



Dismissal of State Civil Apparatus Without Pension Rights by the Head of BKN (Analysis Study of PTUN Decision NO: 85/G/2016/PTUN-BDG) Siyasaq Qadhaiyyah Perspective

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Abstract: The dismissal of State Civil Apparatus (ASN) without pension rights by the Head of the State Civil Service Agency (BKN) has raised complex legal issues, especially in the context of protecting ASN rights. This study aims to analyze the decision of the State Administrative Court (PTUN) Number: 85/G/2016/PTUN-BDG regarding the dismissal of ASN without pension rights and to assess the decision from the perspective of Siyasaq Qadhaiyyah. Siyasaq Qadhaiyyah, as one of the branches of science in Islamic fiqh that regulates public policy, provides a different perspective in assessing government policies, including in terms of dismissal of ASN. In this case, the Mayor's Decision Number 881/Kep.117-BKD/VI/2016 concerning the implementation of the Decree of the Head of BKN No. 04755/01/Kep/BHT/TT/2002 is also an important issue, considering that the Mayor's decision is based on the rules issued by the Head of BKN. This analysis shows that there is a discrepancy between the administrative decisions taken by the Head of BKN and the Mayor with the principles of justice in Siyasaq Qadhaiyyah, which requires the protection of individual rights, including ASN pension rights. This article aims to provide recommendations regarding a more equitable ASN dismissal policy, by considering broader legal and policy principles.

Keywords: PTUN, Siyasaq Qadhaiyyah, Justice.

1. Introduction

The administrative justice system in Indonesia plays an important role in maintaining a balance between government interests and citizen rights (Seipul, Adepio, & Ardhan, 2024), (Princess & Human, 2024). In resolving state administrative disputes that have permanent legal force for people seeking justice, the PTUN (State Administrative Court) acts as a facilitator in resolving a dispute. One case that caught the attention of researchers was the PTUN decision NO: 85/G/2016/PTUN-BDG. This case concerns the lawsuit of the head of BKN over the dismissal of State Civil Apparatus (ASN). This decision is in the spotlight because it specifically discusses several important aspects of state administrative law regarding the limitation of the authority of public officials and the protection of ASN rights (Pangarso, n.d.), (Umar, 2020).

The State Administrative Court (PTUN) is the last judicial environment to be formed, marked by the ratification of Law Number 5 of 1986 on December 29, 1986n(Fanny, nd), (Ramadhan & Sastrawati, 2022). The purpose of establishing the State Administrative Court (PTUN) is to realize a prosperous, safe, peaceful, and orderly state and national life that is able to guarantee the position of citizens in the eyes of the law. The establishment of the State Administrative Court (PTUN) is proof that Indonesia is a country of law that upholds the values of justice, legal certainty, and human rights (HAM) (Nandini, Trisiana, & Utami, 2021), (Muhlashin, 2021). The subject who files a lawsuit to the State

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Administrative Court (PTUN) is a Person or Civil Legal Entity as the plaintiff, and the State Administrative Agency or Official as the Defendant. Meanwhile, the object or subject of the case in the State Administrative Court (PTUN) is the State Administrative Decree (*beschikking*) (Sirajuddin, Mau, & Bakry, 2023), (Hamid, n.d.). An official is a person who holds a position in a particular organization or agency, while a position is a position given to a person in an institution that determines his duties and responsibilities as well as the authority held by that person (Idris & Aisyah, 2021), (Mokodongan, Mantiri, & Kumayas, 2019).

