

General Principles of Good Governance in Administrative Court Decision Regarding Request for Review of Abuse of Authority

Xaviera Qatrunnada Djana Sudjati[✉] and Dewi Cahyandari

Faculty of Law, Brawijaya University, Malang - Indonesia

Abstract

The administrative court is given the authority to review the request for review of abuse of authority according to the legislation and general principles of good governance as the two touchstones. This review may serve as a testing benchmark to discuss the issue of the request over the abuse of authority as requested by government officials, recalling that abuse of authority has several criteria to proscribe and regulate in the general principles of good governance. The research problems involved the criteria and the bases for determining the type of abuse of authority in the request over the abuse of authority. This research employed a normative method, statutory, and historical approaches. The research results concluded that the Decision 2/P/PW/2017/PTUN.JBI holds the relevance to the current legislation, public interest, and the absence of state losses, while the Decision 09/P/PW/2018/PTUN.Sby only refers to the current legislation in terms of its relevance. Although the general principles of good governance refer to the administrative court as the touchstone, this touchstone is not optimally used in the request for review of abuse of authority.

Keywords: AUPB (general principles of good governance); Administrative Court; request for review of abuse of authority.

Abstrak

PTUN diberikan kewenangan untuk menguji permohonan pengujian penyalahgunaan wewenang dengan dua batu uji yaitu Peraturan Perundang-Undangan dan AUPB. Hal yang menjadi penting untuk ditinjau sehingga dapat digunakan sebagai pisau asah dalam membahas permasalahan yang diangkat pada permohonan pengujian penyalahgunaan wewenang yang diajukan oleh pejabat pemerintah, mengingat penyalahgunaan wewenang memiliki macam jenis larangan dan pengaturan AUPB yang bermacam-macam. Rumusan masalah yaitu kriteria dan dasar penentuan jenis penyalahgunaan wewenang pada permohonan pengujian penyalahgunaan wewenang. Penelitian ini merupakan penelitian normatif dengan pendekatan perundang – undangan dan pendekatan sejarah. Dari analisis disimpulkan putusan 2/P/PW/2017/PTUN.JBI kriteria dan dasar pengujian-nya ialah kesesuaian dengan peraturan perundang – undangan yang berlaku, kepentingan umum, dan ada tidaknya kerugian negara, pada putusan 09/P/PW/2018/PTUN.Sby kriteria dan dasar pengujian-nya ialah kesesuaian dengan peraturan perundang – undangan yang berlaku. Meskipun AUPB batu uji PTUN namun penggunaannya pada permohonan pengujian penyalahgunaan wewenang masih belum digunakan secara maksimal.

Kata kunci: AUPB; Permohonan Pengujian Penyalahgunaan Wewenang; PTUN.

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Introduction

The rising demand of the citizens to the country for welfare represents the existence of the welfare state. The concept of a welfare state (Gautama, 1983) not only puts the state as a night watcher (*nachtwakerstaat*), but it also serves the public interest.

¹ ✉Corresponding Author: xavieraqatrunnada@gmail.com

Following this situation, administrative law (Hadjon, 2012) transforms into an instrument of the state of law that sets democracy and human rights protection as a priority. The state no longer maintains law and order (Freidman, 1971) but it has blended into all aspects of life to guarantee the welfare where the state serves as a provider, regulator, entrepreneur, or umpire. The existence of Law Number 30 of 2014 concerning Government Administration (henceforth referred to as UUAP) gives the government proper guidelines set forth in Article 1 point 2 of UUAP stating that the government holds the governmental function to set a regulation, give services, develop, empower, and protect.

Recalling that the purview of administrative law serves as the embodiment of legal functions in modern society, several legislative products in administrative domains have experienced significant development. Numerous legislative products within administrative purview were illustrated by Crince Le Roy (Soemantri, 2014), a professor in Administrative Law as a phenomenon, and he elaborated several factors affecting the progress of administrative law in the Netherlands:

- a. Gradual expansion of governmental tasks or the tasks held by those with power, parallel to the industrial revolution;
- b. The replacement of manpower by machines due to the industrial revolution, igniting social disputes that require the capacity of the government as a night watcher (*nachtwakerstaat*) to settle the issues and transform the state into a welfare state (*welvaarsstaat*).

The dynamic progress of administrative law, the initiation taken by the government to allow the drafting of UUAP serving as a motor operating the governance, and relevant topics regarding the abuse of authority have been intriguing discourses. However, it is not deemed to be novel when lots of experts have often discussed authority as the heart at which studies on administrative law are centralized. Authority as a legitimate source of government officials in running their tasks is getting more thought-provoking when authority and the abuse of authority are seen from a normative perspective. Authority lies in the hands of institutions and/or government officials or other government organizations, allowing decision-making and/or action to take place in a governmental setting. All government officials are proscribed to abuse authority, and the restrictions constitute the following acts:

- a. acting ultra vires;
- b. mixing authorities; and/or
- c. arbitrariness.

The chance for the law to qualify the type of abuse of authority could serve as a breakthrough. The provisions regarding the restrictions above are not only addressed to UUAP but also other laws governing the abuse of authority such as Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Corruption Eradication. UUAP delegates authority to the internal supervisory government apparatus (henceforth referred to as APIP) to ensure no abuse of authority takes place. The establishment of APIP is intended the same way as in the establishment of Inspectorate General (henceforth

referred to as Irjen) existing in every governmental institution. Article 17, Article 18, Article 19 of Presidential Regulation Number 7 of 2015 concerning State Ministerial Organizations imply that Inspectorate General represents a supervisory body in a ministerial scope responsible to conduct internal supervision within the scope of ministry under a minister.

