

# The Development Concept of State Administrative Decision After the Enactment of Law Number 30 Year 2014 Concerning Government Administration

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## ABSTRACT

State Administration Decision is the main legal instrument in the administration field, especially to regulate concrete events in society. After the enactment of Law Number 30 Year 2014 concerning Government Administration, the concept of State Administration Decision run into an expansion of meaning. This expansion has led to a shift towards the previously held principles and has resulted in the widening of the jurisdiction of the Administrative Court in resolving administrative disputes. Unfortunately, the expansion of the meaning of State Administration Decision is not supported by a clear explanation so that it can cause confusion in law and judicial practices. A clear norm explanation is needed on the new concept characteristics of the State Administrative Decision, both through implementing regulations on the Government Administration Law or through revisions to the Government Administration Law with reference to the theory and principles of state administrative law.

**Keywords:** State Administration Decision, Administrative Court, government actions, administrative law

## 1. INTRODUCTION

The conception of the modern rule of law adopted by countries in the world today basically rests on the principle of *staatsbemoeyenis*. This principle requires the state and the government to be actively involved in the economic and social life of the community as a step to realize public welfare (*bestuurzorg*), beside to maintaining order and security. The principle of *staatsbemoeyenis* emerged as a response to the failure of the principle that was previously held, namely *staatsonthouding*, which requires limiting the role of government in the economic and social life of society.

The principle of *staatsonthouding* - which developed before the second world war - holds that the least government is the best government or *laissez faire laissez aller*, which means the less government interferes in people's lives, then will be better for the government. Therefore, the state becomes passive or only functions as a "night watchman" (*nachtwakerstaat*). As a result, misery arises in the lives of citizens which results the social disturbance. Thus, the conception of a night watch state has failed in its implementation [1]. Since the government hold a responsibility to actively participate in various fields of community life to realize social welfare, the government scope of task is increasingly broader. As a consequence, the government is equipped with discretionary power or freedom to act on their own initiative (*freies ermessen*). relying on the principle of

freedom of action, the government (state administration) has large an authority to perform various government actions in the context of serving the interests of its people. Government (administration) is a legal entity and rights and obligations holder. As a legal entity, the government takes a variety of actions both factual actions and legal actions [2]. The government acts to serve the community, carry out administrative tasks daily, but it is also frequently to perform an order to the community. Government officials perform services through tasks that relate directly to the community, such as in the sub-district office, land office, licensing department and so on. On the other hand, the government apparatus also carries out administrative tasks by carrying out office work, in the form of writing, recapitulation, correction, and research of various files, including the preparation of various documents and administration of various government that they need. In addition, the activities of the government apparatus are seen through an actions regulating traffic or traders whom exercise the business activity, even bring order to street vendors and dismantle an illegal buildings [3].

According to Bachsan Mustafa opinion, government legal actions are deeds, both their actions and their consequences are governed by public and private law [4]. When the government takes actions that are only based on public authority and without the use of private law instruments, the government's actions are purely public in nature, for example in the formulation of legislation or

administrative decisions (*beschikking*) [5]. According to Law Number 30 Year 2014 concerning Government Administration Article 1 number 8, government actions or government administrative actions are the actions of Government Officials or other state administrators to carry out and / or not carry out concrete actions in the framework of government administration.

Administrative or public legal actions are different in nature from private law actions, especially the binding nature. Administrative legal actions can bind citizens without requiring the consent of the citizens concerned, while in private legal action requires conformity of the will between the two parties or more, on the basis of freedom of will, or approval from the party subject to the legal action is required. This is because a private law relations are equal, while relations on public law are subordinate. Subordinate means on the one hand the government is hold a public authority, on the other hand citizens are not hold the same power [1].

In carrying out government tasks on various aspect, the government or state administration performs various legal actions using various means or instruments such as writing instruments, or means of transportation and communication, office buildings and others that are collected in the public domain. In addition, the government uses various legal instruments in carrying out activities, regulating and carrying out government and social affairs such as statutory regulations, administrative decisions, policy rules, licensing, private law instruments and so on [6].

One product that results from public (administrative) law action is the instrument of the State Administration Decree. The term State Administration Decree comes from Law Number 5 Year 1986 concerning Administrative Court as lastly amended by Law Number 5 Year 2009, while the term State Administrative Decision can be found in Law Number 30 Year 2014 concerning Government Administration. Henceforth the author will use the term State Administrative Decision. The State Administrative Decision instrument is an object of a lawsuit on Administrative Court if it is considered to cause loss or disadvantage to a person or private legal entity.

