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Citizens' Right to Claim Compensation for Damages Resulting from Unlawful Government Actions (Onrechtmatige Overheidsdaad)

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A B S T R A C T

Protection of citizens' rights in Indonesia is regulated through various legal mechanisms, both at the national and international levels. At the national level, the Constitutional Court plays a crucial role in upholding and protecting citizens' constitutional rights. Through its decisions, the Constitutional Court can annul laws and regulations deemed to violate human rights. Furthermore, institutions such as the National Commission on Human Rights (Komnas HAM) also function to monitor and report human rights violations. Internationally, Indonesia is bound by various conventions governing the protection of human rights, which provide a legal basis for citizens to seek redress if their rights are violated. For example, in the case of human rights violations in Aceh, several victims successfully obtained redress through existing legal mechanisms.

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INTRODUCTION

In a modern constitutional democratic system, the existence of a state based on the rule of law (rechtsstaat) is a primary requirement for the creation of a just, open, and accountable government. The concept of a state based on the rule of law encompasses not only the existence of formal laws and regulations, but also respect for citizens' rights, effective legal protection, and accountability for state power. A state based on the rule of law places law as the primary foundation for governance and demands that all actions of state administrators, including the president, ministers, and other government officials, be based on applicable law and subject to judicial review.

This principle is based on the fundamental assumption that power tends to corrupt if unchecked, as once expressed by Lord Acton, and that justice can only be realized within a legal framework that guarantees participation, accountability, and redress against arbitrary action. In a state governed by the rule of law, the people are not merely objects of power, but legal subjects with rights, including the right to demand accountability if the government acts unlawfully and detrimentally.

The Republic of Indonesia's 1945 Constitution's Article 1 Paragraph 3 explicitly declares the rule of law, saying, "The State of Indonesia is a state based on law." Consequently, the administration of government must be subject to the principle of legality, which demands that every government action must have a clear, proportional, and accountable legal basis. Not only that, the law is not enough to just regulate the authority of the government, but it must also provide space for citizens to question the legality and consequences of government actions, including the right to remedy when they suffer losses due to unlawful actions.

In modern legal systems, one concrete form of implementation of the principle of the rule of law is the recognition of the right to administrative redress. When the actions of an official or government agency are proven to be unlawful and cause harm, the state has an obligation to restore the situation or, if that is not possible, provide appropriate compensation. Thus, a state based on law is not only a law that regulates, but also a law that protects.

However, in practice in Indonesia, the implementation of the rule of law principle in the context of protecting citizens who are victims of unlawful government actions has not been fully realized. Despite the normative recognition of the right to redress, national judicial and legislative mechanisms have not fully provided adequate, effective, and equal protection for victims of detrimental administrative actions. There is still a gap between the ideal concept of the rule of law and the reality of positive law and the practice of administrative justice.

The concept of the right to compensation as a form of state accountability is rooted in the development of European public law, particularly in the French and Dutch administrative law traditions. Historically, the doctrine of state liability arose from the need to address situations where citizens suffered losses due to actions or decisions of government officials that proved unlawful. In the Netherlands, the concept of onrechtmatige overheidsdaad serves as the basis for

holding the state accountable when government actions are proven to be unlawful and detrimental to others.

Initially, this doctrine was opposed because it contradicted the principle of sovereign immunity, which holds that the state cannot be sued by its citizens. However, as the state's paradigm shifted from a dominant institution to a public servant, the doctrine of state responsibility began to develop and become widely accepted in modern administrative law. The state is no longer above the law, but is subject to the law, and has a legal obligation to provide redress if its actions violate the rights of citizens.

In the Indonesian legal system, recognition of the right to administrative redress does not have a long and established history. During the colonial period of the Dutch East Indies, the legal system adopted much of the Dutch legal structure, including provisions on state responsibility. However, after independence, provisions on state responsibility were not immediately developed into a separate legal system. Indonesian administrative law focused more on limiting the authority of public officials, rather than on redress for citizens who were victims of arbitrary actions.

It was not until the reform era that the idea of the right to redress for unlawful government actions began to gain ground in legal discourse and public policy. Law No. 5 of 1986 concerning State Administrative Courts opened the way for lawsuits against administrative decisions that harm citizens, although it did not explicitly regulate compensation. Subsequently, Law No. 30 of 2014 concerning State Administration introduced substantive provisions regarding the right to compensation. However, to date, there is no single law or specific legal regime that comprehensively regulates the administrative compensation system in Indonesia.

The absence of regulations specifically governing administrative compensation creates a legal vacuum that renders citizen protection ineffective. Consequently, lawsuits against unlawful government actions often result in the dismissal of the action, with no remedy for the losses suffered. This is where building a conceptual and normative foundation for the right to compensation becomes crucial, as an integral part of the rule of law and legal protection for citizens.

In Indonesian constitutional law, the principles of legality and due process are not explicitly stated, but can be derived from Article 28D paragraph (1) of the 1945 Constitution which states that "Everyone has the right to recognition, guarantees, protection and certainty of fair law and equal treatment before the law." This provision emphasizes that the government cannot act arbitrarily, and that citizens have the right to obtain justice, including in the form of compensation, if their rights are violated due to government actions.

