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Comparison of Authority Between the State Administrative Court in Indonesia and the *Mazhalim* Institution in Islam

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Abstract

The State Administrative Court in Indonesia is a judicial institution that is almost similar to *the Mazhalim* Institution in Islam. Although they have similarities, the two institutions have many differences in their concepts. This study aims to examine in more detail the comparison of the concept of authority of the State Administrative Court in Indonesia and *Mazhalim* institutions in Islam. This research is carried out through literature studies by collecting various literature from books, journals, and other documents related to the comparison of the concept of authority of the State Administrative Court in Indonesia and *the Mazhalim* Institution in Islam. The results of the study show that there are many differences between the State Administrative Court in Indonesia and *the Mazhalim* Institution in Islam, including that the PTUN in Indonesia has the authority of the Court to be on duty and has the authority to examine, decide, and resolve State Administrative disputes. State Administrative Disputes that occur between a citizen/community or civil legal entity and the State Administrative Agency/State Biocracy Official. *The Mazhalim* institution/court is authorized to examine, adjudicate, decide, and punish disputes that occur between the ruler and the people which includes ten cases. *The Mazhalim* institution has a wider authority not only in terms of cases that have the right to be tried but also regarding the authority to sentence and dismiss a person who is proven to have abused his position.

Keywords: Authority; State Administrative Court; *Mazhalim Institution*

Introduction

The judiciary is a state institution where justice seekers complain and demand their rights. It is in this institution that everyone who loses their rights seeks legal justice and demands that the truth be upheld as justly as possible. Although the judiciary is one of the state institutions, it does not mean that the state can arbitrarily intervene in the decisions issued by the court, and the rulers or government officials cannot pressure the judges to win their cases or free them from the shackles of the law.

The court is an honorable and authoritative institution that cannot be interfered with by anyone and this principle should not be tainted by those who do not want justice and truth to be realized on this earth. The judiciary should really

reflect an independent attitude and reflect as a truth enforcement institution that can provide a sense of legal justice for the community. It never distinguishes between the people and the rulers, the rich and the poor and other differences in social strata. It is not uncommon for the people to be harmed and harmed by various attitudes and policies made by the rulers. Therefore, it is appropriate that the judiciary as an institution where everyone seeks legal justice can realize truth and justice. Thus, the people will feel peaceful and comfortable because the state guarantees their rights and provides legal justice to every citizen without discrimination.

In Indonesia, there is a PTUN that is authorized to resolve State Administrative disputes and in Islamic history there is also known as an institution that resolves disputes between officials and the people in terms of government. Based on this, the author will explain a comparison of how the authority of the PTUN in Indonesia and *the Mazhalim* institution in Islam as an institution that examines, adjudicates and decides disputes that occur between government officials and the people.

Research Methods

This study uses the literature study method to further examine the comparison of the concept of authority of the State Administrative Court in Indonesia and *Mazhalim* institutions in Islam. The literature study approach was chosen because it allows researchers to gather information from a variety of textual sources, including classic books, recent research, and the opinions of scholars relevant to this research topic.

Thus, this study can comprehensively explore the understanding of the authority of the State Administrative Court in Indonesia and its comparison with *Mazhalim* institutions in Islam. In carrying out this method, the researcher searched for books that discussed Islamic law, especially related to the judiciary, including books that discussed the State Administrative Court and *Mazhalim* institutions.

The researcher also examines modern literature, articles, journals, and the latest fatwas from scholars to get a more up-to-date perspective on this topic. Furthermore, the data found from these various sources are critically analyzed to identify the similarities, the differences used by the two legal systems. This analysis is carried out by paying attention to the historical context, classical texts, and relevance to contemporary social and legal conditions.

The literature study method also allows researchers to evaluate the credibility and reliability of the information found, as well as consider various viewpoints that exist in the related literature. Thus, this study can present a more complete and in-depth analysis of the authority of the State Administrative Court in Indonesia and the institution of *Mazhalim* in Islam.

Results and Discussion

History of the State Administrative Court in Indonesia

During the Dutch East Indies period, the State Administrative Court was not known or known as the *beroep administrative system.*This is described in article 134 paragraph (1) I.S which contains:

1. Civil disputes are decided by ordinary judges according to the Act;
2. The examination and settlement of administrative cases is the authority of the administrative institution itself (http://one.indoskripsi.com).
3. Then, after Indonesia became independent, namely during the 1950 Constitution, three ways of resolving administrative disputes were known, namely:
4. Submitted to the Civil Court;
5. Handed over to a specially formed Body;
6. By determining one or several TUN disputes whose settlement is submitted to the Civil Court or a special body.