The concept of State Administrative Decision run into an extreme change along with the issuance of Law Number 30 Year 2014 concerning Government Administration. Initially, State Administrative Decision is an individual norm that only applies to certain people / legal entities as stipulated in Article 1 number 9 Law Number 51 Year 2009 concerning Amendments to Law Number 5 Year 1986 concerning Administrative Court, "Written stipulations issued by state administrative bodies or officials that contain state administrative legal actions that are based on statutory regulations, with concrete, individual and final nature, that cause legal consequences for a person or civil legal entity".

Then, in the Law Number 30 Year 2014 version, it gives a very broad meaning to the State Administrative Decision concept. Article 1 number 7 of the Law Number 30 Year 2014 concerning Government Administration stipulates, "Government Administration Decisions, also referred to as

State Administration Decisions or State Administrative Decisions, hereinafter referred to as Decisions, are decisions issued by Government Bodies and / or Officials in the administration of government".

Article 87 of the same law determines With the enactment of this Law, the State Administration Decision as referred to in Act Number 5 Year 1986 concerning Administrative Court as amended by Act Number 9 Year 2004 and Act Number 51 Year 2009 must be interpreted as:

- a. Written stipulations which also includes factual action;
- b. Decisions of State Administration Bodies and / or Official in the executive, legislative, judicial, and other administration official;
- c. Based on statutory provisions and general principle of good administration;
- d. final nature in the broader sense;
- e. Decisions that have the potential to cause legal consequences; and / or
- f. Decisions that apply to Citizens.

The expansion of the meaning has legal consequences, the absolute competence (jurisdiction) of Administrative Court is becoming wider [7]. That Court, which previously only examined and adjudicate individual decisions, now also includes the types of decisions and / or actions as formulated in Article 87 of the Law Number 30 Year 2014. Expansion of the meaning of State Administrative Court in the Law Number 30 Year 2014 needs to get further study, and also examine its compliance with the basic principles of administrative law so that clarity of the State Administrative Decision concept can be obtained. For example, can the written Stipulation be equated with factual action? Then, how is the final meaning in a broader sense? Decisions that have the potential to cause legal consequences, whether the intended legal consequences? In addition, the decree that applies to citizens or decisions aimed at the public or mass (Article 62 Law Number 30 Year 2014), is this also included in the realm of the legislation or is it limited to policy rules ?

## **2. THEORETICAL STUDY OF GOVERNMENT POSITION AND ACTION**

The government has two legal positions, namely representatives of public legal entities and representatives of office. As a representative of a public legal entity, the government can carry out legal actions in the private field and comply with private law norms, while as a representative of the government office, the government holds public authority to carry out acts in the public sector (administration) and subject to the norms of public law [5]. Even though government organs can carry out privat law actions, representing their principal legal entities, the most important thing in the context of administrative law is to know the organs or positions of government in carrying out public actions . In administrative law , which places organs or government positions as one of the main study objects, recognizing the characteristics of government positions is inevitable. Although this government positions

hold the rights and obligations or was given authority to take legal action, but the office (*ambt*) can not act alone. office is just fiction. Law action of the office is done by their representatives, namely officials (*ambtsdrager*). The official acts for and on behalf of the office [1].

In the Article 1 number 3 Law Number 30 Year 2014, the official is referred to "government bodies and / or officials" which are given restrictions as "elements that carry out the functions of the Government, both within the government and other state administrators". In this relation, Indroharto said that what became the benchmark for being called a State Administration Agency or Officer (state administration) was a function carried out, not a daily name, nor a structural position in one of the branch of power in the state .

According to Indroharto opinion, states that to be called a State Administration Agency or Officer is a function that is carried out, not an everyday name, nor is it a structural position in one of the branch of power within the state. The state administrative bodies / officers can be grouped as follows:

- a. Official government agencies under the President as chief executive;
- b. Agencies in the state branch outside the executive power branch which based on laws and regulations carry out government affairs;
- c. Private legal entities established by the government with a view to carrying out governmental tasks;
- d. Agencies that are a collaboration between the government and the private sector which carries out governmental tasks;
- e. Private legal institutions that are based on laws and regulations and licenses systems carry out governmental duties [8].