Furthermore, the principle of due process is also related to Article 28G paragraph (1) which guarantees the right to protection of oneself and property, and Article 28H paragraph (4) which states that everyone has the right to receive special treatment to obtain facilities and special treatment to obtain justice and compensation. These provisions implicitly contain the idea that the state must

provide a legal mechanism that allows citizens to obtain redress if they are harmed by government actions.

However, in reality, there remains a wide gap between constitutional norms and the implementation of the national legal system. Sectoral laws, such as Law No. 30 of 2014 concerning State Administration and Law No. 5 of 1986 concerning the State Administrative Court, do recognize that citizens can file lawsuits against unlawful government actions. However, the redress mechanisms provided tend to be limited to the annulment of administrative actions, rather than redress in the form of compensation for actual losses.

The right to compensation as a form of remedy for victims of unlawful government actions is a crucial element of the legal protection and substantive justice system. From a constitutional and human rights perspective, the right to compensation is inseparable from the right to recognition, protection, and redress for violations of fundamental rights.

In international law, the right to compensation is recognized as part of the right to an effective remedy, as stated in Article 2 paragraph (3) of the International Covenant on Civil and Political Rights (ICCPR), which Indonesia has ratified through Law No. 12 of 2005. The covenant states that every individual whose rights have been violated has the right to obtain an effective remedy, and the state is obliged to guarantee that every person who claims to have been harmed by a violation of their rights can access legal mechanisms and obtain appropriate compensation.

The right to compensation is also part of the principles of non-discrimination and equality before the law. When citizens are harmed by state actions but do not receive adequate access to redress, this constitutes a violation of the principles of legal equality and fair treatment. Therefore, the legal system must be designed not only to limit state power but also to ensure that citizens can obtain substantive justice in the form of proportionate compensation for the losses suffered.

Formulation of the problem

The ideal concept of regulating compensation for unlawful government actions (onrechtmatige overheidsdaad) can be formulated within the framework of Indonesian administrative law to realize legal certainty, substantive justice, and legal benefits for citizens?

LITERATURE REVIEW

In the Indonesian legal system, recognition of the right to compensation can be found in several constitutional norms. According to the 1945 Constitution's Article 28H, paragraph 4, everyone is entitled to preferential treatment and recompense. Although its wording is general, this norm demonstrates that the constitution opens up space for the development of the right to compensation, including in an administrative context. In addition, Article 28D paragraph (1) guarantees fair legal certainty, which includes the right to recovery if the law is violated.

However, the regulation and implementation of the right to administrative redress in the Indonesian legal system remains very limited. In administrative court practice, judges are still reluctant to grant compensation or damages except in very limited cases. Even when courts declare a government action unlawful, the ruling often simply annuls the action, without addressing the aspect of redress or compensation.

One of the important milestones in the development of Indonesian administrative law was the enactment of Law Number 30 of 2014 concerning Government Administration (UU AP). This law codifies the basic principles of government administration and introduces normative recognition of citizens' rights to compensation for losses suffered by the actions of government officials. This is explicitly reflected in Article 80 of the UU AP, which states: "Any person who is harmed by the decisions and/or actions of government officials that violate the law has the right to demand compensation from government agencies."

These provisions provide a legal basis for citizens to file claims for compensation for unlawful government actions, which is doctrinally aligned with the concept of onrechtmatige overheidsdaad. However, this normative recognition in the AP Law has not been accompanied by operational regulations. To date, there are no implementing regulations (PP or Permen) that specifically regulate the mechanisms, procedures, types of losses that can be compensated, or the parameters for the amount of compensation that can be granted by the courts.

In addition to the AP Law, the State Administrative Court (PTUN), as the judicial institution authorized to adjudicate government administrative disputes, has also demonstrated openness to claims for compensation. This is demonstrated by the issuance of Supreme Court Regulation (PERMA) Number 2 of 2019 concerning Guidelines for the Settlement of Disputes Regarding Governmental Actions and the Authority to Adjudicate by the State Administrative Court. This PERMA explains that in a lawsuit against government actions, the plaintiff may also file a claim for compensation.

However, the Supreme Court Regulation (PERMA) is not a primary legal source with external binding force like a law. As an internal regulation of the judicial institution, its applicability is limited to judges and judicial practice, and does not directly bind the executive branch as policymakers. Furthermore, the PERMA does not provide a normative basis for substantive rights to compensation, but rather merely procedural guidelines on how judges can receive, assess, and decide claims for compensation.

However, as stated in Article 1365 of the Civil Code, the Indonesian civil law system also incorporates a procedure for bringing a lawsuit for illegal activities (onrechtmatige daad). Through this provision, citizens who feel they have been wronged can seek compensation in the district court. However, this approach is individualized and not specifically designed to address the actions of public officials or government institutions within the context of state administrative relations. In addition, the burden of proof in a civil lawsuit is quite heavy because it requires proving the elements of fault (schuld), causal

relationships, and losses in detail, something that is not always easy for ordinary citizens to do when facing the state.

Thus, the normative position of the right to compensation in Indonesian positive law remains fragmented between two regimes: administrative law and civil law. There is insufficient integration between the two, leading to legal confusion and additional burdens for citizens seeking to assert their rights. This fragmentation demonstrates that normative recognition has not yet transformed into substantive legal guarantees that can be effectively enforced.

