

Sanctions Against Civil Services That Complete Criminal Acts of Corruption (Study of Ambon State Administrative Court Decision Number: 41/G/2019/PTUN.ABN)

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ABSTRACT

In order to achieve the ideals of the nation, and to realize the goal of establishing the Unitary State of the Republic of Indonesia (NKRI) as stipulated in paragraph IV of the Preamble to the 1945 Constitution of the Republic of Indonesia, a State Civil Apparatus (ASN) is required to carry out public services, government duties, and development tasks. certain. In carrying out state administration and realizing good public services, civil servants who are ASN must refer to the principles, principles, basic values, as well as the code of ethics and ASN code of conduct as regulated in Law Number 5 of 2014 concerning State Civil Apparatus. In addition, civil servants must have integrity, professionalism, be neutral, and free from political intervention, free from corrupt practices, collusion, and nepotism, and be able to provide public services. The purpose of this study is to determine the sanctions against civil servants who commit criminal acts of corruption, and the conformity of the Ambon State Administrative Court Decision Number 41/G/2019/PTUN.Abn with Law Number 5 of 2014 concerning State Civil Apparatus, Law Number 30 of 2014 concerning Government Administration and Government Regulation Number 11 of 2017 concerning Management of Civil Servants. The type of research used is normative legal research with a legal approach sourced from primary, secondary, and non-legal materials. After the study was conducted, it was found that the sanctions against Civil Servants who commit Corruption Crimes are in the form of criminal and administrative sanctions, but in the case of the decision, the Civil Servants were not immediately sentenced to administrative sanctions after the court decision had permanent legal force. The administrative sanction in the form of dismissal was only carried out by his superior after 10 years which was finally sued to the Ambon State Administrative Court, where the lawsuit was fully granted.

Keywords: *sanctions, civil servants, criminal acts of corruption*

1. INTRODUCTION

1.1. Background

In Indonesia, the law has an important role as a barrier in which all attitudes, behavior, and actions are carried out by state authorities and by citizens. The form of intervention from the government must be given a legal form so that it is not confusing and does not cause doubts to all parties concerned, if one day a conflict arises, the resolution will be easier.[1]

“Laws that limit government power are made on the basis of popular sovereignty (democracy) and

must not conflict with the law at the highest level called the constitution.”[2]

In carrying out state administration and realizing good public services, civil servants who are ASN must refer to the principles, principles, basic values, as well as the code of ethics and ASN code of conduct as stipulated in Article 2 – Article 5 of the ASN Law. If an ASN when carrying out his duties commits fraud or is involved in an action that is contrary to the provisions of the applicable laws and regulations, he must be given a sanction commensurate with the violation committed so that it can be accepted by a sense of justice. The purpose of the application of sanctions is to provide a deterrent effect to those who commit violations and to give warnings to others not to

commit similar acts because they will definitely be sanctioned.

Sanctions that can be applied to civil servants are "criminal sanctions" and "administrative sanctions". The imposition of imprisonment and fines is enforced if the laws and regulations that are violated stipulate so. Then, this criminal sanction is followed by administrative sanctions in the form of respectful dismissal, dishonorable discharge, and temporary dismissal as stipulated in Article 87 paragraph (2), Article 87 paragraph (4) letter b and letter d, and Article 88 paragraph (1) letter c of the ASN Law, and the sanctions as regulated in Law Number 30 of 2014 concerning Government Administration (hereinafter referred to as the Government Administration Law).

Further provisions regarding administrative sanctions against civil servants are contained in Government Regulation Number 11 of 2017 concerning Management of Civil Servants as amended by Government Regulation Number 17 of 2020 concerning Amendments to Government Regulation Number 11 of 2017 concerning Management of Civil Servants (hereinafter referred to as PP Management civil servant)

The administrative sanction in the form of temporary dismissal and dishonorable discharge is the authority of the State Administration Agency/Official in the form of a State Administrative Decree as regulated in Article 6 paragraph (2) letter c of the Government Administration Law. The State Administration Agency/Official in making decisions must not conflict with the provisions of laws and regulations, and must pay attention to the general principles of good governance (AUPB) as stipulated in Article 8 paragraph (2) of the Government Administration Law.

In this paper, the author studies the Ambon Administrative Court Decision Number: 41/G/2019/PTUN.ABN in which the object of the dispute is the Decree of the Central Maluku Regent Number: 880/433/2019 concerning Disrespectful Dismissal for Committing a Crime Which Has To Do With The Position In The Name Of Gandhi Letahiit, S.Sos. NIP: 197107042005011010. The decree is a follow-up to the Joint Decree of the Minister of Home Affairs, the Minister for Administrative Reform and Bureaucratic Reform, and the Head of the National Civil Service Agency No. 182/6597/SJ – No. 15/2018 – No. 153/KEP/2018 concerning Law Enforcement Against Civil Servants Who Have Been Sentenced Based on Court Decisions with Permanent Legal Force for Committing Crimes Related to Position. Gandhi Letahiit was found guilty through the Decision of the Masohi District Court Number: 91/Pid.B/2009/PN. Msh, having committed a criminal act of corruption with a sentence of one (1) year in prison, and a fine of Rp. 50,000,000, - (fifty million rupiah). Based on the decision of the Masohi District Court, the Plaintiff served a period of detention and paid all the fines [3].