As explained above, the government or state administration is a legal subject that represents two institutions, namely positions as a government (executive branch) and legal entities. Because it represents two institutions, it is known that there are two types of law actions namely public law actions (administration actions) such as issuing decisions private law actions such as making buying and selling, leases, or other agreements [9]. The legal status of a government that represents two institutions and is regulated by two different legal fields, namely public law and private law , will give rise to law actions with different legal consequences.

Theoretically, the method to determine whether government action is regulated by private law or public (administrative) law is to look at the position of the government in carrying out these actions. If the government acts in its quality as a government, then only public law applies, if the government acts not in the quality of government, then private law applies. In other words, when the government is involved in civil relations and not in its position as a party that maintains the public interest, then the government is no different from the private sector which is subject to private law.

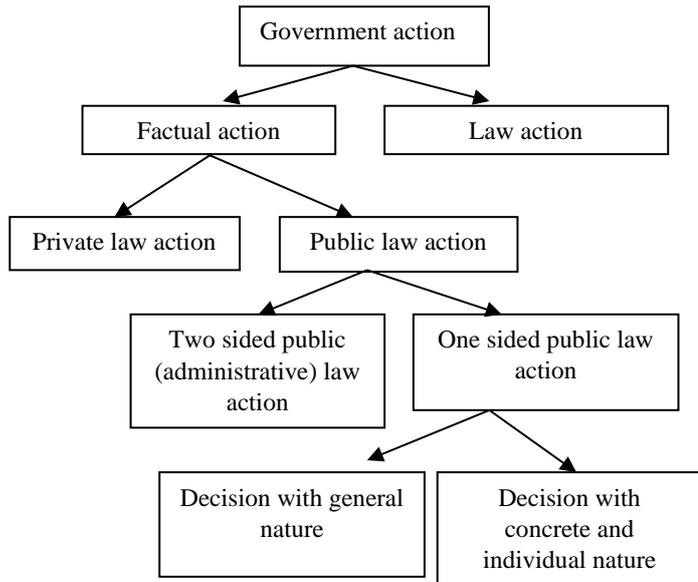
If the government carries out this action on the basis of public authority and also applies private law instruments,

the action is called a mixture of public and private. This mixed government action is known as the "fuse theory" or "concatenation theory" [9]. This mixed government legal action is also called a two-sided public legal action, which is an agreement based on public law [4]. Some scholars such as Van der Pot, van Praag, Wiarda, Donner and Utrecht recognize the existence of two-sided public legal action, or agreements governed by public law. For example, a short-term agreement (*kort ver bant kontrakt*) entered into by the private party as an employee with the government as an employer for a period of for example two or three years. This short-term agreement is caused by a two-sided legal action (contract) due to the agreement between the employee and the employer. Meanwhile, this law action is also governed by special legal regulations, namely public legal regulations because the worker is appointed by a decision as a civil servant with a short term contract of two or three years. Another example is agreements entered into by foreign oil companies with the Indonesian government whose organic regulations are further elaborated in a Ministerial Decree [4].

In addition to taking legal action, there are also government actions called factual actions or tangible actions. Factual Action is sometimes called also with substantive action. Factual actions in principle are acts that do not give rise to consequences in law effect. In other words, the government's actions do not occur due to law. Unlike law actions, in factual actions there is no will from the perpetrators to gives a legal consequences. However, that does not mean factual action has nothing to do with the law. For example, the act carried out by an officer of the City Planning agencies to cut down road shade trees. The act can be categorized as factual action because the person doing it is the City Planning Office Agencies officer who does have the duty to keep the tree fulfilling its function as a shade. In order to remain shady, but not very thick, pruning or logging is needed so that it does not disturb the view and does not cause general harm. The employee can carry out pruning because it does have the authority and duty to care for and maintain the tree.

In certain cases, factual actions can also have legal consequences. In the example above, if an officer of the City Planning Agency when trimming or cutting down shade trees, because of negligence, the trunk of a tree fell into a car that crosses the road, causing damage to the car. In such a case, even though it is not intended to cause legal consequences, the conduct of the City Planning Office officer has caused the loss of other parties. Therefore it is also possible for the owner of the vehicle to submit a claim for compensation for what has happened to his property [3]. Examples of other factual actions include ceremonies to open bridges, highways, inaugurate monument buildings, laying first stones. The Mayor invited the people to attend the ceremony on August 17, the President appealed for a simple life and so on [9].

