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Principles and Norms of State Administrative Law Based on the Creation of Government Instruments

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ABSTRACT

When we talk about Indonesia as a state of law, we also consider the duties of the government and constitution in terms of the rule of law formed or collected in the Basic Law. But, therefore, the constitution was not implemented effectively enough to address technical issues. Because the state is an organization of power, (HAN) is needed as a tool to supervise the use of state power. The study addresses two issues: the critical limitations of law and regulation. Policies and decisions are based on the principles and standards of HAN and HAN in making laws and regulations, policy rules and decisions. This study is carried out together using a normative legal approach or study. Law Library. According to the results of this study, regulations are essentially abstract or general normative laws that are binding in general (generally applicable) whose task is to regulate things that are essentially general. For the time being, political regulations only function to regulate state affairs and laws and regulations cannot be changed or withdrawn. Finally, Guarantees (Veiligheidsclausule) can shake the basis of legal certainty, so that it can be concluded that it is useless and does not overlap. Such formulations violate the principle of legal certainty on the one hand and the principle of valid presumption on the other.

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INTRODUCTION

The idea of the rule of law was first discovered by Plato while writing his third novel, Nomoi, which he wrote in old age. The concept of the rule of law did not appear in the first two works of Politeia and Politicos. Plato argued in Nomoi good government rests on good precautions. Plato's idea of the rule of law became more concrete when his student Aristotle held the view that a good state is a state governed by a constitution and has the rule of law. The idea of the rule of law remained vague and obscure for a very long time and was revived more clearly in the 19th century. Immanuel Kant Stahl's view, the elements of the rule of law are the protection of human rights, separation or division of authority in order to secure rights, governance based on law and rules, and administrative definitions in times of conflict. (Pureklolon, 2020) (Namang, 2020) (Astomo, 2014)

The concept of the legal state by A.V. in the Anglo-Saxon world. Dicey has the following elements: the rule of law. Lack of arbitrary power (absence of law). Equality under the law. These demands are active for both ordinary people and public officials, and human rights are guaranteed by law or court decisions. After that, in its expansion, the concept of the rule of law was refined, and the concept can be broadly seen in the elements, namely. A system of state government is based on the sovereignty of the people. The government

must rely on any laws or regulations in fulfilling its duties and obligations. There is a guarantee of human rights (citizens). There is a classification of authority in this country. There is an examination by a judicial power (rechterlijke controle) that is completely impartial and free and independent in the sense that it is not under the administrative influence. Members of the public and citizens have a real role in the policies implemented by the government and oversee their implementation. The existence of an economic system is able to distribute fairly the resources that are run for the prosperity of the people.

Based on Article 1 (3) of the Constitution of the Republic of Indonesia Year 1945 states that the State of Indonesia is the State of law that pays attention to decentralization along with the administration of government, as stipulated in Article 18 Paragraph 1 of the Constitution of the Republic of Indonesia Year 1945. local government governed together with law". As a rule of law, all performance of official duties must be regulated by active law. As a nation that runs decentralization, government affairs consist of central affairs as well as regional affairs. This means that there are central government agencies as well as local government agencies that are given autonomy. In 1945, some argued that Indonesia adhered to the concept of the welfare state, mentioning references to national goals in the 4th paragraph of the Special Constitution, especially in the heading "Encouragement of Common Vessels". By Azhari and Hamid S. Atamimi. The view of Hamid S. Atamimi, since the beginning the Indonesian state was established as a state of law. In fact, Lexstat Indonesia introduced lectures to promote the general welfare, educate people about life, and achieve social equality for all Indonesian citizens. According to Phillips M. Hazon, the Rekstadt accident tended towards legal positivism, therefore laws had to be drafted deliberately by lawmakers. As a state of law, the law is positioned as the rule of the game for the administration of the state, government, and society, while the purpose of law itself includes "opgelegd om de samenleving vreedzaam, srechtvaardig, en doelmatig te ordered". (Founded to build a just, meaningful and peaceful society.) (Juliani, 2019)

The fulfillment of state duties and statehood is carried out with the state of law through the provisions of constitutional law or state constitutional provisions. However, due to technical implementation issues, this Constitution has not been implemented effectively and completely. In other words, the Constitution requires other laws of a technical nature. The related law is the State Administration Code (HAN). Luring the state is an organization of authority, then constitutional law will eventually prove to be a tool for scrutiny of the use of state power. Thus, the state of HAN arises due to the administration of the state and state power in the state of law which requires and must carry out state, state, and community duties based on law. thus. Philipus M. Hadjon, The rule of law as a measure or indication is a function of administrative law. Otherwise, if administrative law doesn't work, the state is not really a state of law.