Changes began to occur with the issuance of Law No. 14 of 1970 concerning the provisions of the Principal Judicial Power. In Article 10 of the law, it is stated that the Judicial Power is exercised by the courts in the environment, including the State Administrative Court. The authority of the Judge in resolving state administrative disputes is further emphasized through Law No. 5 of 1986 concerning the State Administrative Court where it is stated that the authority to examine, decide and resolve a case/administrative dispute lies with the Judge/State Administrative Court, after administrative efforts have been taken (Prodjohamidjojo, 2005).

From a historical point of view, the idea of the establishment of the State Administrative Court is to resolve disputes between the government and its citizens and the establishment of the institution aims to control judicially (*judicial control*) government actions that are considered to violate administrative provisions (*mal administration)* or acts that are contrary to the law (*abuse of power)*.

The existence of the State Administrative Court is regulated in special laws and regulations, namely, Law No. 5 of 1986 concerning the State Administrative Court which was later amended by Law No. 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning the State Administrative Court. However, it should be realized that das sollen is often contrary to das sein, one example related to the execution of judgments, the State Administrative Court can be said to be unprofessional and has not succeeded in carrying out its functions (http://one.indoskripsi.com).

Prior to the promulgation of Law No. 9 of 2004, the PTUN decisions were often not complied with by officials due to the absence of the executing institution and also the absence of legal sanctions and weak support from the principles of state administrative law which caused the inconsistency of the PTUN system with other judicial systems, especially with the general court because it clashed with the azaz *dat de rechter niet op de stoel van het bestuur mag gaan zitten* (Judges may not sit in government seats or interfere in government affairs) and Azaz *Rechtmatigheid van Bestuur* , namely superiors do not have the right to make decisions that are the authority of their subordinates or Azaz the freedom of officials cannot be deprived.

After the promulgation of Law Number. 9 of 2004 is expected to strengthen the existence of the State Administrative Court. However, in Law No. 9 of 2004, it turns out that it still raises pessimism and public apathy because it does not regulate in detail the stages of forced execution efforts that can be carried out on the decision of the PTUN and the absence of clarity of procedures in Law No. 9 of 2004 Article 116 paragraph (4), namely if the official is not willing to implement the decision, he may be subject to sanctions of forced efforts to pay a certain amount of forced money and/or administrative sanctions (http://one.indoskripsi.com).

The execution of the PTUN decision is also often delayed due to an appeal, cassation, or review (PK) effort that forces the panel of judges to postpone the execution, if the execution cannot be carried out, then the PTUN is authorized to report to the superior concerned whose peak is reported to the President.

The purpose of the establishment of the State Administrative Judiciary Philipus M. Hadjon stated that legal protection for the people can be divided into 2 types, namely preventive legal protection and repressive legal protection. Preventive legal protection is legal protection where the people are given the opportunity to raise objections (inspraak) or their opinions before a government decision gets a definitive form, meaning that preventive legal protection aims to prevent disputes, while on the other hand, repressive legal protection aims to resolve disputes. Preventive legal protection is very meaningful for government actions based on freedom of action, because with preventive legal protection, the government is encouraged to be cautious in making decisions based on discretion (http://one.indoskripsi.com).

In the study of State Administrative Law, the objectives of the establishment of the State Administrative Court (State Administrative Court) are:

1. Providing protection for people's rights that originate from individual rights.
2. Providing protection for the rights of the community based on the common interests of individuals living in the society.

Based on Law No. 5 of 1986 concerning the State Administrative Court, legal protection due to the issuance of a decree *(beschiking)* can be pursued through two

channels, namely through administrative appeals or administrative efforts and through the judiciary.

The Authority (Competence) of PTUN in Indonesia

In article 1 paragraph 1 of Law No. 5 of 1986 concerning the State Administrative Court (PTUN), it is stated that the State Administration is a State administration that carries out the function of carrying out government affairs both at the central and regional levels. In article 1 paragraph 4, it is explained that State Administrative disputes are disputes that arise in the field of State Administration between persons or civil legal entities and State Administrative bodies or officials, both at the central and regional levels as a result of the issuance of Administrative Decrees, including personnel disputes based on applicable laws and regulations (Koentjoro, 2004).