In *Algemene Bepalingen van Administratief Recht* (ABAR), as quoted by Ridwan HR, the government action scheme can be described in the following chart [1] :



### 3. CHARACTERISTICS OF STATE ADMINISTRATIVE DECISION IN THE ADMINISTRATIVE COURT LAW AND GOVERNMENT ADMINISTRATION LAW

One-sided public law action taken by government agencies/officials (state administration) in the form of a decision. Some scholars are like Bachsan Mustafa [4], Bagir Manan, Utrecht uses the term "permanence (*penetapan*)". While Jimly Asshiddiqie [10], WF Prins, Marbun and others use the term "decision". Jenal Hoesen and Muchsan say that the use of the term "decisions" would be more appropriate to avoid the confusion with the term "permanence" [1]. In positive law perspective, the technical juridical terms used are:

- a. State Administration Decree (in the Administrative Court Law);
- b. Government Administration Decisions or State Administrative Decisions (in the Government Administration Law).

According to HD van Wijk / Willem Konijnenbelt, KAN is a government decision on concrete matters with individual norm nature (not intended for the public) and has always been used as the main juridical instrument of government. In that connection, Jimly Asshiddiqie said, legal decisions that determine the administrative matters result in a state administration decision (*beschikking*) [10].

Theoretically, based on the State Administration Decision definition according to scholars, there are several elements found in State Administration Decision (*beschikking*), namely:

- a. A statement of one-sided will;
- b. Issued by governmental organs;
- c. Based on legal authority with public nature;
- d. Aimed at specific or concrete and individual occasion;

- e. With aim to having legal consequences in the field of administration.

In Article 2 of the Dutch Administrative Law (AwB), the meaning of state administrative decision contains six elements, as follows:

- a. A statement of written will;
- b. Granted based on the obligation or authority from constitutional law or state administration law;
- c. One-sided nature;
- d. Not including general decisions;
- e. Intended to ensure, deletion, or termination of an existing legal relationship, or creating a new legal relationship, contains a rejection so that the decree occurs, change, deletion or creation;
- f. Derived from government organs [1].

The Indonesian Administrative Court Law seems to have adopted the State definition State Administrative Decision from AwB. In Article 1 number 9 of Law No. 51 Year 2009 concerning the Second Amendment to Law No. 5 Year 1986 concerning State Administrative Court, elements of State Administrative Law can be described as follows:

- a. Written stipulation;
- b. Issued by State Administration Agency / Officer;
- c. Contains State Administrative Law action;
- d. Based on the applicable laws and regulations;
- e. Concrete, individual and final;
- f. Causing legal consequences for a person or private legal entity.

*Stipulation in writing*. The concept of written stipulation primarily refers to the content, not to the form of decisions issued by the State Administration Agency or Officer [7]. The decision is indeed required to be written, but what is required is not written in the format such as the appointment letter and so on. Written requirements are required for easier to search an evidence. Therefore, a memo or memorandum can fulfill these written requirements and will constitute the Decision of the State Administration Agency or Officer according to this law if it is clear:

- a. Which State Administration Agency or officer issue it;
- b. The purpose as well as to what are the contents of the writing;
- c. To whom the writing was intended and what was stipulated therein.

*Issued by a State Administration Agency or Officer*. State Administration Officer are officials at the central and local government who carry out executive activities [7]. In the perspective of the Administrative Court Law, the decision referred to here is only a decision issued by the government as the state administration (executive branch). Decisions issued by other state organs (legislative and judiciary) are not included in the State Administrative Decision definition based on state administrative law [1].

*Contains legal actions of state administration*. State administration law action is an act of official agencies or the State Administration sourced in an administrative law which may give rise to rights or obligations for others [7]. *Based on the applicable laws and regulations*. The making and issuance of decisions must be based on

prevailing laws or regulations or must be based on governmental authority granted by legislation. Without a basis of authority, the government or state administration cannot make and issue decisions or decisions that are invalid. The decision will have legal consequences for the parties affected by that decision, so the creating must be based on legitimate authority. Government organs can gain authority to make these decisions in three ways, namely attribution, delegation and mandate.

*Causing legal consequences for a person or private legal entity*. The legal consequences referred to that arise from the decision are the emergence of certain rights, obligations, authorities or status for a person or private legal entity. It can also happen that the issuance of the decision does not give birth or eliminate rights and obligations, but merely state existing rights and obligations. In such cases, this type of decision is called a declaratory decision.