The separation between the legal (PTUN) and compensation (civil) realms creates legal fragmentation that complicates access to justice. In many cases, lawsuits to the PTUN merely result in the annulment of administrative actions or decisions, leaving the plaintiff without any remedy for the material and immaterial losses suffered. Conversely, if a plaintiff goes directly to the district court, they must prove personal fault on the part of the official or government institution, strictly based on civil law doctrines that are not always compatible with the administrative context.

The gap between norms and implementation has various negative consequences. First, citizens lose confidence in the legal system and justice. When unlawful government actions are not accompanied by adequate redress, a sense of justice is lost. Second, structural discrimination occurs, where only citizens with sufficient resources can pursue their rights through complex civil litigation. Third, the state fails to fulfill its role as protector of its citizens' fundamental rights, as guaranteed by the constitution and international human rights law.

In an academic context, this dissertation aims to contribute to the development of Indonesian administrative law theory and practice. The primary novelty of this research lies in the construction of an administrative compensation system that positions the right to compensation as a constitutional and substantive right of citizens, while rejecting the conventional paradigm that positions compensation as an ancillary claim. Another novelty is the legal and normative argumentation for including immaterial compensation as part of the right to recovery that must be recognized and subject to review by administrative courts.

The latest development in the transformation of administrative law in Indonesia is the enactment of Law Number 30 of 2014 concerning Government Administration (Law No. 30 of 2014). This law broadens the definition of State Administrative Procedure (KTUN), where factual actions are also interpreted as a KTUN (vide Article 87 of Law No. 30 of 2014). With this construction, the PTUN has the authority to examine lawsuits for unlawful acts by the authorities/government (Onrechtmatige Overheidsdaad). The Supreme Court, through various legal products issued, has also confirmed the competence of the PTUN to adjudicate Onrechtmatige Overheidsdaad cases, such as Supreme Court Circular Letter Number 4 of 2016 (SEMA) and Supreme Court Regulation Number 2 of 2019 concerning Guidelines for Settling Disputes Regarding Government Actions and the Authority to Adjudicate Unlawful Acts by Government Agencies and/or Officials (Onrechtmatige Overheidsdaad). The shift of authority to examine lawsuits for unlawful acts by the

authorities/government (Onrechtmatige Overheidsdaad) from the general court environment to the state administrative court certainly has various legal consequences, starting from changes in procedural law, petitum, posita, and so on. This study aims to find an ideal concept for regulating compensation due to unlawful government actions (onrechtmatige overheidsdaad) that reflects legal certainty, justice and benefit.

METHODOLOGY

The study of positive law is the main topic of normative juridical legal research, which is the kind of research that is being used. Legal studies that present the law as a set of rules are known as normative juridical studies. This normative system pertains to the rules, norms, and principles of laws, judicial rulings, and doctrines or teachings.

Document study, library research, or doctrinal legal research are alternate names for normative legal research. This type of legal research is known as doctrinal legal research since it is limited to written regulations or other legal sources. Since secondary data from libraries is the main source of this type of research, it is also known as document study or library research.

a. Statutory Approach (Normative/Statute Approach)
b. Conceptual Approach
c. Case Approach
d. Historical Approach

RESEARCH RESULT AND DISCUSSION

In essence, the idea of a state founded on the rule of law is derived from the doctrine of the rule of law, which holds that the law is a state's supreme authority. Therefore, all citizens and state apparatus are obliged to submit to, obey, and uphold the law without exception. Based on this theoretical concept, the concept of a state based on the rule of law developed, requiring certain elements in the implementation of the state system, namely:

1. There is a guarantee of human rights (citizens).
2. There is a separation/division of powers.
3. The existence of the principle of legality of government.
4. The existence of the principle of a free and impartial judiciary.

Based on the elements related to the concept of the rule of law outlined above, the state plays a crucial role in creating and enforcing laws to create a safe and orderly environment. The state's obligation to strive to create a safe and orderly environment is carried out by the executive, legislative, and judicial branches. Therefore, the function of the state, as expressed by Arendt, is to establish binding rules and guarantee communal life. Furthermore, the state also functions to create space and maintain resilience. Therefore, it is understandable that the state has the power to regulate the society within its territory. This means that power in a political context is related to the power to regulate society. The conclusion we can draw is that the power exercised by the ruler can be interpreted as an act of the state. Governance, in the broadest sense, is all forms of state administration carried out by state organs with the authority to exercise

power. This definition of government encompasses state administration activities carried out by the executive, legislative, and judicial branches. Meanwhile, governance, in the narrowest sense, encompasses all activities carried out by the executive branch, which in this case is carried out by the President or Prime Minister, down to the lowest levels of the bureaucracy.

The implementation of these administrative or bestuur functions is what is called government in the narrow sense. Han, et al. stated that one of the government instruments is "wet-en regelgeving". Said by de Haan, et al. that: Voor de bestuurlijke fungctie maakt het in wezen geen veschil of men nu probeert met behulp van algemeen verbindende (abstracte) voorschriften – wetgeving in material zin dus-dan wel met behulp van concrete voorshriften (beschikkingen en overeenkomsten) bepaalde berstuursdoeleinden te realiseren.