This research begins with a case that began with the issuance of the decision of the Head of the State Civil Service Agency (BKN) Number: 04755/01/KEP/BHT/TT/2002 which dismissed the State Civil Apparatus without pension rights in the name of Joantina De Jesus Carvalho and the decree of the Mayor of Bekasi Number: 881/Kep.117-BKD/VI/2016 concerning the Implementation of the Decision of the State Civil Service Agency (Juliana, Rudiadi, & Pirmansyah, 2022). The crux of the problem is in The decision was made by the Head of BKN as defendant 1 and the Mayor of Bekasi as defendant 2 who dismissed the plaintiff not because the plaintiff had committed a disciplinary violation, but because of a written statement refusing to become an Indonesian citizen (Husna, 2023), (Purnomo & Soekirno, 2022). This is considered detrimental to the plaintiff and raises questions related to administrative decision-making. And in this PTUN decision, it must also be guided by the general principles of good governance (AAUPB) in Indonesian state administration, such as the principle of legal certainty, and the principle of formal accuracy in the general principles of good governance (Kusdarini, 2020), (Harjiyatni & Raharja, 2014).

However, in this case, no documentary evidence was found to indicate that Joantina De Jesus Carvalho as the plaintiff refused to become an Indonesian citizen. The administrative actions taken by the defendant were carried out without going through the examination process as stipulated in the State Civil Service Agency (BKN) Regulation Number 6 of 2022, which is an indication of a violation of the principle of justice (Yuslim, 2022), (ASN & SAIFUDDIN, nd).

In this study, if it is related to an Islamic perspective, it is very important to involve the *siyasah fiqh* perspective (Mardoki, 2022), (Hilmy, 2024). Because in essence the purpose of this article is to analyze the PTUN decision not only from the perspective of positive Indonesian law, but also from the perspective of *fiqh siyasah*. One aspect is *siyasah qadhaiyyah* in Islamic law, which focuses on judicial procedures and the application of law by government officials or institutions (Jannah, 2023).

Based on the explanation of the background, the researcher is interested in further researching the "Dismissal of State Civil Apparatus Without Pension Rights by the Head of Bkn (Analysis Study of Ptun Decision No: 85/G/2016/Ptun-Bdg) from the *Siyasah Qadhaiyyah* Perspective.

2. Materials and Methods

This study uses a normative legal method. The normative legal research method is a library legal research conducted by examining library materials or secondary data alone.³ The data sources used in this decision are secondary data consisting of primary, secondary, and tertiary legal materials. The technique used by the researcher through library research techniques, namely by conducting literature studies, which are taken through quotations from various books, scientific journals, previous studies that discuss the analysis of PTUN and *Siyasah Qadhaiyyah* and other data sources available in the library.

3. Results and Discussion

3.1 Legal Analysis of PTUN No: 85/G/2016/PTUN-BDG

In this decision, the State Administrative Court tried Joantina De Jesus Carvalho's lawsuit against the Decree of the Head of the State Civil Service Agency (BKN) and the Decree of the Mayor of Bekasi regarding the dismissal of ASN, revealing several important things that must be analyzed in more depth:

a. Violation of the General Principles of Good Corporate Governance (AUPB) in Decision HeadBody Staffing Country Number:

755/01/KEP/BHT/TT/2002 is considered to be in conflict with the AUPB, namely: (1) Principle of Legal Certainty: The retroactive implementation of the decision to dismiss ASN has violated the principle of non-retroactivity in administrative law. This creates legal uncertainty for the ASN concerned. (2) Principle of Accuracy: The decision-making issued by defendant 1 and defendant 2 was not based on complete information and documents to support the legality of the determination or implementation of the decision. (b) This can be seen from the dismissal of the plaintiff Joantina De Jesus Carvalho as a Civil Servant by the Head of the State Civil Service Agency in 2002. At that time, Government Regulation Number 30 of 1980 concerning the Disciplinary Regulations of Civil Servants was still in effect before finally being replaced by PP Number 53 of 2010. However, the dismissal was not based on the provisions of applicable laws and regulations and lacked caution in providing sanctions in the form of dismissal from work as an official. Implications for the Civil Service System.

b. This PTUN decision has major implications for the ASN Management system in Indonesia:

(a) Strengthening Legal Protection: This decision confirms that ASN has the right to be protected from arbitrary administrative decisions. (b) Limitation of the Authority of Public Officials: This case is an important reminder for officials to know the limits of their authority in making decisions that have a significant impact on the status of ASN employees. (c) Urgency of Civil Service System Reform: This case confirms the need for ASN management system reform to prevent similar cases in the future.

c. Time interval between the State Civil Service Agency's Decision and the Mayor of Bekasi's Decision

The main problem in the PTUN decision No: 85/G/2016/PTUN-BDG is the issuance of the State Civil Service Agency Decree Number: 04755/01/KEP/BHT/TT/2002 issued in Jakarta on February 15, 2002 concerning the dismissal of the plaintiff as a Civil Servant (PNS) and the Decree of the Mayor of Bekasi Number: 881/Kep.117-BKD/VI/2016 issued on June 10, 2016 concerning the implementation of the State Civil Service Agency Decree. In this context, the main problems faced in this decision are: (a) Delay in Implementation of the BKN Decree: The BKN Decree should have been implemented immediately after being issued in 2002, but was only implemented in 2016. This delay raises questions regarding the reasons and legal basis for why the implementation of the Decree was only carried out dozens of years later. In making his decision, the judge took into account legal awareness and feelings, as well as the dynamics that developed in society. In an effort to find the right law to resolve the case he is facing, the judge can make legal discoveries. (b) Civil Servant Rights: the plaintiff in this case feels disadvantaged

because he only found out about the Decree when the Decree was implemented by the Mayor of Bekasi in 2016, so that his rights as a dismissed civil servant were not immediately processed or clearly notified. (c) The Role of the Decree of the Mayor of Bekasi Number: 881/Kep.117-BKD/VI/2016: The Decree of the Mayor of Bekasi issued in 2016, although referring to the BKN Decree that has existed since 2002, should have been a concrete step to implement the Decree within the framework of regional government administration. However, the issuance of the Mayor's Decree after a gap of 14 years raises questions about the administrative and personnel examination process that did not run according to procedure within a reasonable time frame. And between the Decree of the Head of BKN and the Decree of the Mayor of Bekasi, it turns out that there are problems regarding personnel administration that cannot be resolved within the specified time.

3.2 Siyasah Qadhaiyyah's View Regarding PTUN Decision NO: 85/G/2016/PTUN- BDG Regarding Dismissal of State Civil Apparatus Without Pension Rights

This case analysis viewed from the perspective of siyasah qadhaiyyah (Islamic legal politics) provides interesting insights into how Islamic judicial principles can be related to administrative judicial practices in Indonesia.

a. Principles of Justice and Legal Certainty

In siyasah qadhaiyyah, delays in implementing the Decree are contrary to Islamic teachings which prioritize justice, legal certainty and the protection of individual rights. justice and legal certainty are two very important values. The delay in implementing the BKN Decree by the Mayor of Bekasi can be considered a form of injustice because it causes legal uncertainty for the employees concerned. Islam emphasizes the importance of protecting individual rights from injustice. And every decision taken by the defendant must be implemented immediately to ensure there is no uncertainty and to protect the rights of citizens.

b. Responsibility of the Ruler in Implementing Decisions

The Mayor of Bekasi as an official who implements the BKN Decision has the responsibility to implement a legitimate Decision and has the moral and legal right to immediately implement the Decision that has been issued by a higher body. Delaying the implementation of this Decision has the potential to harm the employee concerned and create uncertainty that could impact his rights. As the Prophet Muhammad SAW said: "Each of you is a leader, and every leader will be held accountable for those he leads" (HR. Al-Bukhari and Muslim) in this hadith reminds that every leader (Mayor of Bekasi) must be responsible for every Decision taken and must carry out his duties properly without any delay.

c. Right to Protection

Islam teaches that individuals have the right to protection of their rights, including the right to legal clarity regarding their status. In this case, the plaintiff has the right to know his employment status clearly so as not to be harmed financially and socially. This is explained in (QS. Al-Baqarah [2]: 188) "And do not consume your neighbor's property unjustly" this verse prohibits actions that can harm the rights of others. In this case, it explains that the delay in implementing the BKN decision can cause harm to the plaintiff concerned, both in terms of finances and in terms of his employment status.