*Concrete, individual and final*. Concrete means the object decided is not abstract but tangible, certain or can be determined. individual nature means that the

administrative decision is not addressed to the general but certain both the address and the destination. Final nature means definitive, and therefore can have legal consequences. Decisions that still require approval from superiors or other agencies are not final because they have not been able to give rise to a right or obligation on the parties concerned.

The concept of State Administrative Decision in the Administrative Court Law as described above completely difference after issuance of the Government Administration Law. This changing concept is revolutionary enough to broaden the meaning of State Administrative Decision that has been definitively so far. Expansion of the meaning of State Administrative Decision is contained in Article 87 of the Government Administration Law. When we compared between State Administrative Decision according to the Administrative Court Law and Government Administration Law, then it can be described in the following table:

**Table 1** State Administrative Decision according to the Administrative Court Law and Government Administration Law

<b>Administrative Court Law, Article 1 number 9</b>	<b>Government Administration Law, Article 87</b>
<ul style="list-style-type: none"> <li>a. Written stipulation;</li> <li>b. Issued by State Administration Agency / Officer;</li> <li>c. Contains Administrative Law actions (State Administrative Law);</li> <li>d. Based on the applicable laws and regulations;</li> <li>e. Concrete, individual and final nature;</li> <li>f. Causing legal consequences for a person or private legal entity.</li> </ul>	<ul style="list-style-type: none"> <li>a. Written stipulation that also includes factual actions;</li> <li>b. Decisions of State Administration Agencies and / or Officers in the executive, legislative, judicial, and other state administration circles;</li> <li>c. Based on law and regulation provisions and general principle of good administration;</li> <li>d. final nature in a wider sense;</li> <li>e. Decisions that have the potential to cause legal consequences; and / or</li> <li>f. Decisions that apply to the Community (general norm).</li> </ul>

Generally, it appears that the Government Administration Law:

- a. Expanding written appointment included a factual action.
- b. Expanding administration bodies / officer that were initially limited to the executive branch to include the scope of the legislature, judiciary and other state administrators;
- c. Strictly incorporate the principles of General Principle of Good Administration Governance accompanying the laws and regulations;
- d. Expanding the final nature (final in a broader sense);
- e. Add a conception of decisions that have the potential to cause legal consequences;
- f. State administrative Decision character who was essentially an individual (*individual norm*) was expanded to include also State Administrative Decision with general nature (*general norm*) or Decisions that apply to the Community.

#### **4. ANALYSIS OF THE EXPANSION OF THE MEANING OF STATE ADMINISTRATION DECISION IN THE GOVERNMENT ADMINISTRATION LAW**

Expansion of the meaning of State Administrative Decision in Article 87 of the Government Administration Law becomes a legal issue that needs to be studied academically, because there has been a change in the character of the State Administrative Decision that was previously known. Moreover, in the Government Administration Law there is no clear regulation on the expanded scope of State Administrative Decision, so that it can lead to various interpretations both academically and in judicial practice.

Therefore, the authors further examine the State Administrative Decision elements in the Administration Government Law as follows:

#### **4.1. A Written Determination That also Includes Factual Action.**

This provision incorporates factual action within the scope of written stipulations. As explained above, factual actions are deed of the government which in principle do not cause legal consequences and their form does not take the form of a written determination either. For example, tree felling by the city planning agency, construction and official announcement of roads, law enforcement by local police task force and so on. In other words, factual action leads more to physical (material) action. Whereas the written stipulation is a formal legal action which always causes legal consequences. In *Algemene Bepalingen van Administratief Recht* in the Netherlands itself, a separation of legal actions (issuing decisions or written stipulation) was carried out, with factual actions. Therefore equating written determination with factual action contradicts theoretically and the principles of government action.

Factual action by the government, even if it causes legal consequences in the form of loss for others, then in the event of a claim for compensation as is known, in judicial practice becomes a jurisdiction of the ordinary court, namely in the format of a lawsuit against the law by the ruler (unlawful acts by the government) [7]. With the inclusion of factual actions in a written stipulation, the consequences will be that jurisdiction in adjudicating cases of illegal actions by the government moves from the ordinary court to the administrative court.