RESEARCH METHOD

This approach is carried out together to examine all relevant laws and regulations along with the problems (legal issues) faced. The normative legal approach is an approach carried out on the basis of important legal data by examining theories, concepts, legal principles, and laws related to this study.

RESULTS AND DISCUSSION

Policy, Laws and Regulations, and Decisions Based on State Administration Law

Regulation is an abstract law or general norm that is binding (generally applicable) in general and whose purpose is to group things that are general. As explained in Article 1(2) of the Law, the provisions of the Law on the State Administrative Court of May 5, 1986 are generally binding regulations, enacted by the people's assembly together with the central and local governments, and are generally binding. The formulation of the meaning of such laws includes both substantive and formal meanings. Based on the explanation in Law Number 5 Paragraph 1 Paragraph 2 of 1986, it can be summarized, namely the decision of the state administrative agency or official is a general agreement (Marbun, 2006) (Candra, 2016)(decision of general application), belonging to the legal creed (generally applicable rules).

According to German scholar Paul Laband, the law can be interpreted both formally and substantively (wet in formele zin and wetted in materialele zin). The common law of formal understanding (wet in formele zin) is all the rules made by the government that relate together to how it came into existence or came into existence. While the official understanding of law in Indonesia is a legal product made by the joint President (DPR). On the contrary, together with a substantive meaning, a law is a fixed establishment of law, so that the law is binding. According to Paul Laband, the binding force of the rule of law requires two elements: a firm decision (an order) and the rule or substance of the law itself (the rule of law). Buys argued with his book De Grond Wet, Toelichting en Kritiek (1883) that the common law has a substantive meaning meaning that all government decisions (overhead) whose contents are directly binding on the entire population.

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About legislation, A. Hamid S. Attamimi wrote: "The term legislation (wettelijkeregels) as literally able to be interpreted as a rule related to the law and includes both the regulation in the form of the law itself and the sub-rules that belong to or mandate the law. Laws are classified into decrees, presidential decrees include regulations, decrees include regulations, decrees such as decrees, as well as laws based on them. Chieftains other than the president - legal regulations Government agencies, including laws and regulations, including Regional Rules Level 1, Level 1 Regional Regulations, Regional Regulations Level 2, and Vice Ministerial Regulations in the form of Regional Governor Regulations, including implementing regulations for Districts/Mayors Level II Regulations implementing regional regulations include. (Einstein, 2020)

Laws and regulations have the following characteristics: It is general and inclusive, that is, the opposite of special and exclusive characteristics. Universal. It was created to face future events whose concrete form has not yet been revealed. Therefore, it cannot be said to deal only with specific events. You have the power to improve and improve yourself. Regulations generally contain clauses that allow for judicial review. Based on Article 1bis of the Law and Article 10 of the 2004 Law, the rules of law are generally binding on recorded rules issued by government agencies or authorized officials. In general, binding law (algemeen binding voorschrift) is also called wet in material zin (law in the substantive sense). Based on the grouping of legal norms mentioned above, legal rules are general and abstract. General abstract concepts are characterized by the following elements: 1) Time (normal currency, not open moment). 2) Plate (the rule does not apply to open plates); location (not just a specific location). 3) People (rules do not apply to the same person) People (not limited to specific people). 4) Legality (the rule does not apply to one legality, but legality applies: (Effendy, 2013)i.e. pretending to be able to do so every time).