The tasks, functions, and authority the Inspectorate General possesses resemble the authority possessed by APIP as governed in Article 20 of UUAP, one of which is to supervise government officials. However, Inspectorate General has more proportion of authority to conduct full supervision, while APIP only conducts supervision over government officials closely related to the likelihood of abuse of authority.

The existence of UUAP is intended to encourage the government to consistently comply with general principles of good governance (henceforth referred to as AUPB) or *Algemene Beginselen van Behoorlijk Bestuur* and legislation. In the considering part of the UUAP, the drafting of UUAP aimed to provide legal protection for parties involved in governance processes, either the members of the public as affected parties or the government running the governance.

Due to the above view, the state needs to comply with certain requirements to execute authority. On one hand, actions taken by the government must abide by the law and embrace the rights of the member of the public. On the other hand, it is not deemed to be appropriate if citizens keep blaming the government unless it is based on valid argumentation and the mechanism of law that is up to the standard. In this case, supervision and review over governance are conducted by state institutions and administrative court (henceforth referred to as PTUN) that is independent (general definition of UUAP).

PTUN was further granted authority to review the request for review concerning abuse of authority with legislation and AUPB serving as the touchstones for the review. This case refers to the criteria and the bases of determining the type of abuse of authority in the request for the review as requested by government officials, recalling that the abuse of authority is bound to restrictions as mentioned earlier and there are varied regulatory provisions of the AUPB.

Research Problems

Departing from the above issue, this research investigates what are the criteria and bases of determining the type of abuse of authority in the request for review of abuse of authority?

Research Methods

This research employed a normative method, where legislation was studied and further analyzed to provide solutions to the issue concerned. The statutory approach was performed by observing all related laws and regulations. The primary data involved legislation and the secondary data were obtained from books, papers, articles, and other

scientific sources, while tertiary data were from the Internet and law dictionary. All the data were further analyzed by comparing judicial decisions.

Discussion

Authority serves as a substantive basis possessed by government officials, allowing them to perform their tasks. *Kewenangan* in Bahasa, translated as power or authority in English, comes from the word “*wenang*” (Cahyandari, 2017) meaning right and authority to act, make decisions, order, delegate responsibility to others. The authority based on which this state runs its tasks should refer to valid authority. Authority is accepted if it abides by law or legislation. However, the law does not always represent legislation, and what exists outside legislation is the law or *algemen rechtbeginselen*/legal principles, *administratief rechtbeginselen*/the principles of administrative law, general principles of governance, or tradition living in society.

The authority (Stroink and Steenbeek, 1985) was further adopted into the formulation of the academic draft on UUAP, implying that authority could be gained from both attribution and delegation. Authority (Sudarsono, 2013) could be viewed from three aspects: the source or basis, how it is obtained, and the execution. The first aspect refers to “authority is legitimate power”. Authority could be obtained from attribution, delegation, and mandate. Delegation of authority through attribution represents new governmental authority according to legislation. Authority came from administrative officials of the state due to the existence of regulatory provisions in legislation drafted by both the government and representatives. The competence in arranging authority is categorized into two that comply with the legislation:

- a. Original legislator represented by People’s Consultative Assembly as a constitutional drafter, government along with the House of Representatives (DPR) in drafting laws and local governments along with Regional House of Representatives (DPRD) in drafting regional regulations.
- b. Delegated legislator represented by President complying with the provisions of a law that holds the authority to issue government regulation representing elaboration of law that sets forth the production of authority for state administrative institutions positioned under it.

Delegating authority may involve the transfer of authority that leads to a legal consequence where no new authority is made but only to transfer pre-existing authority. The party delegated with authority bears the responsibility to execute the delegated authority. Unlike the authority obtained from the delegation, in the authority resulting from a mandate, the authority bearer does not have any responsibility to execute the authority given, and the responsibility for the authority is within the responsibility of the party giving the mandate.

Authority delegation through UUAP results in new authority transfer to government officials to execute government tasks as the rights and responsibility to run the state. The action taken by the government, or dubbed as *beestuurshandling*, is performed by govern-

ment organs (*beestursorgaan*) to run government function (*beestursfunctie*). Not all action taken by the government should be categorized as legal acts, but government action categorized as a legal act (Sadjiono, 2001) should meet the following elements:

1. "An action done by government apparatus with his/her position with authority or as a government organ (*bestuursorgaan*)
2. An action only taken to run the function of the government (*bestuursfunctie*)
3. An action aimed to give rise to legal consequences (*rechtsgevolgen*) in administrative law
4. An action aimed to guarantee the public interest
5. An action taken according to the government authority
6. An action taken for a certain legal purpose".

The government action categorized as a legal action according to the academic draft on UUAP is divided into five:

1. Administrative Court Decision (henceforth referred to as KTUN)

This government's action constitutes the following elements:

- a. "written decision constituting factual actions
- b. The Decision issued by a body and/or an official of state administration within the executive, legislative, and judicative scopes
- c. According to legislative provisions and AUPB.
- d. The Action that is final in a wider scope
- e. Decision tending to give rise to legal consequences; and/or
- f. The decision set for the members of the public".