This was reinforced by the publication of the Supreme Court Circular Number 4 Year 2016. That Supreme Court Circular is like strengthening the Administration Government Law because in point one that Circular: (a) stipulates that Administrative Court has the authority to prosecute unlawful acts by the government, ie acts that violate the law carried out by the holder of government authority (Agency and / or Government Official) commonly referred with *onrechtmatige overheidsdaad* (OOD).

The problem is that the duty of the Administrative Court in principle is to judicial review the state administrative Decision, not to judge unlawful acts by the government based on Article 1365 of the Civil Code. In addition, the transfer of authority to adjudicate will also relate to the readiness of the administrative court itself in handling cases of unlawful acts by the government. In judicial practice, after the issuance of Government Administration Law and Supreme Court Circular Number 4 Year 2016, it turns out that the general court is still handling cases of unlawful acts by the government [11].

For example, a lawsuit for Unlawful Acts by the Government that was submitted by owner refueling station on Pramuka street Jakarta against the Capital City Jakarta

Provincial Government in November 2017. This case was submitted to the Central Jakarta District Court and the District Court continued to examine and decide on this case until it was finished. If the authority to handle unlawful acts by the government cases by the Government has transferred to Administrative Court, why does District Court not declare "not competence", instead District Court will still handle it until it is finished. Therefore, it is necessary to clearly distinguish the concept of written determination from factual action.

#### **4.2. Decisions of State Administration Agencies and / or Officers in the Realm of Executive, Legislative, Judicial, and Other State Administrators.**

State Administrative Decision is basically intended as a decision issued by the government as the state administration (executive). In that regard, according to Bachsan Mustafa, forming the State Administrative Decision is a function of the government carried out by government agencies, not by judicial bodies (judges) or by legislators (House of Representatives). In other words, forming State Administrative Decision is a governmental act (*overheid*) specifically in the field of government carried out by government agencies / organs (*bestuur*), such as governors, mayors, regents and so on which are echelon of the central government, namely the President as a highest executive body [4].

With the issuance of the Government Administration Law, the scope of this decision was expanded to include decisions in the realm of legislative, judicial and other state administrators. The matters needs attention, especially State Administrative Decision in the judicial realm. For example there is a Decision of the Chief Justice of the Court or Decree of the Court that is considered detrimental and then sued to the Administrative Court, will it not cause a "*volonte de corps*" or *conflict of interest*?

#### **4.3. Decisions That are Final in a Broader Sense.**

In the Administrative Law stipulation, State Administrative Decision is said to be a concrete, individual and final decision. Being final means it is definitive, and does not require approval from superiors or other agencies. The Government Administration Act added that the formula "final nature in the broad sense". The formulation of the norm "in a broad sense" there is no clear stipulation, only the explanation from Article 87 of Government Administration Law mentioned, what is meant by "final in a broad sense" includes the decisions taken over by the authorized superior. The author believes, this explanation is inadequate and can be further debated the criteria for decisions such as what is taken over by authorized superiors? Therefore, based on the author opinion, final in a broad sense can also be interpreted related to the every stage of the State Administrative Decision publishing process.

For example, in issuing licenses or other state administrative decision issuance in the context of public services. Each stage of the issuance of the State Administrative Decision, start from the application (adjuration), processing and until the issuance of State Administrative Decision itself must be regarded as final. Thus, although the State Administrative Decision has not yet reached the publishing stage, but the process has been considered detrimental, it can already be the object of a lawsuit in the administrative court.

#### **4.4. Decisions That Have the Potential to Cause Legal Consequences**

Such a decision is not known in the Administrative Court Law and in the Government Administration Law it is not given clear description. Potential means that there is a possibility that in the future the decision will have legal consequences. Understanding the legal consequences are usually interpreted as rights and obligations. The next question is for whom? Is it for individuals (individuals / private legal entities) or for community members? In the Government Administration Law there is no explanation. Legal consequences in the form of rights and obligations can mean "beneficial" or "impose". Both of these conditions can cause profits or losses. In other words, both favorable and burdensome decisions can result in losses or gains for the relevant parties, whether as a person / legal entity (individual) or community members (public). In this paper, the author wants to give examples of decisions that have the potential to cause legal consequences for citizens, namely the Instruction of the Governor Capital City Jakarta Number 66 Year 2019 concerning Air Quality Control. In Part One number three of the Instruction, the Governor instructs to tighten the emission test provisions for all private vehicles starting in 2019 and ensure that no private vehicles older than 10 (ten) years can operate in the Capital City Jakarta area in year 2025.