Legal facts (not only for related laws but for various legal facts to be repeatable, i.e. repeated actions). Discretion in German Frei means free, independent, not restrained. The word free means free person and the word discretion means to consider, judge, guess, judge, consider or decide. In English, it is called "discretion" which means wisdom, wisdom, prudence, or "diskretionnaire" (adjective), meaning to succumb to wisdom and have the freedom to decide or determine. Stanley De Smith and Rodney Brazier define wisdom/freebie as "... the right to choose between alternative measures..." H.W.R. Wade further refers to the core principle of discretionary discretion. On the other hand, Amrah Muslimin defines Fries' discretionary power as "... The field moves with wisdom or freedom of wisdom...". (Utama, 2014)

Variously with Hans J. Wolf and his book Administrative Law I quoted by Marcus Luqman, he said freedom of discretion should not be overstated. .or subjective considerations - personal. It is fair to say that in Hans J. Wolf's view, they acted on expertise. Hermessen's freedom, seen within the framework of the German administrative system, was a means of allowing space for the national executive to perform actions that were not at all restricted by law. Meanwhile, A.V. Dicey, as quoted by Bagir Manan, "... discretion includes the freedom of the Crown or officials to make regulations or the approval of Parliament. Therefore, discretion comes from privilege, not law..." Syakhrab Basah provides a discretionary understanding of freedom as freedom of strategy-making through the attitude of state burden actions that must be accounted for. (Muhlizi, 2012)

Therefore, discretion is the freedom to act on one's own initiative in order to resolve sudden, important and urgent problems that are not regulated by law and held legally and morally accountable. Decisions are an important subject of administrative law review, especially because decisions are contentious, which according to Law No. 1 is the absolute authority of administrative jurisdiction. 5 Year 1986. Verdicts are also one of the most common instruments of government law used when the government takes action to express its will. (Marbun, 2006)(Muhlizi, 2012)

The term 'decision' is a translation of the term 'beschikking', which means 'administrative action' with Dutch and 'verwaltungsakt' in German. The term Beschikking was first introduced by WF in Indonesia. What does the prince's decision mean. Djjenal Hoesen said it might be more appropriate to use the term 'decision' to avoid confusion with the term 'decision'. In his view, in Indonesia, the term "statute" has a technical-legal meaning, namely the provisions of the MPR are active internally and externally. Among other things some scientists give the definition of beschikking. master. Dr. E. Utrecht, together with his book "Introduction to Indonesian Constitutional Law", said that besikking (decree) is a unilateral public law act carried out by a government agency based on special authority. 2) Mr. WF. together with his book Inleiding in het Administratiefrecht van Indonesia, Prins called Beschikking as a unilateral legal act with the field of government carried out by a government instrument based on the power contained in that tool or body. 3) Van der Pot, in his book "Nederlandsch Bestuursrecht", describes Beschikking as a legal act carried out by a ruling authority, A government that organizes common privileges with the intention of bringing about a common change in the field of legal relations.

A view of the various definitions of such scholars, Beschikking seems to contain several elements:) 4) directed at a specific object or specific, single event. 5) with the intention of bringing administrative consequences. In these various senses, beschikking (decision) is a unilateral act of public law carried out by an

instrument of government (with a narrow meaning) on the basis of domination or special power with the meaning of changing a legal bond. (Muhlizi, 2012)

HAN Principles and Norms based on Statutory Regulation, Policy Regulation (Beleidsregel), and Decision Making

Based on the theory of the Welfare State (Verzorgingsstaat), the task of government is not limited to the enforcement of laws passed by the legislature. From the point of view of the welfare state, the government is obliged to take care of the general imperative (bestuurszorg) or strive for social equality. By fulfilling this obligation, the government has the power to intervene in the lives of the people (staatbemoeiensis). Legal limitations. In addition to this interference, the government is also empowered to create and enforce laws and rules. That is, the government has legislative power. (Muhlizi, 2012)

Although the complex concept of power has lost its relevance as the challenges of the state and government develop, in practice there are many obstacles, especially in relation to the shared meaning of the executive which is only with laws without the provision to make laws and rules. Therefore, while some argue that the legislature is the primary body that makes laws, and the implementing body is the secondary body that makes laws, H.W.R. Wade when we measure only by numbers, many laws and regulations are formed by the executive branch, not the legal branch.