Legislation serves as a legal instrument for realizing the welfare state concept in social reality. Its elaboration in concrete situations and objectives can be achieved through decisions and agreements that refer to legislation. Unlike a classical rule of law state, legislation in a participatory welfare state is not designed to strictly limit government functions, but rather to regulate the implementation of the government's social role in a participatory manner. Legislation serves as an instrument of government's role in realizing the goals of a social rule of law state.

Onrechtmatige Overheidsdaad and Compensation: Designing Fair and Beneficial Regulations

The concept of legal overheidsdaad in Indonesia has actually existed for a long time, even since the colonial era. This is due to the principle of concordance, which significantly influenced the development of existing law in the Netherlands. Adhering to this principle of concordance, general courts during the colonial era asserted their authority to handle lawsuits against the government under Article 2 of the Law on Legal Organisations. The term "illegal acts by the authorities" (onrechtmatige overheidsdaad) was first used historically in reference to the arrest of Ostemann on November 20, 1924. An extension of the idea of unlawful acts (onrechtmatige daad) is the primary concern of unlawful activities committed by the authorities. Thus, the Civil Code's Article 1365 is still used in the regulations controlling onrechtmatige overheidsdaad. A number of components go into creating the illegal conduct covered by Article 1365 of the Civil Code, including:

1. there must be an action;
2. the act is against the law;
3. the perpetrator must have committed a mistake;
4. the act causes loss; And
5. There is a causal relationship between the act and the loss.

Regarding the form of compensation for unlawful acts, it is not descriptively regulated in the Civil Code. Therefore, the rules used for this compensation are analogous to the regulations for compensation for breach of contract stipulated in Articles 1243-1252 of the Civil Code. Moegni Djodjodirjo

argues that Article 1365 of the Civil Code provides the possibility of several types of prosecution, including compensation for losses in the form of:

1. Money;
2. Ganti-loss for loss in the form of equivalent or return to its original state;
3. A statement that the act committed is unlawful;
4. Prohibition of carrying out an action;
5. Eliminating something that is held against the law; And
6. Announcement of a decision on something that has been corrected.

The term "act" as referred to in the onrechtmatige overheidsdaad is meaningfully equivalent to the terms "government act", "state administrative act" and "governmental act". Hereinafter, the term "government act" will be used to refer to the element of "act" as referred to in the concept of onrechtmatige overheidsdaad merely for ease of writing. The activities of officials (office holders) as persons in social traffic (apart from their official duties) must be differentiated from what is implied by a government act (Bestuurshandelingen). This is because the notion of responsibility—official responsibility (faute de service) and personal responsibility (faute de personille)—is the basis for determining the location of legal responsibility for claims for compensation resulting from governmental activities.

The government bears responsibility when an act is performed within the authority and capability of a government official. Muchsan listed the requirements that an act must fulfill in order to qualify as a government action, which are as follows:

a) With their own initiative and accountability, government officials acting in their capacities as rulers or as government apparatus (bestuursorganen) committed this conduct.
b) The purpose of the act is to fulfill government duties.
c) The purpose of this act is to establish legal ramifications in the area of administrative law.
d) The aforementioned actions are performed in a manner that upholds the interests of the people and the state. Theoretically, there are two categories of government actions: legal actions (Rechtshandelingen) and real actions (Feitelijke Handelingen), often known as material actions, ordinary actions, or factual actions.

Legal actions are those that are meant to have legal repercussions, whereas actual actions are those that are meant to have no such repercussions. As a public legal body, the government can take two types of legal action: private legal action (privaatrechtelijke rechtshandelingen) and public law action (publiekrechtelijke rechtshandelingen). Government legal actions based on civil or private law are referred to as private legal actions. A government lawsuit founded on public law is known as a public lawsuit. It is important to note that even when implementing private legal action, the government's goal remains the public interest and the welfare of society.

The concept of legal overheidsdaad implies that a government action that violates the law will give rise to liability for any losses caused by that action. The question of whether government conduct covered by public law can be pursued

under private law is, in fact, up for debate. According to E. Utrecht, the government's acts as a supplier of public welfare are as follows:

> "Like all other legal subjects, administration is also subject to civil (private) law, which I can call ordinary law (gemenrecht; Hamaker, Scholtern) in order to carry out (the distribution of its duties), so administration can also, like all other legal subjects, use the legal relations used by other legal subjects, for example the money regulations contained in the BW regarding buying and selling, renting, and so on."

Hoge Raad contended in Stroopot Arrest, dated June 29, 1928, that government activities can only be deemed illegal if they contravene written laws, infringe upon the rights of others, or conflict with the offender's legal obligations, but are not unlawful if they violate unwritten legal provisions. In the Arrest it was stated that "Unwritten legal norms cannot be applied to the actions of the authorities because the prohibition against violating norms of propriety in society only applies in interactions between fellow citizens."

To put it briefly, a ruler's (government's) actions are not evaluated according to the standards of good morals and propriety mentioned in the Drukkers Arrest. Nonetheless, the Hooge Raad's later-emerging jurisprudence contended that rulers are subject to the same standards of morality. In the post-proclamation period, general courts continued to assert their authority to handle lawsuits against the government. Three points were inconsistently raised: first, they continued to refer to Article 2 of the RO as the legal basis; second, they stated that the basis was the absence of a state administrative court; and third, they referred to jurisprudence. With multiple jurisprudences offering distinct standards for determining when a government action is illegal, Indonesia's onrechtmatige overheidsdaad evolution can be described as highly dynamic. This change in standards is demonstrated by at least two jurisprudential cases.