KTUN is a concrete legislative product of administrative law with its function to elaborate the government's actions. KTUN is legally binding for all individuals committing violations. KTUN could also serve as the basis for a lawsuit filed to PTUN if KTUN is found harming an individual or collective legal subjects such as the members of the public or particular groups.

KTUN is a legislative product issued by a body/government official that is arbitrary, rendering all processes ranging from administrative provisions to KTUN set by the legislation. the KTUN could be delivered in a written or electronic form as a digital document or orally. However, KTUN is generally in a written form, and, thus, KTUN could provide assertive legal protection for KTUN holders or the members of the public. Under certain circumstances, a government body/official may issue the KTUN with discretion, and "this decision is made by a government official to solve concrete problems faced in the governance in terms of the legislation that gives choices, does not regulate, is not complete or unclear, and/or when the governance gets stagnant". KTUN with discretion could be issued if this issuance is intended to:

- a. "expedite government administration
- b. Fill legal loopholes
- c. Solve the government stagnancy under certain circumstances for public interest"

Decision issuance with a discretion must:

- a. be pertinent to the discretion
- b. comply with the provisions of the legislation
- c. be pertinent to AUPB
- d. be based on objective grounds
- e. not spark conflict of interest; and
- f. be performed with good faith

The KTUN decision on the basis of the discretion set forth in Article 29 of UUAP gives authority to government officials and may not share any knowledge to the members of the public related to the Decision and/or action that causes a loss for not more than 10 working days from the time the decision is made and/or the action is taken”

2. Concrete action

The academic draft of UUAP defines a concrete action as “An instrument” emphasized on factual causes of an action that do not leave any impacts on the legal standing of a citizen (a simple action taken by an authorized party)”.

This simple action must be relevant to the legislation so that it will lead to legitimate legal consequences before the law. If a citizen is found suffering from any concrete action taken by a government body/official and if it involves material and immaterial losses the citizen has to take, the citizen could file a petition to civil court.

3. Discretion

An action taken by the government regarding the freedom of the government body/official in making decisions according to the UUAP academic draft can be understood as follows: “The authority of government administration officials to have a freedom to decide is due to the condition where specific matters are not governed in the existing law”.

The scope of discretion is slightly different from that of the abuse of authority. Consequently, this UUAP regulates the scope of the discretion to avert any likelihood of abuse of authority:

- a. The government body/official, in terms of the use of discretion, complies with the provisions in the legislation.
- b. The government body/official, in terms of the use of discretion, must not act ultra vires, contravening the legislation.
- c. The government body/official, in terms of the use of discretion, must not contravene the objectives of the authority as set by the legislation.
- d. The government body/official, in terms of the use of discretion, must not contravene AUPB.
- e. The government body/official, in terms of the use of discretion, must not be terminated by an unauthorized official according to the legislation.

4. Government Institutional Cooperation

State administration may not run only under one body or institution, and, therefore, it needs cooperation that supplements another institution for more efficient and effective governance of the state. The planning and coordination between institutions require

the role in policy-making that constitutes the recommendation and notions given by other institutions within a particular time limit.

5. Supervision of Government Administration

The action taken by the government, according to the UUAP academic draft, represents an absolute action aiming to ensure that all administrative measures are given up to existing standards, norms, and criteria and according to legal provisions. This supervision is generally performed by related institutions involving both the citizens and the government. The government's actions as mentioned serve as the subject where the aspect of legality is met. Legality, according to the academic draft, is defined as "the fundamental to test whether an action taken by a state administrative official complies with the provisions of the existing legislation".

The implementation of the legality principle as in UUAP is apparent in the legal protection of dispute resolution over an arising conflict between government officials and civilians. The disputes, according to the academic draft, refer to conflicts incited by "maladministration and abuse of authority". This legal protection is given to an individual or a civilian and a government official in the form of a lawsuit a citizen could file to an administrative court, while the government administrative officials deserve legal protection that authorizes them to submit a request for a review to test whether an action taken by the government is deemed to be the abuse of authority. This protection is intended to smooth the state administration amidst the conflicts in compliance with existing laws. The legal protection provided for government officials is outlined in Article 21 Paragraph 2 of UUAP: "A government body/official could file a request to a court to see whether the abuse of authority takes place in the decision and /or an action."

Petition and request comply with the Law concerning Administrative Court based on which the request for the review of the abuse of authority in this context could be performed attributively, especially referring to Article 21 paragraph (2). With this, legal protection can be given to ensure that the state administration runs appropriately. The court authorized to adjudicate the case concerning the review of the abuse of authority is elaborated in Article 21 paragraph (1) of UUAP implying that administrative courts are authorized to accept, review, and decide whether a government official has committed the abuse of authority."

The judges of administrative courts are authorized to handle the review of the abuse of authority as set forth in Article 21 paragraph (1) of UUAP stating "courts are authorized to accept, review, and decide whether a government official has committed the abuse of authority". The right to review is outlined in Article 21 paragraph (1) of UUAP stating "a government body/official could file a request to the court to see whether the abuse of authority has taken in the Decision and/or Action". The judges of administrative courts must base their decisions over the abuse of authority on legal grounds, and this matter is governed in Article 16 letter d of Supreme Court Regulation Number 4 of 2015 concerning Litigative Guidelines of the Review of the Abuse of authority (henceforth referred to as

PERMA 4/2015) mentioning ‘the judges’ decisions regarding the request to see whether the abuse of authority takes place as intended in Article 17, Article 18, Article 19 and/or Article 24 of Law Number 30 of 2014”.