Although most laws and regulations are promulgated by the executive body, the existence of a legislative body is not superfluous in a state of law. "Perhaps it would be more realistic to say that the administration makes laws contingent on prior approval from Congress." According to the principle of constitutional legitimacy, i.e. Parliament. With the development of the theory of the welfare state that obliges the government to provide social services and to achieve overall welfare, the government must give legislative power. That is, the legislative power of the government cannot be abolished. Bagir Manan said that the power of the administration (government) to participate in drafting laws and regulations cannot eliminate institutional procurement assistance, as is the case in the doctrine of separation of powers. Therefore, the function of making laws and regulations does not need to be separated from the function of governance. The task of formulating laws and regulations can also be delegated to the state administration as a legislature. The concept of a power state or welfare state gives the state or government power to intervene with the continuity of society. (Muhlizi, 2012) (Muhlizi, 2012)

According to the ideology of state power, state or government interference is to limit and control the people. One of the things that supports the formal exercise of such power is the creation of various legal instruments in which the state or government acts. The state of equality requires a variety of legal means that cannot be delegated by the legislature alone. State administration requires the power to exercise without neglecting the principle of the state based on law and the principle of general selection for the realization of the common good. In such circumstances, the authority of state administration in the field of making laws and regulations is increasing. To be able to react to more rapid and complex social change, we must accelerate legal reform. This gives the state a greater role in legislation and regulation. We revise various types of laws and regulations, from constitutional laws to local laws and regulations.

The legislature does not make all kinds of legal regulations but is limited to laws and constitutions. Other types are produced by the state. In addition, there are other reasons for delegating legislative power to the government, which are related to the abstract nature of the algebra of the national constitution and the norms of national administrative law. When dealing with concrete cases, general and abstract norms apply.

Specific and individual legal documents are required (Ridwan HR, 2011: 136). Thus, the term terugtred van de weggever (withdrawal of the legislature) can be found in the literature of state administrative law. Due to this backwardness, there have been attempts to apply general and abstract national administrative law norms to special as well as individual cases. Joint study A.D. Belinfante said: "It is an indemnity body managed by the legal administrative authority and it is necessary that the body and citizens be exempt." De terugtred is in vermijdelijk. "I believe there needs to be differentiation to improve the concrete situation and guarantee security." (The law delegates authority to government agencies to enact legislation in their legal relations with citizens that are essentially more administrative in nature. This regression phase is inevitable, and indefinite legislative action can yield greater benefits. will offer). (Muhlizi, 2012)

According to Indroharto, the advantage of lawmakers taking this backward stance is that the regulation and determination of legal norms by TUN bodies or agencies can be distinguished according to specific and specific community conditions. There are three reasons for this regression visualization: 1) Because the whole (TUN) is so broad, it is impossible for the framer of the law to regulate everything in official law. 2) DO legal norms must always adjust together with changing conditions that arise in connection with technological advances and developments that cannot always be followed by the legislature as formal law. 3) In addition, whenever additional rules are needed, always related to very detailed technical evaluations, then it is not reasonable to ask lawmakers to regulate them. (Muhlizi, 2012)

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Day-to-day government actualization conveys how often state administrative bodies or officials take related political steps, including the creation of so-called political rules (recess rules). Products such as directive regulations cannot be separated from discretion-free use, namely, officials or state administrative officials who realize the policy along with various forms of "rule of law", such as regulations, guidelines, notices, and circulars, and then promulgate the policy. Wisdom or expertise can be described or expressed as: "For freedom or freedom to act on one's own initiative (discretion), as permitted by law, in order for the sudden resolution of important and urgent problems, lack of regulations, and vague or ambiguous mandates, consideration must be taken from law and morals". (Marbun, 2006)

SF Malbun's definition of policy above consists of elements, namely the Law recognizes the freedom of state administration to act independently. 2) there are important and urgent issues that must be resolved quickly 3) must be accountable as well as the law as well as some requirements that must be considered in the preparation and application of laws and regulations, there are several requirements that also need to be addressed by Peruvian and penera Plate regular policies. According to Indrohart, quoted by Ridwan, things that need to be considered in the preparation of policy provisions are: 1) Not violating the Basic Regulations, including the Right of Discretion contained therein. 2) It must not contradict sound reasoning. 3) You will take care of your life, keep your life, and offer alternatives. 4) The content of the policy should adequately clarify the rights and obligations of citizens affected by the relevant rules. 5) The objectives and reasons for the policy considerations to be demanded must be clear. 6) must meet the important requirements of legal certainty; This means that the rights granted by affected members of society must be respected. Public expectations, which deserve to be raised, should also not be denied.(Marbun, 2006)