According to the Supreme Court, the requirements for onrechtmatige overheidsdaad are the formal norms and applicable laws, as well as social propriety that the authorities must adhere to. Law Number 2 of 1986 respecting General Courts (PU Law) and the PTUN Law were passed in 1986, Together with Article 1 number 4 of the PTUN Law, Article 50 of the PU Law is linked to Article 4 and serves as the foundation for the general court environment's jurisdiction to decide onrechtmatige overheidsdaad situations. The State Administrative Court (PTUN) is one of the executors of judicial power for those seeking justice in state administrative problems, according to Article 4 of the PTUN Law. The term "state administrative disputes" refers to disagreements that arise in the field of state administration between individuals or civil legal entities and state administrative bodies or officials, both at the central and regional levels, as a result of the issuance of a KTUN. This includes disagreements over personnel based on relevant laws and regulations.

Considering that the lawsuit for unlawful acts by the government (onrechmatige overheidsdaad) is the competence of the general civil court, formally procedurally the procedural law used is civil procedural law, namely Het Herziene Indonesich Reglement (HIR) or Reglement Indonesia updated S.1848 No. 16 jo. S.1941 No.44, Rechtsreglement Buitengewesten (RBg) or

Reglement Daerah Seberang, S. 1927 No.227, Book IV BW, Law Number 20 of 1947 concerning Repetition Court Regulations for the Java and Madura Regions, and so on. Default decisions are one of the key areas where state administrative procedural law and civil procedural law diverge. Article 125 HIR and Article 149 RBg serve as the foundation for the norms governing default decisions in civil procedural law. The PTUN legislation, which is a state administrative procedural legislation, does not recognize default rulings. When it comes to lawsuits for illegal government actions, the default procedure lets the government lose if it doesn't show up for the initial hearing. The answer-and-answer phase of the civil procedural process is preceded by mediation. The Supreme Court Regulation Number 1 of 2008, Article 4, stipulates that this mediation must be completed by 2014. According to this article, all civil disputes brought before the First Instance Court must first be settled amicably with the help of a mediator, with the exception of cases decided through industrial relations courts, commercial court procedures, objections to decisions of the Business Competition Supervisory Commission, and objections to decisions of the Consumer Dispute Resolution Agency.

With reference to these clauses, mediation between the government as the defendant and a person or organization as the plaintiff is required in cases involving illegal government actions. In addition to the difference in the settlement forum, There are also differences in the amount of compensation sought for losses resulting from the issuing of a KTUN that is litigated at the PTUN compared to losses claimed in a general court setting. According to PP 43/1991, which implements Article 120 paragraph (2) of the PTUN Law44, the highest remuneration for issuing a KTUN is IDR 5,000,000.00 (five million rupiah), while the minimum is IDR 250,000.00 (two hundred and fifty thousand rupiah). 45 In the meantime, given that the rules make reference to Article 1365 of the Civil Code, the amount of compensation for factual activities that breach the law is unlimited.

Regarding compensation in cases where there are multiple plaintiffs, the State Administrative Court's (PTUN) compensation cap has an intriguing feature. The limitation on compensation according to Government Regulation No. 43 of 1991 undoubtedly restricts the amount of compensation that can be claimed for each case rather than for each plaintiff. In practice, it turns out that this limitation on compensation is also interpreted as a limitation on compensation per person or plaintiff. A detrimental KTUN is first challenged in the PTUN. If the lawsuit is won by the plaintiff and the relevant official or agency fails Disobedience to the PTUN ruling serves as the foundation for a District Court lawsuit seeking onrechtmatige overheidsdaad in order to carry out the ruling.

Another reason to file a civil lawsuit after filing a lawsuit at the PTUN is because of the limitations on compensation claims that have been mentioned previously. It is indeed quite detrimental to justice, if the compensation arising from the issuance of a KTUN is only limited to Rp5,000,000.00. What if the losses incurred exceed that amount? Are the remaining losses then the plaintiff's responsibility? According to the Supreme Court's recommendations, if the

amount sought for compensation beyond the upper limit set forth in PP No. 43 of 1991, legal considerations it is considered whether the request for compensation is granted to the extent of PP No. 43 of 1991, whereas the general court may hear the remaining claim for compensation. Naturally, the existence of onrechtmatige overheidsdaad serves as the legal foundation for bringing a claim for compensation.

One point that comes up when looking at the practice of civil lawsuits is whether or not such a mechanism is a ne bis in idem. It should be mentioned that compensation is basically an extra claim that is awarded following the main claim in state administrative court litigation. Article 53 of the PTUN Law states that: "An individual or civil legal entity who feels that their interests have been harmed by a State Administrative Decision may file a written lawsuit with the competent Court containing a demand that the disputed State Administrative Decision be declared null and void, with or without a claim for compensation and/or rehabilitation."

Thus, this is not a ne bis in idem. While legally unproblematic, this type of mechanism essentially prolongs the process of seeking justice. It's important to remember that the legal process in general courts, like administrative courts, takes quite a long time. This will actually make it difficult to guarantee legal certainty (rechtzekerheid) and uphold a sense of justice for the public.