On January 19, 2011 the Plaintiff was released because he had finished serving his detention period at the State Detention Center OH, and on May 1, 2013 the Plaintiff again received a promotion to Advisory III/c based on the

Decree of the Regent of Central Maluku Number: 821.3/SK/40/2013 [3].

During the legal process starting from the level of investigation at the Masohi District Attorney until the judicial process at the Corruption Court at the Masohi District Court until he was found guilty, the Plaintiff was never suspended or released from duty as a civil servant in his work unit [3].

On April 9, 2019 the Regent of Central Maluku issued Decree Number: 880/433/2019 Regarding: Dismissal for Committing a Crime of Position or Crime Related to the Position of a.n. Gandhi Letahiit, S.Sos, NIP: 197107042005011010 Rank/Class of Space: Tk. I IIIId. This decree dated April 9, 2019 was submitted through the staff of the Regional Personnel Agency of Central Maluku Regency named Syarifudin, and was only received or known by the Plaintiff on August 8, 2019 [3].

After receiving the decree of dismissal against him, the Plaintiff submitted an Administrative Objection and Appeal to the Defendant within the time limit in accordance with the applicable laws and regulations. This administrative effort did not receive an answer or response from the Regent of Central Maluku and the Governor of Maluku. Therefore, in accordance with the provisions of Article 5 paragraph (1) of the Supreme Court Regulation Number 6 of 2018 concerning Guidelines for Settlement of Government Administrative Disputes After Taking Objections, on October 24, 2019 the Plaintiff filed a lawsuit to the Ambon Administrative Court.

Based on the description as stated above, the author feels the need to conduct research on "SANCTIONS AGAINST CIVIL SERVICES THAT COMPLETE CRIMINAL ACTS OF CORRUPTION (STUDY OF AMBON STATE ADMINISTRATIVE COURT DECISION NUMBER: 41/G/2019/PTUN.ABN)", the results of which are outlined in this script.

1.2. Problem

Based on the background explanation above, the legal issues in this paper is:

Is the Ambon Administrative Court Decision Number: 41/G/2019/PTUN.ABN not contradictory to Law Number 5 of 2014 concerning State Civil Apparatus, Law Number 30 of 2014 concerning Government Administration, and Government Regulation Number 11 of 2017 concerning Civil Servants Management?

2. ANALYSIS

In Ambon State Administrative Decision Number; 41/G/2019/PTUN.ABN, the legal facts obtained by the Panel of Judges are as follows:

- The object of the dispute was issued by the Defendant on April 9, 2019;
- The Plaintiff received the object of the dispute on August 8, 2019;

- The Plaintiff filed an Objection to the Regent of Central Maluku on August 15, 2019 and received it on August 19, 2019;
- The Plaintiff filed an Administrative Appeal on September 9, 2019 to the Governor of Maluku.

The Panel of Judges conducts tests on legality according to law which includes aspects of authority, substance, and procedure. From the aspect of authority, according to the Panel of Judges in legal considerations, the Maluku Regent is a Personnel Guiding Officer in the Regional Government of Central Maluku Regency based on Article 1 number 13, Article 1 number 14, Article 53 of the ASN Law, as well as Article 1 number 16, Article 1 number 17, Article 3 Government Regulation on Management of Civil Servants.

Based on Article 50, Article 292 of Government Regulation on Civil Servants Management, and Article 1 point 9 of the ASN Law, the Plaintiff's position as Executor at the Transmigration and Manpower Office of the Central Maluku Regency Government is included in the category of Administrative Position, so that from the aspect of the authority to issue the object of dispute there is no juridical defect. The defendant has the authority to issue the object of the dispute as regulated in the said legislation.

Regarding procedural aspects related to legal facts at trial, the Panel of Judges is of the opinion that in the process of issuing the object of dispute, the Defendant is an authorized official and has coordinated with several government agencies related to the issuance of the object of dispute. Therefore, the Defendant in the process of issuing the object of dispute has complied with the applicable laws and regulations regarding the issuance of the object of dispute, and has complied with Article 266 paragraph (1) letter b of Government Regulation on Civil Servants Management, and general principles of good governance (AUPB) so that there are no juridical defects in the procedure for the issuance of the disputed object.

From the aspect of substance, the object of dispute issued by the Defendant uses a legal basis that has been revoked and declared invalid, namely as follows:

- Government Regulation No. 4/1966 concerning Temporary Dismissal of Civil Servants
- It has been revoked and declared invalid based on Article 362 number 1 of Government Regulation Number 11 of 2017 concerning Management of Civil Servants.
- Government Regulation Number 32 of 1979 concerning Dismissal of Civil Servants
- It has been revoked and declared invalid based on Article 362 number 5 of Government Regulation Number 11 of 2017 concerning Management of Civil Servants.
- Government Regulation Number 63 of 2009 concerning Authority to Appoint, Transfer and Dismiss Civil Servants Has been revoked and declared invalid based on Article 362 number 14 of Government Regulation Number 11 of 2017 concerning Management of Civil Servants.

