Kepegawaian Mengenai Kedudukan Hak dan Kewajiban Pegawai Negeri Sipil."* Jakarta: Ghalia Indonesia, 1983, P. 168.

³³ Inayah, Hidayah Rohmah. *Implementasi Peraturan Badan Kepegawaian Negara (BKN) Nomor 03 Tahun 2020 tentang Petunjuk Teknis Pemberhentian Pegawai Negeri Sipil Pada Dinas Kelautan dan Perikanan Provinsi Kalimantan Selatan.* Diss. Universitas Islam Kalimantan MAB, 2021. <http://eprints.uniska-bjm.ac.id/id/eprint/8195>

³⁴ Sudrajat, Tedi. "Menelaah Persoalan Penyalahgunaan Wewenang Dalam Pemberhentian Pegawai Negeri Sipil." *Civil Service Journal* 11. No. 2 (2017): 10.

³⁵ Triatmodjo, Sudibyo. *"Hukum Kepegawaian Mengenai Kedudukan Hak dan Kewajiban Pegawai Negeri Sipil."*

³⁶ R. Wiyono. *"Hukum Acara Peradilan Tata Usaha Negara."* Jakarta: Sinar Grafika, 2007, P. 98.

(*rechtmatigheids*) to the issuance of State Administrative Decisions which give rise to state administration disputes only.³⁷

In accordance with the provisions of Supreme Court Regulation Number 6 of 2018 concerning Guidelines for Resolving Government Administrative Disputes After Taking Administrative Efforts, the State Administrative Court is a continuation of the process of legal disputes that have previously been examined in the internal government environment through Administrative Efforts which consist of Objection and Appeal procedures. and Administrative.³⁸

The court within the State Administrative Court which has the authority to adjudicate state administration disputes in the field of personnel is the State Administrative High Court (PTTUN) as regulated in the provisions of Article 18 of Government Regulation Number 79 of 2021 concerning Administrative Efforts and Advisory Bodies for State Civil Apparatus. which reads: "In the event that an ASN employee is dissatisfied with the BPASN decision, the ASN employee can submit legal action to the State Administrative High Court."³⁹

Regarding the follow-up to the Administrative Appeal which cannot be accepted by the Petitioner, it has been regulated in the Supreme Court Circular Letter Number 2 of 1991 concerning Instructions for Several Provisions in Law Number 5 of 1986 concerning State Administrative Courts, namely:

- a. If in the statutory regulations that are the basis for the issuance of a state administrative decision which results in a state administration dispute, the available administrative remedy is an objection, then the next solution is to file a lawsuit with the State Administrative Court.
- b. If in the legislation that is the basis for the issuance of a state administration decision which results in a state administration dispute, the available administrative remedy is an Administrative Appeal, then the next solution is to file a lawsuit at the High State Administrative Court.

Thus, based on the provisions above, the first level court within the State Administrative Court which has the authority to adjudicate state administration disputes in the field of personnel is the High State Administrative Court (PTTUN), not the State Administrative Court (PTUN).⁴⁰ The PTTUN in question is the Jakarta PTTUN, not the PTTUN whose jurisdiction covers the place where the Defendant is located.

One loophole that can be used for civil servants who are dishonorably dismissed is the possibility that the Governor's Decree is contrary to the general principles of proper governance. Therefore, the procedure for dismissing civil servants must be carried out carefully, especially in providing technical considerations to the Governor and in the process of issuing the Governor's Decree regarding Dismissal of Civil Servants Disrespectfully.⁴¹

According to W. Riawan Tjandra, the general principles of proper government are unwritten legal norms but must still be obeyed by the government.⁴² In line with this opinion, Jazim Hamidi, as quoted by A. Muin Fahmal, stated that the general principles of proper government are ethical values that live and develop within the State Administrative Law environment. The general principles of proper government serve as guidelines for state

³⁷ R. Wiyono. "*Hukum Acara Peradilan Tata Usaba Negara.*"

³⁸ Simanjuntak, Enrico. "*Hukum Acara Peradilan Tata Usaba Negara.*" Jakarta: Sinar Grafika, 2018, P. 203.

³⁹ Arbina, Maria. "Dualisme Pengaturan Mengenai Pemberhentian Pegawai Negeri Sipil." *De Legalata: Jurnal Ilmu Hukum* 4.1 (2019): 54-62. <https://doi.org/10.30596/dll.v4i1.3165>

⁴⁰ Permadi, Iwan. "Aspek Hukum Pemberhentian Pegawai Negeri Sipil Berdasarkan Peraturan Pemerintah Nomor 30 Tahun 2019 Tentang Penilaian Kinerja Pegawai Negeri Sipil." *Yurisprudensi: Jurnal Fakultas Hukum Universitas Islam Malang* 4. No. 1 (2021): 44-57. <https://doi.org/10.33474/yur.v4i1.6893>

⁴¹ Simanjuntak, Enrico. "*Hukum Acara Peradilan Tata Usaba Negara.*"

⁴² Tjandra, W. Riawan, "*Hukum Administrasi Negara.*" Jakarta: Sinar Grafika, 2018, P. 177.

administration officials in carrying out their functions, are a testing tool for Administrative Judges in assessing state administration actions and as a basis for filing lawsuits for plaintiffs.⁴³

Conclusion

The procedure for dishonorably dismissing a civil servant begins with a temporary dismissal, then if the investigator issues an Order to Stop the Investigation (SP3) or is declared free based on a court decision that has obtained permanent legal force (*inkracht van gewijsde*), then the civil servant concerned must be reactivated. However, if the civil servant concerned is sentenced to a crime based on a court decision that has permanent legal force (*inkracht van gewijsde*), then the civil servant is dishonorably dismissed by the Governor as the Civil Service Management Officer. The legal remedy that can be taken by civil servants who are sentenced to dishonorable dismissal is to submit an Administrative Appeal request to the State Civil Apparatus Advisory Body (BPASN). In the event that the civil servant concerned is not satisfied with the BPASN decision, the civil servant can submit legal action to the State Administrative High Court (PTTUN). Furthermore, if the civil servant involved cannot accept the PTTUN decision, then the person concerned can submit a cassation legal action to the Supreme Court.

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Conflict of Interest

This article has no conflict of interest with anyone. This article is solely the result of the author's work experience.

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