One impact of the expanded concept of the State Administrative Court (KTUN) is that factual actions (feitelijk handelingen) are now also considered to be KTUN. This naturally has various legal consequences, one of which is that onrechtmatige overheidsdaad, which was previously the absolute competence of the district court, has shifted to the absolute competence of the PTUN. This is because previously the PTUN only had absolute competence over State administrative disputes originating from written KTUN with a concrete, individual, and final nature (narrow KTUN), but currently the concept of KTUN has been expanded in accordance with Article 87 of Law No. 30 of 2014 (broad KTUN). Regarding factual actions (feitelijk handelingen) regulated in Article 87 letter a of Law 30/2014, there are actually two possible forms, namely:

1. Factual action which is the implementation of a written determination
2. Stand-alone factual actions without written determination

Regarding factual actions that can be sued to the PTUN, it can actually be seen experis verbis in the Circular Letter of the Supreme Court Number 4 of 2016. In the Legal Formulation section of the State Administrative Chamber of the Circular Letter of the Supreme Court Number 4 of 2016, it is regulated that the object of a lawsuit to the PTUN is a written determination and/or factual action. With this provision, it is clear that factual actions that can be sued are factual actions that stand alone without a written determination and/or factual actions that are written implementation.

There are legal consequences with the shift of absolute competence of onrechtmatige overheidsdaad lawsuits from the district court to the PTUN. One of the fundamental legal consequences is related to changes in procedural law. Previously, when onrechtmatige overheidsdaad lawsuits were the absolute competence of the district court, the legal basis for the procedure used was civil

procedural law which generally came from HIR and RBg. Meanwhile, the legal basis for the state administrative court procedure generally came from, among others, the PTUN Law, then underwent the first change by being amended by Law No. 9 of 2004 concerning Amendments to Law No. 5 of 1986 concerning State Administrative Courts, Law No. 51 of 2009 concerning the second amendment to Law No. 5 of 1986, Law No. 30 of 2014, and so on.

From the legal basis alone, it can be seen that the procedural law applicable in district courts and administrative courts has differences. So of course in filing onrechtmatige overheidsdaad there are quite significant changes in procedural law after the transfer of absolute competence to the PTUN. Several things that are different in the procedural law for onrechtmatige overheidsdaad lawsuits when transferred to the PTUN, for example, is the obligation to make administrative efforts before filing an onrechtmatige overheidsdaad lawsuit. This is in accordance with the provisions of Article 75 of Law No. 30 of 2014 in conjunction with Article 2 of Supreme Court Regulation Number 6 of 2018 concerning Guidelines for the Settlement of Governmental Administrative Disputes After Taking Administrative Efforts. These administrative efforts based on Article 75 paragraph (2) of Law No. 30 of 2014 consist of two, namely objections and appeals. The existence of the obligation to implement these administrative efforts is actually an embodiment of the government as a public servant/public officer, where the main task of the government is to provide services to the community (public services), rather than serving lawsuits, so that if the state administrative dispute cannot be resolved by the government, it will be resolved by the court (ultimum remedium).

Thus, Article 72 of the PTUN Law regulates the issue of in absentia. This differs from default decisions generally recognized in district courts, where, based on Article 125 of the HIR in conjunction with Supreme Court Circular Letter Number 9 of 1964, a judge may issue a default decision after properly summoning the defendant again when he or she is absent. This means that there is no need for a proof process in the default decision in the district court. Therefore, it can be said that when the submission of the onrechtmatige overheidsdaad lawsuit has moved to the PTUN, then the default decision is not recognized. In its development, besides the absence of a default decision, based on Article 1 number 37 of Law No. 9 of 2004 which removed the provisions of Article 118 of the PTUN Law which was later confirmed by the Constitutional Court in Decision Number 122 / PUU-VII / 2009 which rejected the addition of derden verzet in the procedural law in the PTUN, now in the procedural law in the PTUN there is no longer a derden verzet recognized. Based on this, it is clear that there is no derden verzet for the onrechtmatige overheidsdaad lawsuit after Law No. 30 of 2014. Thus, now in the procedural law in the PTUN there is no longer a derden verzet recognized. Based on this, it is clear that there is no derden verzet against the lawsuit onrechtmatige overheidsdaad after Law No. 30 of 2014.

Repositioning Compensation as a Basic Right in the Administrative System

Repositioning the right to compensation as a fundamental right within the state administrative law system is part of an effort to reconstruct the Indonesian

legal state paradigm, oriented toward respecting and fulfilling citizens' rights. Within the framework of a modern legal state, compensation cannot be viewed solely as a corrective instrument for unlawful administrative actions, but rather must be positioned as a concrete manifestation of the legal protection and substantive justice inherent in citizens from the outset.

According to Jimly Asshiddiqie, the right to legal protection, including compensation, is part of the "constitutional rights" inherent in the concept of the rule of law (rechtsstaat), not merely a creation of positive legislation. Therefore, when the government takes action that violates administrative law, citizens not only have the right to sue, but are entitled to full compensation, both material and immaterial.