Based on these considerations, the Panel of Judges argues that the issuance of disputed objects from the aspect of substance is not in accordance with the general principles of good governance, namely the principles of accuracy and legal certainty. The Panel of Judges also argued that the issuance of the disputed object by the defendant was due to the pressure of the Joint Decree of 3 (three) Ministers of Home Affairs, the Minister for Empowerment of State Apparatus and Bureaucratic Reform and the Head of the State Civil Service Agency Number 182/6597/SJ, Number 15 of 2018, Number 153/ KEP/2018 dated September 13, 2018 regarding Law Enforcement Against Civil Servants Who Have Been Sentenced Based on Court Decisions With Permanent Legal Force for Committing a Crime of Position or Crime Related to the Position.

The incompatibility of the substance aspects of the disputed object issued by the Defendant which does not meet the legal requirements of the decision in Article 52 of the Government Administration Law, and the general principles of good governance (AUPB) results in the disputed object being declared null and void, as well as rehabilitating the position, dignity, and status of the plaintiff, namely Civil Servants in the scope of the Central Maluku Regency Government.

Based on the legal considerations above, the Panel of Judges handed down the Ambon State Administrative Court Decision Number: 41/G/2019/PTUN.ABN which was decided on March 10, 2020 in a deliberation meeting of the Ambon State Administrative Court Council of Judges with the following warning:

- a. Granted the Plaintiff's claim in its entirety;
- b. Declaring that the Decree of the Central Maluku Regent Number: 880/433/2019 concerning Dismissal for Committing a Crime of Position or Crime Related to the Position, dated April 9, 2019, on behalf of Gandi Letahiit, S.Sos, NIP. 197107042005011010;
- c. Requires the Defendant to revoke the Decree of the Central Maluku Regent Number: 880/433/2019 concerning Dismissal for Committing a Crime of Position or Crime Related to the Position, dated April 9, 2019, on behalf of Gandi Letahiit, S.Sos, NIP. 197107042005011010;
- d. Require the Defendant to rehabilitate the position, dignity and status of the Plaintiff as before, namely as a civil servant at the Transmigration and Manpower Office of Central Maluku Regency;
- e. Sentencing the Defendant to pay court fees that arose in this dispute amounting to Rp. 338.000,- (Three Hundred Thirty Eight Thousand Rupiah).

The Panel of Judges refers to several provisions of laws and regulations, namely Law Number 5 of 1986 concerning State Administrative Courts as amended by Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning State Administrative Courts, and Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts; Law Number 5 of 2014 concerning State Civil Apparatus; Law Number 30 of 2014 concerning Government Administration, as well as

Government Regulation Number 11 of 2017 concerning Management of Civil Servants, as amended by Government Regulation Number 17 of 2020 concerning Amendments to Government Regulation Number 11 of 2017 concerning Management of Civil Servants. Therefore, the author has the opinion that the Ambon Administrative Court Decision Number 41/G/2019/PTUN.ABN does not contradict or is in accordance with Law Number 5 of 2014 concerning State Civil Apparatus, and Government Regulation Number 11 of 2017 concerning Management of Civil Servants.

3. CONCLUSION

Sanctions against Civil Servants who commit Corruption Crimes based on court decisions with permanent legal force are criminal sanctions and administrative sanctions. The criminal sanctions applied refer to the applicable laws and regulations, namely in the form of imprisonment and fines as regulated in Law Number 31 of 1999 concerning Corruption Crimes, while the administrative sanctions applied refer to Law Number 5 of 2014 concerning Apparatus State Civil Service, and/or the laws and regulations below which regulate related matters, namely in the form of Respectful Dismissal, Disrespectful Dismissal, Temporary Dismissal, and revocation of rights as Civil Servants, as regulated in Law Number 30 of 2014 on Government Administration.

The Ambon Administrative Court Decision Number 41/G/2019/PTUN.ABN is in accordance with and does not conflict with Law Number 5 of 2014 concerning State Civil Apparatus, Law Number 30 of 2014 concerning Government Administration, and Government Regulation Number 11 of 2017 concerning Management of Civil Servants. As it is known that Law Number 5 of 2014 concerning State Civil Apparatus, Law Number 30 of 2014 concerning Government Administration, and Government Regulation Number 11 of 2017 concerning Management of Civil Servants regulates administrative sanctions to the legal requirements of State Administrative Decrees, relating to the Ambon Administrative Court Decision Number 41/G/2019/PTUN.ABN which states that the Decree of the Central Maluku Regent Number: 880/433/2019 concerning Disrespectful Dismissal for Committing a Crime Relating to an Position on behalf of Gandi Letahiit, S. Sos. NIP: 197107042005011010 is invalid and must be revoked because it does not meet the requirements for the validity of the State Administrative Decree from the substance aspect, as regulated in Article 52 of Law Number 30 of 2014 concerning Government Administration, and general principles of good governance.

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