The authority of the State Administrative Court as stated in article 47 of Law No. 5 of 1986 concerning the State Administrative Court is that the Court is tasked and authorized to examine, decide and resolve State Administrative disputes.

State Administrative Disputes that occur between a citizen/community or civil legal entity and the State Administrative Agency/State Biocracy Official, including community disputes/disputes against: Environmental pollution; Health/environmental protection; Transnational/international environment; Environmental disputes (Tjakranegara, 2002).

In addition, it also relates to laws on national land, taxation, and others related to companies based on Law No. 4 of 1982 vide articles 5 to 22 related to Government Regulation No. 7/1973, Presidential Instruction No. 3/1986, Government Regulation No. 5/1967 and others.

The State Administrative disputes that are sued under article 50 are:

1. The State Administrative Decision that was sued was contrary to the applicable laws and regulations.
2. The State Administrative Agency or official at the time of issuing the decision as intended in paragraph (1) has used its authority for purposes other than the purpose for which the authority was granted;

So the State Administrative dispute in question is a dispute filed as a result of the abuse of power authority against the decision issued.

The State Administrative Decision according to article 1 paragraph (3) of Law No. 5 of 1986 is a written determination issued by a State Administrative Agency or Officer that contains the legal actions of the State Administration based on the applicable laws and regulations, which are concrete, individual, and final in nature that cause legal consequences for a person.

The competence of the State Administrative Court according to Law No. 5 of 1986 has a very narrow authority because not all cases whose subject matter of

dispute is located in the field of public law (State Administrative Law) can be tried in the State Administrative Court. State Administrative Decisions that can be sued at the State Administrative Court according to the provisions of article 1 paragraph (3) of Law No. 5 of 1986 are:

1. Written decisions, this is necessary to facilitate proof.
2. Concrete means that the object decided in the State Administrative decision has a certain form or can be determined as, an individual.
3. Individual, meaning that the State Administrative Decision is not intended for the public, but is intended for certain people or civil legal entities.
4. It is final, meaning it is definitive and therefore can cause legal consequences or stipulations that no longer require approval from the superior agency (Rozali Abdullah, 2005).

The authority of the State Administrative Court is also considered narrow because according to article 49 of Law No. 5 of 1986, the court is not authorized to adjudicate a State Administrative dispute in the event that the State Administrative Decision is issued:

1. In times of war, dangerous circumstances, natural disasters or extraordinary circumstances that are dangerous based on the applicable laws and regulations.
2. In urgent circumstances for the public interest based on applicable laws and regulations.

In practice, the reason "in urgent circumstances for the public interest" can be problematic, because it is difficult to determine objective limits and measures of the "public interest". Usually, the public interest is often seen from the perspective of the ruler, so it often harms the interests of the people (Rozali Abdullah, 2005). Law No. 5 of 1986 is also still dual because it still gives authority to other bodies outside the courts within the State Administrative Court to adjudicate certain State Administrative disputes. This can be seen in article 48.

However, some articles in Law No. 5 of 1986 were amended with the passage of Law No. 9 of 2004 because it was no longer in accordance with the development of the legal needs of the community and constitutional life according to the 1945 Constitution (Harahap, 2005).

History of the *Mazhalim* Institution (Region) in Islam

The Mazhalim *area* is a power in the field of the court that has a higher position than the power of the judge and the power of the *muhtasib* area. This institution examines cases that do not fall within the authority of ordinary judges. This institution examines cases of persecution committed by rulers, judges, or children of powerful people (Ash-Shiddieqy, 1964).

Some of the cases examined in this institution are cases filed by a person who has been persecuted, but some of them do not require a complaint from the person concerned, but it is indeed the authority of this institution to examine them (Ash-Shiddieqy, 1964).

This *Mazhalim* institution has been famous since ancient times. This power was famous among the Persians and among the Arabs in the *Jahiliyah* era. When the Prophet was still alive, the Prophet himself solved every legal problem that occurred between Muslims and officials. This continued during the reign of *khulafaurrasyidin*.