In the Indonesian legal system, the main problem lies in the legal status of administrative compensation, which is still considered a secondary right, rather than a primary right. This is reflected in various laws and regulations, such as Law Number 30 of 2014 concerning State Administration, which does not explicitly guarantee compensation as a stand-alone right, but rather as a consequence of the annulment of a legally flawed administrative decision. This differs from the legal systems in Continental European countries such as the Netherlands and Germany, which explicitly give primary importance to the right to administrative compensation.

The absence of normative affirmation of compensation as a fundamental right has created a gap of legal uncertainty in government administration practices. On the one hand, citizens suffer losses due to arbitrary actions by officials; on the other, there is no definite procedural and substantive guarantee for obtaining redress. This is where the urgency of repositioning compensation as a fundamental right becomes apparent, as outlined by Satya Arinanto, who argues that a democratic state under the rule of law must place the guarantee of compensation as part of the state's obligation to protect human dignity.

Research by Dian Puji N. Simatupang in the Journal of Law and Development states that the formal normative approach used in Indonesian administrative regulations has not been able to provide a just framework for granting administrative compensation. The right to compensation still depends on successfully proving procedural or substantive errors by administrative officials, which in practice are difficult for injured citizens to adequately prove.

Furthermore, a study conducted by Anggara in the RechtsVinding Journal proposed that a change in the administrative law approach is necessary from a legalistic-responsive model to a model based on substantive justice. In this model, every violation of a citizen's rights by state administrative action should automatically give rise to the right to compensation, without having to go through a burden of proof that is burdensome for the plaintiff. This is in line with the spirit of human rights protection as formulated in Article 28H paragraph (4) of the 1945 Constitution.

This repositioning also has a philosophical basis in Aristotle's teachings of distributive justice, which requires the state to distribute benefits and burdens proportionally to all citizens. Distributive justice, in Aristotle's view, rests on the idea that each individual should receive a share commensurate with their

respective contributions and needs in the community. In the context of the modern state, this principle is interpreted as the state's responsibility to ensure that its policies and administrative actions do not create systemic inequality or injustice, especially for citizens directly affected by government decisions or actions.

When the state, through administrative officials or specific policies, causes real harm to individuals or groups in society, distributive justice demands that the state be present to restore social and legal balance through compensation. Compensation in this framework is not merely a legal consequence or an economic substitute, but rather a form of state recognition of administrative errors that have disrupted justice in the relationship between citizens and the state. In this context, the right to compensation is not merely a protection of individual legal interests, but also part of the social contract between the state and its citizens.

This view is reinforced by Hans Kelsen who stated that a true state of law must provide a corrective mechanism for any violation of the law committed by public authorities, so that the law continues to function as a guardian of order and social justice. Likewise, John Rawls in his theory of justice emphasizes the importance of fair treatment by state institutions towards every citizen, especially those who experience losses due to disproportionate public policies.

In the Indonesian legal system, the principle of distributive justice has also become an integral part of the values of Pancasila and the constitution. Article 28D paragraph (1) of the 1945 Constitution affirms that everyone has the right to recognition, guarantees, protection, and certainty of fair law, as well as equal treatment before the law. If the state fails to fulfill this principle, especially in the administrative realm, then citizens who are harmed have the moral and legal right to receive adequate compensation.

Systematically, the first step in this repositioning is to explicitly affirm the right to compensation in law as a constitutional right of citizens. Second, establish an objective and accountable compensation assessment mechanism, both material and immaterial. Third, strengthen the PTUN institution by assigning it the authority to impose compensation amounts without requiring a separate lawsuit process. Fourth, ensure a dedicated budget to guarantee the implementation of the right to compensation so that court decisions can be immediately enforced.

By establishing the right to compensation as a fundamental right, the state both normatively and practically fully implements the principle of state liability. This also lays the foundation for building responsive, just, and humane administrative justice.

Reformulation of Regulations and Strengthening of the Authority of the PTUN

Within the framework of a state based on law that upholds the principles of legality, justice, and the protection of citizens' rights, the State Administrative Court (PTUN) plays a central role in controlling the legality of government administrative actions. However, to date, existing regulations have not fully provided space for the PTUN to carry out its corrective function

comprehensively, particularly in terms of providing effective compensation. The provisions of Article 97 paragraph (9) of Law No. 5 of 1986, as amended by Law No. 51 of 2009, in principle, open up the possibility of compensation, but do not regulate in detail the mechanisms, criteria, and basis for calculating administrative compensation. Furthermore, PERMA No. 2 of 2019, which is intended to fill the legal gap, is instead administrative-procedural in nature and limited to cases of unlawful detainment or factual government actions. This demonstrates the weak normative capacity of the PTUN to issue restorative compensation decisions, even though, in the theory of state liability, the authority to restore the legal standing of citizens is one of the main pillars of a modern state based on law. Therefore, regulatory reform is needed that not only strengthens the PTUN's authority in deciding compensation cases, but also expands the scope and types of cases that can be subject to administrative remedies. This reformulation must be accompanied by strengthening the PTUN's institutional legal framework so that it can issue binding restitutive and compensatory decisions, not just declarative ones. A study by Hasanuddin et al. shows that Indonesian administrative courts do not yet have adequate remedial power to resolve public disputes based on violations of citizens' rights by government officials. Furthermore, the research results of Luh Made Lestari underscore the importance of recognizing the right to compensation in state administrative disputes as part of substantive legal protection for citizens in modern administrative justice practices.