This study is focused on the decisions of administrative courts sourced from the directory of Supreme Court Decisions. The decisions selected contain the indictment “granting the request of the petitioner” and “declaring that the Decision and/or Action of a government official does not represent the abuse of authority”. This scope only allows this study to compare the existing judges’ decisions. This study serves as comparative criteria and the bases for the administrative courts’ judges to review the abuse of authority committed by officials of state administration. The comparative criteria and the bases according to which the judges of the state administration decide a case can be seen in the legal consideration in a decision.

The decisions referred to in this study were sourced from 2 different administrative courts: the Administrative Court of Jambi and the Administrative Court of Surabaya. This study conducted a comparison by analyzing existing legal materials as presented in Table 1.

Table 1. Analysis of Decisions over Review of the Abuse of authority

| | PTUN Jambi 2/P/PW/2017/PTUN.JBI | PTUN SBY 09/PW/2018/PTUN.SBY |
|----------------|---|---|
| Petitioner | Ir. Sarjono, Head of Crop, Horticulture, Food Security Agency of the Regency of Tebo, the Province of Jambi | Drs. Syamsul Hadi, Ak, a civil servant |
| Indictment | <ol style="list-style-type: none"> granting the entire request declaring the discretion of the petitioner extending the contract limit by drafting Addendum I of Contract Letter on an extended limit to allow the continuation of retention basin construction in Sungai Abang village, the District VII of Koto, the Regency of Tebo Number: 521/263/SP/IV/DPT/2015, dated 21 December 2015. The payment method did not indicate any sign of abuse of authority. Stating discretion of the petitioner making the Office Memo Number 521.21/247/IV/DPTP/2016, dated 16 May 2016 regarding review of the retention basin construction taking place in Sungai Abang village of budget year 2015. The follow-up did not indicate any sign of the abuse of authority. Court process fee of IDR. 180,500 was left to the responsibility of the petitioner | <ol style="list-style-type: none"> granting the request of the petitioner declaring Inspector’s Decree of the Regency of Bojonegoro Number 80013.a/201.412/2016 concerning The Amendment to Inspector’s Decree Number 800/13/201.412/2016 concerning Fee charged on Investigation Process/Supervision of the Governance of the Regency of Bojonegoro of budget year 2016, dated 29 January 2016, indicating no sign of abuse of authority. The cost of IDR 410,000 raised following the petition is left to the responsibility of the state. |
| | Legal Consideration | |
| Request Object | <ol style="list-style-type: none"> Addendum I of Contract Letter on extended contract limit of retention basin construction taking place in Sungai Abang of the District VII of Koto, the Regency of Tebo Number: 521/263/SP/IV/DPT/2015 along with its legal con- | Inspector’s Decree of the Regency of Bojonegoro Number: 800/13.a/201.412/2016 concerning The Amendment to Inspector’s Decree of the Regency of Bojonegoro Nomor: 800/13/201.412/2016 concerning Fee charged on Investigation |

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| | <p>sequence (see evidence P-1, further referred to as request object 1)</p> <p>2. The Office Memo Number 521.21/247/IV/DPTP/2016, dated 16 May 2016 regarding the request for the review of retention basin construction in Sungai Abang village, the District VII of Koto, the Regency of Tebo of the budget year 2015 and its follow-up (see evidence P-2, further referred to as request object 2 in this Decision)</p> | <p>Process/Supervision of the Governance of the Regency of Bojonegoro of Budget Year 2016 dated 29 January 2016.</p> |
| Procedural Requirement | | |
| <p>Results of Internal Supervision by the Government</p> | <p>Report on Special Review Number: 700/69/B.1/ITKAB/2016, dated 23 August 2016 on request for the review of retention basin construction in Sungai Abang village of Budget Year 2015 written on Office Memo of a Regent of the Regency of Tebo from the Head of Crop Agency of the Regency of Tebo Number: 521.21/247/IV/DPT/2016, dated 16 May 2016 (see evidence P-9)</p> | <p>Report on audit results for particular purposes. Budget management of the Inspectorate of the Regency of Bojonegoro of 2016 Number: LATT-1019/PW 13/5/2017, dated 11 December 2017.</p> |
| <p>Whether criminal proceedings took place</p> | <p>Criminal proceedings took place, proven by Order of Inquiry Number: Sprin.Sidik/58.1/VII/2016, Reskrim, dated 12 July 2016 (see p-28). Following the Decision concerning Pre-trial Number 1/Pid/Pra/2017/PN.Mrt, dated 27 November 2017, the judges declared that all the proceedings were discontinued and all the process was deemed to be illegitimate. The judges reckoned no criminal proceedings took place on behalf of the petitioner.</p> | <p>No criminal proceedings</p> |
| <p>The view of the judges regarding whether the sign of the abuse of authority was apparent as intended in Articles 17-19 and 24 of UUAP</p> | <p style="text-align: center;">Request Object I</p> <p>The judge viewed that the action taken by the a quo petitioner who performed discretion regarding the retention basin construction in Sungai Abang village by issuing Addendum I of Contract Letter as a request object 1 regarding the extended time limit for the construction of the retention basin in Sungai Abang village of the District VII of Koto, the Regency of Tebo Number 521/263/SP/IV/DPT/2015 dated 21 December 2015 and the extension of payment period were relevant to Article 22 paragraph 2 letter d of UUAP, and there were no signs of the abuse of authority as relevant to Article 17 and 18 of UUAP. The money was returned to CV. Persada Antar Nusa with an amount equal to the value of the construction had not been completed, an unpaid fine of delay as in line with the statement given by an expert witness Prof. Dr. Sukanto Satoto, S.H., M.H, and Prof. Dr. Bahder Johan Nasution, S.H., M.Hum. The panel of judges viewed there was no loss caused to the state following the discretion performed by the a quo petitioner.</p> | <p>The panel of judges concluded that the substance as set forth in the Inspector's Decree of the Regency of Bojonegoro Number 800/13.a/201.412/2016, dated 29 January 2016, was relevant to the amount set in Regional Budget (APBD) of the Regency of Bojonegoro of Budget Year 2016, as outlined in Budget for Work Unit of Regional Instruments (DPA SKPD) of Budget Year 2016, revised in the document of the Revision of Budget for Work Unit of Regional Instruments (DPPA SKPD) of Budget Year 2016</p> |