The *Mazhalim* institution (region) was formed during the reign of the Abbasid state. The beginning of caliph who deliberately held certain times to pay attention to the complaints of the people was caliph Abdul Malik bin Marwan. In the treatise al-Kharady, Abu Yusuf recommended to the caliph Harun al-Rashid to hold hearings to examine the people's complaints against officials (Ash-Shiddieqy, 1964).

The panel of the *Mazhalim* court should be attended by five kinds of officers who cannot be left behind and the task cannot be carried out properly without their presence. They are:

1. The guards and helpers to draw strength and straighten out the brave side.
2. The *qadhi* and government officials who function to find out the facts of the truth that are then discovered, as well as witness the handling of cases that are being handled in that place.
3. The jurists serve as a source of reference in difficult problems and become a place to ask questions in problematic and complicated problems.
4. The secretaries in charge recorded the talks that took place in the assembly and the decrees made afterward, both the rights of a person and his obligations.
5. Witnesses who function as witnesses to the rights that have been established and the laws that have been decided (Al-Mawardi, tt).

Authority (Competence) of the *Mazhalim* Institution

Al-Mawardi explained that the authority of the *Mazhalim* institution includes:

1. The persecution of the rulers, both individuals and groups.
2. Fraud of officials who are assigned to collect zakat and other state assets.
3. Supervise the state of officials.
4. Complaints filed by soldiers who are salaried but their salaries are reduced or their payments are delayed.
5. To return to the people their property that was taken away by the righteous rulers.
6. Supervising waqf assets.
7. Implementing judges' decisions that cannot be implemented by the judges themselves because the people who are sentenced are people of high status.

8. Researching and examining matters related to public benefits that cannot be carried out by hisbah officers.
9. Maintaining the rights of Allah, namely real worship such as Friday, Eid, Hajj, and jihad.
10. Resolve matters that have become disputes between the parties concerned (Al-Mawardi, tt).

The Mazhalim institution also has the authority to issue a decision to dismiss anyone among government officials just as he also has the right to dismiss the caliph if it is considered to have violated the provisions of the law. In deciding any form of injustice that concerns state apparatus or concerns the misappropriation of the caliph against sharia law, the Constitution or the laws adopted by the caliph, concerning the obligation to pay one form of tax, the misappropriation of the state against the people, treating the people in dzhalim, manipulating their property, cutting the salaries of employees and soldiers, then the *Mazhalim* courtcan impose a verdict regarding this kind of injustice and the like does not require a courtroom and does not require an indictment by the prosecutor, or the plaintiff. This court has the right to directly examine the wrongdoing even without a lawsuit filed (Zallum, 2002).

From this, it can be seen that the *Mazhalim* institution has very broad authority and very strong power in exercising its authority so that the injustices committed by rulers and government employees can be tried smoothly and the people's rights (sense of justice) are fulfilled without discrimination.

Differences Between the State Administrative Court and *the Mazhalim* Institution

Although at first glance it seems that the State Administrative Court (PTUN) is similar to *the Mazhalim* institution in Islam, but the two have several differences, including:

1. In terms of its function; The State Administrative Court has the function of resolving disputes that occur due to government policies against the community that are considered to violate regulatory provisions. Meanwhile, *the Mazhalim* institution functions to listen to complaints or reports from the public against government officials who are considered unfair and arbitrary. The *Mazhalim Institute* is also authorized to prosecute bribery and corruption cases committed by government officials.
2. The State Administrative Court has limited authority over administrative violations committed by the government against citizens, while the Mazdhalim institution has broader authority covering ten cases.
3. The State Administrative Court is an institution established by the President of the Republic of Indonesia, while the *Mazhalim* institution was originally formed by the caliph during the Islamic Caliphate.

4. The person who has the authority to settle cases in the State Administrative Court is called a judge, while the person who has the authority to resolve disputes in *the Mazhalim* institution is called the term wali al-Mazhalim.

Conclusion

The PTUN in Indonesia has the authority of the Court to be on duty and has the authority to examine, decide, and resolve State Administrative disputes. State Administrative Disputes that occur between a citizen/community or civil legal entity and the State Administrative Agency/State Biocracy Official. The *Mazhalim* institution/court is authorized to examine, adjudicate, decide, and punish disputes that occur between the ruler and the people which includes ten cases. *The Mazhalim* institution has a wider authority not only in terms of cases that have the right to be tried but also regarding the authority to sentence and dismiss a person who is proven to have abused his position.

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