Reform of administrative justice institutions cannot be separated from the need to strengthen the effectiveness of PTUN decisions, particularly in providing legal remedies in the form of compensation. Currently, many PTUN decisions are declarative and do not provide concrete redress for losses suffered by citizens due to arbitrary actions by officials or government agencies. This creates a gap between procedural justice and substantive justice, which should be integral to the practice of a modern rule of law. As Muchamad Ali Safa'at argued, the legal justice that should be provided by the state does not stop at the annulment of administrative decisions, but also at the restoration of the rights and interests that have been significantly harmed.

On the other hand, current regulations demonstrate ambiguity between civil and state administrative jurisdictions regarding claims for damages for unlawful acts by the government. As is well known, Article 1365 of the Civil Code remains the primary basis for claims for damages for government actions, despite its general tort nature, which does not fully align with the characteristics of public legal relations. Therefore, the demand to reformulate the PTUN procedural legal framework into a remedial justice system is inevitable. This perspective is also emphasized in Ninik Purwanti's study, which states that PTUN procedural law needs to be redesigned to accommodate aspects of the state's public responsibility more progressively.

As a consequence of this approach, the PTUN's authority structure needs to be expanded to include not only overturning TUN decisions but also imposing administrative compensation in the form of restitutio in integrum. In this context, administrative law should not be merely repressive but also corrective, namely

restoring the legal condition of citizens to the way it was before the violation occurred. According to Denny Indrayana, the ideal administrative court is one that has an empowering function, not just a reviewing function, regarding government actions. This means that the PTUN needs to be given the authority to issue recovery decisions in concrete forms such as compensation, rehabilitation, or administrative restitution.

Beyond the authority aspect, it's also important to review the design of standing and legal interest in the PTUN procedural law. To date, the concept of "direct interest," as required by the PTUN Law, has often limited citizens' access to administrative compensation. Yet, in a modern state governed by the rule of law, restricting access to justice contradicts the principle of non-discrimination in protecting human rights. Yuliandri's study shows that the provisions regarding legal standing in the PTUN remain highly conservative and biased toward victims of administrative cases.

Internationally, several countries, such as the Netherlands and Germany, have granted administrative courts broad authority to not only overturn government decisions but also order positive action, including the payment of compensation. This indicates that administrative compensation has become a recognized part of the judicial function. Indonesia, as a country that upholds the principle of the rule of law, must adopt this standard in reformulating its judicial regulations. Kurnia Warman stated that the state's failure to provide an administrative compensation mechanism violates the right to justice guaranteed by the constitution.

Efforts to reform the PTUN regulations must also consider the existence of PERMA No. 2 of 2019 as a judicial instrument that is still limited. While this PERMA represents a progressive step in opening the door to resolving factual government actions (rather than written decisions), its scope only covers certain cases such as unlawful arrest and detention. Yet many other government actions, such as administrative negligence, neglect of legal obligations, and procedural violations, directly impact citizens' losses. A study conducted by Agustina Pringgodigdo concluded that PERMA does not yet reflect comprehensive protection of citizens' rights to compensation.

Within the framework of strengthening the PTUN's authority, the role of administrative judges must also be enhanced through an activist judge approach. To date, the judge's role has often been limited to annulling administrative decisions without exploring the actual losses experienced by the plaintiff. PTUN judges need to be given specific training and guidance in examining evidence of losses, including immaterial losses and psychosocial impacts. According to Lestari Wulandari, Indonesian state administrative court practices remain very rigid in assessing the legal consequences of unlawful government actions, particularly in the immaterial dimension.

Therefore, regulatory reformulation must include three main aspects: (1) revision of the PTUN Law and Law 30/2014 to explicitly recognize the PTUN's authority to impose compensation, (2) the formation of implementing regulations that determine the criteria and mechanisms for assessing administrative compensation, and (3) strengthening the institutional capacity of

the PTUN, both in terms of human resources, technical guidelines, and an adaptive evidentiary system for complex types of administrative losses. This idea is in line with the direction of national legal development that positions the judiciary as an instrument for restoring rights, not merely a formal forum for resolution.

CONCLUSIONS AND RECOMMENDATIONS

The ideal concept for regulating compensation for unlawful government actions should place compensation as a primary right, expressly guaranteed within the administrative law system. This concept should encompass: (a) legal certainty through detailed and accessible legal norms, including regarding the types of losses and filing procedures; (b) substantive justice that considers material and immaterial losses proportionally; and (c) legal benefits realized through a simple, fast, and low-cost settlement process. A model legal system that can be used as a reference is the Dutch legal system, in which administrative judges have full authority to hear and issue compensation decisions directly in a single trial. This dissertation proposes a reformulation of the administrative law system in Indonesia to be more integrated, holistic, and responsive to the needs of victims, through an approach based on the principles of the rule of law, humanitarian values, and state responsibility.

ADVANCED RESEARCH

Citizens and legal counsel need to improve their advocacy capacity in developing legal arguments about losses arising from government actions, including calculating immaterial losses and integrating litigation strategies between administrative and civil channels. Future legal researchers are also advised to explore alternative, more restorative models for administrative dispute resolution, including the use of ombudsmen, administrative arbitration, or mediation within a participatory justice framework.

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