Request Object II

The panel of judges viewed that the fulfilment of the payment to the contract of the construction was performed according to the project that had been performed by the provider/executor. However, in line with the legal consideration mentioned above, the panel of judges viewed that the payment for the project performed had been made, which represented 80% of the construction. The judges also viewed that this project would fail to be completed on time and to no avail since the retention basin would not be accessible for the locals. From this perspective, the panel of judges agreed that what was performed by the petitioner requesting the payment for all the job done equal to 60% and added to the 30% down payment made earlier and maintenance fee of 5% and fine due to the delay of the construction represents the discretion that was aimed to encourage on-time completion of the construction of the retention basin for the sake of the people and this retention basin has been proven useful for the locals (see evidence P-25 = relevant to the testimony given by Eko Sriyanto and Mohammad Sholeh as witnesses who frequently use the retention basin to water their paddy fields)

The opinions of the panel of judges regarding the main issues of the request

The extended time limit of project/goods and services procurement.

1. the judges viewed that the provision of Article 87 paragraph (1) of Presidential Regulation Number 54/2010 and Annex III of Presidential Regulation Number 54/2010: Guidelines of carrying out a Tender to select construction work provider Section C. Contract Agreement and Implementation, point 2 letter m allowed the extension of contract time limit to take place regarding the project preceded by studies or research.
2. The panel of judges considered that the action taken by the petitioner as PPK altering the content of the contract letter by extending time limit of the project was legitimate according to Article 87 paragraph (1) letter d of Presidential Regulation Number 54/2010 regarding the schedule alteration of the implementation and Annex III of Presidential Regulation Number 54/2010: Guidelines of Carrying Out a Tender to select Construction Work Provider in Section C. Contract Agreement and Implementation, Point 2 letter m, and this contract time limit extension exceeded budget year, as in line with

The panel of judges concluded that the substance contained in the Inspector's Decree of the Regency of Bojonegoro Number 800/13.a/201.412/2016, dated 29 January 2016 was relevant to the amount set forth in Regional Budget (APBD) of the Regency of Bojonegoro of Budget Year 2016, as outlined in the document of DPA SKPD of Budget Year 2016 and was revised in the document of DPPA SKPD of Budget Year 2016

the statement of an expert witness Prof. Dr. Sukamto Satoto, S.H., M.H. and Prof. Dr. Bahder Johan Nasution, S.H., M.Hum., and the panel of judges viewed that the extension of the contract time limit/contract letter exceeding budget year represents a form of discretion performed by a petitioner that prioritized the public interest, especially for the residents of Sungai Abang village longing for the construction of the retention basin (confirmed by the statement of Eko Sriyanto and Mohammad Sholeh) and the panel of judges viewed that the action taken by the petitioner to extend the contract by conducting surveys earlier was deemed to be appropriate and accurate.

The payment of the construction of retention basin under extended contract:

1. the panel of judges viewed that the fulfilment of the payment of the construction was made based on the work completed by the provider/executor. However, the panel of judges viewed that the payment was made for 80% of the construction which would not be completed and to no avail since the retention basin would not be open for use by the locals.
2. The panel of judges viewed that the construction would be to no avail since it would not be completed on time and not accessible yet for the locals. With this basis, the panel of judges viewed that the action taken by the petitioner expecting the full payment of the work equal to 60% added to the 30% down payment paid earlier, 5% of maintenance fee, and fine due to delay of the construction work represents the discretion aiming to guarantee that the construction of retention basin could be completed for the sake of the locals and this retention basin is proven useful for the residents in the village (see evidence P-25 = in line with the statement given by Eko Sriyanto and Mohammad Sholeh as witnesses using the facility to water their paddy fields).

This discretion is in line with the statement given by Prof. Dr. Sukamto Satoto, S.H., M.H., and Prof. Dr. Bahder Johan Nasution, S.H., M.Hum. the panel of judges viewed that the action taken by a quo petitioner had to be facilitated as long as it was accountable and because of the benefit the locals could perceive when this construction was completed. Without the