Analysis of the PTUN decision NO: 85/G/2016/PTUN-BDG from the perspective of Indonesian positive law and siyasah qadhaiyyah shows that there is a combination of

modern legal principles with Islamic values in the context of administrative justice. This decision not only emphasizes the importance of legal protection for civil servants, but also reflects basic principles in Islam such as justice, responsibility towards individuals, and rights to protection. This case also provides space for further discussion regarding how Islamic values can be presented for the development of a more just and effective legal and judicial system in Indonesia.

4. Conclusion

PTUN Decision No: 85/G/2016/PTUN-BDG related to Joantina De Jesus Carvalho's lawsuit against her dismissal as an ASN by the Head of BKN and the Mayor of Bekasi revealed a violation of the General Principles of Good Governance (AAUPB). The delay in implementing the BKN Decision which should have been implemented since 2002 to 2016 created legal uncertainty and harmed the plaintiff's rights. In addition, the Decision to dismiss the ASN was not based on valid evidence, and the applicable administrative procedures were not followed. This long delay ignores the principle of legal certainty which requires administrative decisions to be implemented immediately after being issued. In addition, the Decision to dismiss was also not based on valid evidence showing that the plaintiff refused to obtain status as an Indonesian citizen, as stated in the statement letter which was the reason for the dismissal. This violates the principle of accuracy in decision-making which requires careful examination before taking administrative steps that impact individual rights. In the perspective of *Siyasah Qadhaiyyah*, this delay is contrary to the principle of justice and the responsibility of the defendant to immediately implement the Decision in accordance with Islamic teachings that prioritize justice and the protection of individual rights. The policies of officials who have the power to make Decisions are carried out arbitrarily without any clear reason. To overcome this, the purpose of the PTUN itself was formed, namely to examine, decide, and resolve disputes arising from the TUN. So, with the analysis of this PTUN decision, the policy or authority held by the official does not always harm one party as long as the person knows the flow. With this policy, officials can sue the PTUN, but with the Decision from the TUN, the policy that has been made is no longer valid, but does not revoke the position of an official.

In the PTUN decision No: 85/G/2016/PTUN-BDG, the authority given to State Administrative (TUN) officials, both the head of the State Civil Service Agency (BKN) and the Mayor of Bekasi is very important to understand the context of administrative decision-making regarding the dismissal of State Civil Apparatus (ASN). In this case, TUN officials have the authority to make administrative decisions that impact individual rights, such as dismissal or appointment which must be carried out based on applicable legal provisions. However, in this case, the authority of TUN officials, especially the Mayor of Bekasi, was not carried out properly and according to procedure. The decision to dismiss ASN was only implemented after 14 years, even though it should have been implemented earlier after the issuance of the KTUN BKN in 2002. The delay in implementing this decision shows negligence in exercising authority, which has created legal uncertainty for the plaintiffs and harmed their rights.

In addition, from an administrative law perspective. Decisions taken by TUN officials must also be based on complete and valid evidence and information. In this case,

the decision to dismiss without clear evidence of the refusal to become an Indonesian citizen which is the main reason for the dismissal also reflects the use of authority that is not in accordance with the principles of authority and justice of state administration.

Overall, the authority of TUN officials must be carried out responsibly, transparently, and in accordance with applicable procedures to ensure the protection of individual rights and prevent administrative injustice. Improper implementation of authority and delays in implementing decisions have resulted in violations of the General Principles of Good Governance (AAUPB) which ultimately harm the plaintiff and create legal uncertainty. This decision emphasizes the importance of implementing the general principles of good governance in state administration, as well as how the values in *siyasaqadhaiyyah* can help strengthen the Indonesian legal system by emphasizing the importance of justice, the responsibility of the ruler, and the protection of individual rights in public policy.

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