In that Instruction there are formulations including "...ensuring there are no private vehicles over the age of ten that can operate in the capital city Jakarta area in 2025". This decision can be said to have the potential to cause legal consequences in 2025, namely losses for citizens of Jakarta who have a car over the age of ten years, because they cannot use their vehicles anymore in the Jakarta area, or the loss of citizens outside Jakarta who cannot carry the car goes to Jakarta if the vehicle is more than ten years old.

So, even though this decision was issued in 2019, the potential impact will only emerge at least 6 (six) years later, namely in 2025 or even sooner. Even as this paper was written there were occurs an actions to reject the Instruction carried out by the antique car community [12], or objections from used car dealers [13]. Meanwhile, on the other hand, there will also be parties who will benefit from the Instruction, including new car companies, because later the citizens (communities) will be forced to buy new cars so that they can continue to use roads in the

Capital City Jakarta area. With the issuance of the Government Administration Law, the decision has the potential to cause legal consequences and can even be the object of a lawsuit in the Administrative Court.

#### **4.5. Decisions That Apply to Citizens (*Besluit*)**

Expanding the meaning of State Administrative Decision by including decisions that apply to citizens in the Government Administration Law is the most revolutionary. Previously, the character of State Administrative Decision (which can be sued to Administrative Court) is identical to decisions that are individual, while decisions that apply to citizens (are general) outside the understanding of State Administrative Court. This was explained by HD van Wijk and Willem Konijnenbelt, that State Administrative Decision is a government decision on concrete matters that are individual (not intended for the public) [1]. In the Netherlands itself, based on Administrative Law (AwB), general decisions are excluded from the definition of State Administrative Court. Therefore, in the Netherlands the distinction is made between *besluit* (general decisions) and *beschikking* (individual decision).

In Indonesia, before the issuance of the Government Administration Law, it also followed practices in the Netherlands. Therefore, the concept of State Administrative Decision is interpreted as an individual decision. Whereas decisions which are of a general nature are excluded from the understanding of State Administrative Decision and if that types of decision gives detrimental to the affected parties, the claim is through the ordinary court using the format of unlawfull act by the government (Article 1365 of the Civil Code).

However, with the issuance of the Government Administration Law, *besluit* (decisions of a general nature) are mixed into the understanding of *beschikking* (decisions of an individual nature). The unity between the two legal products indicates that Indonesia's administrative legal system has shifted from the general principles adopted so far,

Another legal issue that needs to be criticized is that the Government Administration Law also does not provide an adequate description of the scope of the decision applicable to these community members, whether this type of decision is only limited in the form of policy rules (*beleidsregel*) [5] or including legislation (*Regeling*) as local regulation, President regulations, government regulations and so on.

The author argued that decisions apply to citizens must be interpreted as policy rules such as instructions, circulars, guidelines, announcements, or local head (governor, mayor, regent) regulations throughout their creating by using discretion, and cannot be interpreted as statutory regulations. If interpreted to include statutory regulations, it means that the Administrative Court can also examine judicial review which can conflict with the judicial review authority belongs to the Supreme Court and the Constitutional Court.

## 5. CONCLUSION

The Government Administration Law has given a new face to the State Administrative Decision concept, by expanding its meaning, far different from the previous concept stipulated in the Administrative Court Law. If previously State Administrative Decision has an individual nature (applicable to a person / legal entity) then this "new face" of State Administrative Decision also includes factual actions and decisions that are general nature (applicable to community members). In addition, the concept of a final decision in a broader sense is introduced, and decisions that have the potential to cause legal consequences. Including the expansion of the scope of State Administrative Decision which includes State Administrative Decision in the legislative and judicial realm, in addition to State Administrative Decision in the executive realm.

Based on the *principle of lex posteriori de rogats legi priori*, the understanding of State Administrative Decision in the Government Administration Law is in force, setting aside the understanding of State Administrative Decision in the Administrative Court Law. On the one hand, the expansion of the meaning of State Administrative Decision is felt to be excessive because it has shifted from the principles of administrative law, and on the other hand the new concepts do not get clear explanations that have the potential to be multiple interpretations.

But certainly, the jurisdiction of Administrative Court has become even broader with the new understanding of State Administrative Decision. Clear explanation norm is needed for new meaning of the concept State Administrative Decision, both in implementing regulations on the Government Administration Law or through revisions to the Government Administration Law by referring to the theory and principles of administrative law

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