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| | action taken by the a quo petitioner, it would have caused losses to the state since neglected construction would have been to no avail, while Article 89 paragraph 2a of Presidential Regulation Number 4 of 2015 concerning the Fourth Amendment to Presidential Regulation number 54 of 2010 concerning Goods and Services Procurement implies that the payment made for this construction was relevant to the work achieved/completed. | |
| Summary of all matters considered | The panel of judges concluded and believed that no abuse of authority was committed by the a quo petitioner as intended in Article 17 and Article 18 of UUAP | The panel of judges viewed that, pursuant to the provision of Article 17 and 18 of Law Number 30 of 2014, there was no indication showing any abuse of authority committed by the petitioner in issuing the Decree of Inspector of the Regency of Bojonegoro Number 800/13.a/201.412/2016 concerning the Amendment to Inspector's Decree Number 800/13/201.412/2016 concerning Fee charged on Investigation Process/Supervision of the Governance of the Regency of Bojonegoro of Budget Year 2016, dated 29 January 2016. Thus, it was declared that the request filed by the petition was granted. |

Source: Primary data, processed by the author

From the Table above, Decision Number 2/P/PW/2017/PTUN.JBI referred to the view of the panel of judges towards the main request in setting the criteria and the bases of the type of abuse of authority regarding the request of the review of the case committed by the state administration officials to see whether there was an indication of the abuse of authority as intended in Article 17, 18, 19, and or Article 24 of UUAP. The table above shows that Addendum I of the contract of the Regency of Tebo Number 521/263/SP/IV/DPT/2015 and the Office Memo Number 521.21/247/IV/DPTP/2016 served as the request object. This request object was petitioned for the review of the abuse of authority following specific investigation report Number 700/69/B.1/ITKAB/2016 on 23 August 2016 regarding the request for the construction of retention basin in Sungai Abang village of Budget Year 2015. The panel of judges initiated the decision by checking the legal basis serving as the fundamental for the judges to set the principles as follow:

Request Object I

The action taken by the petitioner of PPK extending the contract time limit was legitimate as in line with Article 87 paragraph (1) letter d of Presidential Regulation of the Republic of Indonesia Number 54 of 2010 concerning Government Goods/Services Procurement (henceforth referred to as Perpres Number 54/2010). In terms of the extension of a contract time limit and Annex III of the Perpres Number 54/2010: selection of tender to serve the construction project, Section C in the agreement and Implementation of contract, point 2 letter m, this extension has exceeded the budget year, as in line with the statement given by Prof. Dr. Sukamto Satoto, SH., M.H., and Prof. Dr. Bahder Johan Nasution, S.H., M.Hum. The panel of judges viewed that this contract time limit extension exceeding budget year represented a form of discretion

performed by the a quo petitioner since this action is not regulated in the provision concerning the contract extension as elaborated by the judges because the a quo petitioner considered the interest of the locals in Sungai Abang village who long for the existence of the retention basin (confirmed by the statement given by Eko Sriyanto and Mohammad Sholeh as witnesses). The panel of judges also viewed that the action taken by the petitioner to extend the contract was initiated by proper survey and studies.

Request Object II

The action of the petitioner requesting the payment for all the project accounting for 60% in addition to the 30% of down payment, 5% of maintenance fee, and the fine due to the delay of the construction represents discretion aiming to encourage on-time construction completion for the sake of the locals in the village, in which, in turn, this retention basin is useful for the locals. The discretion is governed in Article 24:

The discretion used by government officials must:

- a. Be pertinent to the objectives of the discretion as intended in Article 22 paragraph (2);
- b. Not contravene the provisions of the legislation
- c. Be pertinent to AUPB;
- d. Be based on objective grounds;
- e. Not raise any conflict of interest; and
- f. Be performed in good faith.

Article 22

Discretion aims to:

- a. Expedite government administration;
- b. Fill legal loopholes;
- c. Provide legal certainty;
- d. Solve the stagnancy of the government under certain circumstances for public interest.

Considering the discretion, the panel of judges viewed that the action taken by the a quo petitioner was encouraged as long as such an action is accountable and benefits the members of the public when construction is fully completed. On the contrary, when this action is not performed by the a quo petitioner, it may disadvantage the state, leaving the construction incomplete although Article 89 paragraph (2a) of Presidential Regulation Number 4 of 2015 concerning the Fourth Amendment to Perpres 54 of 2010 concerning Goods and Services Procurement implies that the cost of construction is equal to the construction work performed.

The panel of judges conducted an investigation to find out whether an indication of abuse of authority was apparent as intended in Article 17, Article 18, Article 19 and/or Article 24 of UUAP. This is further detailed through the views of the judges as follows:

Request Object I

The panel of judges viewed that the action taken by the a quo petitioner coming with discretion by issuing request object I was relevant to the provision of Article 22 paragraph (2) letter d of UUAP, and no indication of abuse of authority was apparent, as in line with Article 17 and Article 18 of UUAP. A certain amount of money equal to

the construction not performed and the rest of the amount of fine due to the construction delay were also returned by CV. Persada Antar Nusa. This is in line with the statement given by expert witnesses, believing that there were no losses to the state following the discretion of the a quo petitioner.

Request Object II

The panel of judges viewed that the petitioner as in request object II requesting to the Regent of Tebo to conduct a review of retention basin construction in Sungai Abang village showed indication of abuse of authority.

The panel of judges argued that the action taken by the petitioner did not show any indication of abuse of authority as in Article 17 and Article 18 of UUAP. To see whether there was such an indication of the abuse of authority as in Article 17, Article 18, and Article 19 and/or Article 24 of UUAP, the panel of judges considered the testimonies given by Prof. Dr. Sukanto Satoto, S.H., M.H., and Prof. Dr. Bahder Johan Nasution, S.H., M.Hum as expert witnesses.