On the other hand, in implementing or using policy provisions, the following matters must be considered 1) aligning together the objectives of the law governing beoordelingsvrijheid (space for freedom of action); 2) You must follow the applicable general law rules: a) the principle of equal treatment under the law b) the principle of justice and justice c) the principle of balanced) the principle of fulfillment of needs and expectations e) the principle of rights with regard to all matters related together public and national imperatives. 3) Effective and consistent with the goals to be achieved. Pseudo-policy settings do not stem from the power to make laws and regulations (wetgevende bevoegdheid). Because it cannot be verified based on the rechtmatigheid aspect. Based on the State Administrative Law, policy regulatory review is an aspect of the duel matiheid together utilizing the general principle of good governance (AAUPB), especially the principle against abuse of power (detournement de pouvoir) and the principle against arbitrariness (detournement de pouvoir). will). In other words, if government policy contains elements of the use of authority or arbitrary elements, then it is classified as a deviant policy(Marbun, 2006) (Marbun, 2006).

Definition of decision based on Article 1(3) of Law No. 5/1986 juncto Article 1(9) of Law 1986. Article 5 of 2009 concerning the Second Amendment to Law Number 5 of 1986 related to PTUN reads, namely: , is personal and final and has legal consequences for individuals or civil law entities. Referring to the formulation of the definition of the decision above, it can be derived from the legal elements of a decision based on positive law, namely from a written decision issued by a state executive body or officer and containing state legal acts. Administration-based can be derived. The applicable laws and regulations are specific, personal and final, with legal consequences for natural persons or civil law entities. (Marbun, 2006)

In order for a decision to be valid and legally void, the state administrative decision must pay attention to various conditions. Conditions that need to be considered with this decision-making include material and formal requirements. That is, 1) the material condition consists of, then the judgment must not contain legal defects such as fraud (bedrog), coercion (dwang) or bribery (omkoping), or misdirection (dwaling). c) the decision concerns a particular situation (condition), d) the decision must be carried out without violating other provisions and the content and purpose of the decision must be in harmony with the content and purpose of the basic rules. 2) The formal requirements are that a) the specified requirements for the preparation of decisions and the procedures for making decisions must be met. b) Decisions must be made in the form established in accordance with the laws and regulations; c) The conditions for actualization of the decision must be fulfilled. d) determine the period from consideration of the reasons that led to the decision to the adoption of the decision. (Marbun, 2006)

If such substantive and formal conditions are met, then the judgment is legally valid. A judgment that is declared valid and valid establishes not only the actual legal effect but also the principle of presumption of legality (het (Marbun, 2006)Presumption of legality or Presumtio justea causa). This principle means that "all decisions of the national government or executive branch shall take effect according to law". The principle of Teslehitmachigini's presumption means that a government decision cannot be overturned unless annulled by a court. Furthermore, as a result of this legal assumption, As a general rule, any objection, appeal, opposition to a government decision, or action against a government decision by an affected party cannot delay the implementation of a government decision.(Marbun, 2006)

CONCLUSION

From the essential dimension, the bond between law and morality together with the ethical advocacy system of the election organizing committee is an integral bond that does not distinguish between constitutional morality and law. Values that are considered moral in laws and regulations are legal. This can be seen from the existence of (DKPP) as an ethics court with a system that defends the ethics of election organizers, ranging from the most fundamental to operational issues, can be seen from its side. DKPP has implemented the Election Organizer Code of Ethics, namely the rules of the Honorary Board of Election Organizers Number 2 and 3 of 2017, the rules of the Election Organizing Committee (as amended by the Election Organizer since 2017) exercising its authority as law. Honorary Board Regulation Number 2 of 2019 follows as the basic law of Pancasila, the Constitution of the Republic of Indonesia of 1945 and TAP MPR Number V1 / MPR / 2001 related to the code of ethics.

Sourced from field implementation levels as well as actual execution, integration bonds move to independent bonds. This is seen in the enforcement or handling of moral and ethical violations and is considered independent of the dichotomy between violations of law and ethics. Based on the establishment of two independent bodies to address ethical and legal violations. The decision of the Honorary Board of Election Administration shall be binding and final, as shall the decision of any court. Responses to ethical violations that lead to violations of the law are determined independently by the court.

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