The testimony given by Prof. Dr. Sukanto Satoto, S.H. implies that the indicators of abuse of authority constitute the restrictions on actions taken ultra vires, authority mixing; and arbitrary actions. He added that the discretion was based on two benchmarks constituting pure discretion which interprets the general principles of good governance and non-pure discretion relating to the discretion according to the legislation. This notion is in line with the testimony given by Prof. Dr. Bahder Johan Nasution, S.H., M.Hum, arguing that the abuse of authority generally represents the action taken by the government or an official of state administration contravening public interest, or if it is pro-public interest, this action may contravene the authority per se or the action contravenes the procedures set for the authority.

According to the elaboration given by the panel of judges above, setting the criteria and bases to determine the type of abuse of authority in the Decision Number: 2/P/PW/2017/PTUN.JB takes into account the following points:

a. the relevance of the government's actions to the legislation,

The panel of judges, in the Decision 2/P/PW/2017/PTUN.JB, carefully considered the regulatory provisions pertaining to the main conditions of the request filed by the petitioner and existing evidence. These provisions involve:

1) PERMA 4/2015

2) UUAP

3) Perpres Number 54 of 2010 concerning Government Goods and Services Procurement.

b. public interest (the members of the public)

In Decision Number 2/P/PW/2017/PTUN.JB, the panel of judges carefully considered public interest (the members of the public). This is relevant to the statement given by Prof. Dr. Sukanto Satoto, S.H., M.H. "the action taken by the petitioner regarding the drafting of contract addendum by extending the contract time limit represents discretion prioritizing public interest. Such discretion is encouraged or the construct-

ion would be pointless, and there is certainly no indication of abuse of authority” and “discretion based on two benchmarks: pure discretion and non-pure discretion. The party issued the discretion based on the legislation”.

c. State’s loss

The panel of judges also considered the return of the money for the work not performed and the rest of the amount of the fine for the delay of the construction as in line with the request of the petitioner according to evidence P-11 and P-12. The judges viewed there were no losses to the state following the discretion.

Setting the criteria and the bases of Decision Number 2/P/PW/2017/PTUN.JB that comprises three aspects such as the relevance of the government’s actions to the legislation, public interest, and the losses to the state is pertinent to discretion requirements as stipulated in Article 24 of UUAP:

The discretion used by government officials must:

- a. Be pertinent to the objectives of the discretion as stipulated in Article 22 paragraph (2);
- b. Not contravene the provisions of the legislation
- c. Be pertinent to AUPB
- d. Be based on objective grounds
- e. Not raise any conflict of interest; and
- f. Be performed in good faith”

Article 22 paragraph 2 of UUAP

The discretion used by the government officials aims to:

- e. expedite government administration;
- f. Fill legal loopholes;
- g. Provide legal certainty;
- h. Solve the stagnancy of the government under certain circumstances for public interest.

Setting the criteria and the bases of Decision Number 2/P/PW/2017/PTUN.JB did not consider AUPB although Prof.Dr. Sukanto Satoto, S.H., M.H. stated “discretion is based on two benchmarks constituting pure discretion that carries out self-interpretation according to AUPB and non-pure discretion where the party concerned performs discretion according to the legislation”. The panel of judges expressed their view according to non-pure discretion, adjusting the government’s actions to the legislation. This matter caused less optimal reference of the AUPB in Decision Number 2/P/PW/2017/PTUN.JB.

In Decision Number 09/P/PW/2018/PTUN.Sby and the setting of the criteria and bases of the type of the abuse of authority in the request of the review of the abuse of authority by state administration officials, the request object in the decision refers to the Inspector’s Decree of the Regency of Bojonegoro Number 800/13.a/201.412/2016 concerning the Amendment to Inspector’s Decree of the Regency of Bojonegoro Number 800/13/201.412/2016 concerning Fee charged on Investigation Process/Supervision of the Governance of the Regency of Bojonegoro of Budget Year 2016 dated 29 January 2016. This object was requested for the review of the abuse of authority preceded by a report of audit results of Specific Purposes of Budget Management of the Inspector of the Regency of

Bojonegoro of 2016 Number LATT-1019/PW13/5/2017 dated 11 December 2017. In this request, the panel of judges checked the legal basis in which the judges viewed that principally:

The substance outlined in the Inspector's Decree of the Regency of Bojonegoro Number 800/13.a/201.412/2016 dated 29 January 2016 was equal to the amount set in APBD of the Regency of Bojonegoro of Budget Year 2016, as in the Document of DPA SKPD of Budget Year 2016, and was revised in the DPPA SKPD of Budget year 2016. Based on a series of legal considerations, the judges concluded that the petitioner, in issuing the request object according to the authority, formal procedures, and substantive matter of the issuance of the object of dispute, complied with the legislation.

Furthermore, the judges also conducted an investigation to see whether there was an indication of the abuse of authority in Article 17, Article 18, Article 19 and/or Article 24 of UUAP. This is obvious in the following views expressed by the judges:

According to the provisions of Article 17 and 18 of Law Number 30 of 2014, the panel of judges strongly argued that there was no indication of the abuse of authority committed by the petitioner in issuing the Inspector's Decree of the Regency of Bojonegoro Number 800/13/201.412/2016 concerning fee charged on investigation process/supervision of Governance of the Regency of Bojonegoro of Budget Year 2016, dated 29 January 2016. Thus, the request filed by the petitioner was deemed to be legitimate and granted.

That is, the government's action taken by the petitioner did not meet the criterion of abuse of authority as set forth in Article 17 and Article 18 of UUAP. To decide whether there was an indication showing any abuse of authority in Article 17, Article 18, Article 19, and/or Article 24 of UUAP, the panel of judges also considered the testimony given by Prof. Dr. Tatiek Sri Djatmiati, SH., MS as an expert witness, stating that an official of state administration should act according to Law Number 30 of 2014 and AUPB.

In line with the details expressed by the panel of judges and expert witnesses, setting criteria and the bases to determine the type of abuse of authority in Decision Number 09/P/PW/2018/PTUN.Sby involves the relevance of the action of the government to the legislation in place. In terms of Decision 2/P/PW/2017/PTUN.JB, the panel of judges carefully considered regulatory provisions relevant to the request filed by a petitioner and existing evidence, where the provisions were stipulated in:

- 1) Supreme Court Decision (PERMA) Number 4/2015
- 2) UUAP
- 3) Law Number 17 of 2003 concerning State Finance
- 4) Government Regulation Number 58 of 2005 concerning Regional Financial Management
- 5) The Regulation of the Minister of Home Affairs Number 13 of 2006 concerning the Guidelines of Regional Financial Management
- 6) Regent's Regulation Number 36 of 2015 concerning General Expense Standards within the Scope of the Local Government of the Regency of Bojonegoro in 2016

However, Decision Number 09/P/PW/2018/PTUN.Sby did not refer to the consideration of AUPB although AUPB were mentioned by Prof.Dr. Tatiek Sri Djatmiati, SH., MS as an expert witness stating “an action taken by a state administration official should comply with Law Number 30 of 2014 and General principles of good governance”. The panel of judges referred to the authority, formal procedures, and the substance of the issuance of the object of dispute, which is relevant to the legislation. The AUPB were not optimally used in the Decision Number 09/P/PW/2018/PTUN.Sby.

Based on the analysis of the two decisions above, it is obvious that setting the criteria and the bases for the judges of Administrative Court regarding the case of the abuse of authority has not taken into account the AUPB in their legal consideration although expert witnesses have highlighted the consideration of AUPB to serve as the basis of the action taken by the government. However, AUPB have not been referred to optimally.

AUPB have an essential role (Putrijanti, 2018) in developing good governance and their implementation is performed by PTUN that also runs its judicial function to guarantee access to justice for the public. AUPB are stipulated in Article 10 paragraph (1) of UUAP, mentioning the principles used in the review of government’s actions, including: “a. legal certainty; b. merit; c. impartiality; d. accuracy; e. appropriate use of authority; f. transparency; g. public interest; and h. proper services”. The review of the government’s actions could also refer to non-AUPB principles as outlined in UUAP, in Article 10 paragraph (2) stating “other principles outside the AUPB as intended in paragraph (1) could be implemented for as long as it could serve as the basis for the judges to investigate, as intended in Court Decision with permanent legal force”. The AUPB are expected by judges to settle the cases over the abuse of authority submitted by state administration officials. However, according to the analysis of the two decisions mentioned above, the judges of the administrative court have not referred to AUPB optimally.

Lack of involvement of AUPB have made as if the decisions set by the administrative court judges were unperceived, relevant to the thought of Yulius Rivai saying “judge’s decision could be seen from the perspectives of ontology, epistemology, and axiology. That is, the judge’s decision has its object. To issue a decision (Subur, 2014), a judge has to be able to perform interpretation and give an argument to ensure that the decisions issues are superior in theoretical and practical purviews.”. Moreover, Purwoto S. Gandakusuma (Asmuni, 2017) believes that a good decision should meet two requirements; first, it meets the theoretical necessity where the decision must be accountable in terms of legal science that forms jurisprudence; second, it should meet the practical need where the judge concerned could settle a dispute whose resolution is accepted by the parties in dispute and the public. The consideration of the AUPB in the request for the review of abuse of authority (Putrijanti, 2018) has made the role of jurisprudence in backing up the AUPB with permanent legal force applicable in the government administration. Thus, a judicial decision with permanent legal force is required to allow proper implementation of AUPB by the government. However, (Putrijanti, 2018) there are technical and non-technical factors affecting the execution of the decisions delivered by the PTUN with permanent

legal force, meaning that the obedience of government officials occasionally serves as an indicator showing whether a judicial decision is implemented.

Conclusion

The criteria and the bases which serve as the fundamentals of deciding the type of abuse of authority in the request for the review of this case according to Supreme court Regulation Number 4 of 2015 concerning Litigative Guidelines of the Review of the Abuse of authority serving as the basis to see whether there is an indication of the abuse of authority as in Article 16 letter d mentioning “ the judges’ views regarding the primary request in Article 17, Article 18, Article 19 and/or Article 24 of Law Number 30 of 2014”. Decision Number 2/P/PW/2017/PTUN.JBI indicates that the criteria and the bases of the review refer to their relevance to the legislation. Although the AUPB serve as the basis for the state administration officials to perform governmental tasks and as the touchstone for the PTUN, the AUPB have not been optimally referred to in setting the criteria and the bases to find out whether there is an indication of the abuse of authority in the case of the review of the abuse of authority.

Suggestion

Judges as the parties to set the criteria and bases to see the type of abuse of authority are expected to refer to AUPB to view the core of the request petitioned. It is advisable that the consideration of the AUPB as the basis referred to by the officials of state administration in executing actions be made more optimal. The interpretation given by judges in terms of the reference of AUPB in a decision is expected to serve as a legal finding to further improve government services in the time to come.

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