

The Application of The Principles of Legal Assurance, Justice, And Expediency in State Civil Apparatus Dishonorable Discharge a Study of Civil Court Judgment Number 164/G/2019/Ptun-Jkt

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ABSTRACT

Justice is the essence of law. Its existence must be in line with legal assurance and legal expediency. The slow execution of the government in carrying out the order of the State Civil Apparatus Law for the dishonorable discharge of state civil apparatus employee because of the malfeasance they committed raises the problem of substantive justice. The judges' verdict of the Jakarta Civil Court that adjudicated the dispute regarding the dishonorable discharge, granted the request of the concerned civil servant. This study aims to analyze the application of the principles of legal certainty, justice, and expediency in the judge verdict of the Civil Court no. 164/G/2019/PTUN-JKT. The research method is in the form of juridical, mainly from secondary data, exploratory analytical typology with a qualitative approach. The results of the study show that judges apply the principles of legal assurance, justice, and expediency in a balanced manner by considering the chronology and legal facts in the process of civil servant dishonorable discharge. At the same time correcting the government's legal actions by elaborating the principles contained in positive law.

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1. INTRODUCTION

The application of the principle of justice, legal assurance and expediency is interesting to observe in the judges' verdict of the Civil Court on the dishonorable discharge of state civil apparatus due to malfeasance. This topic needs to be carefully observed considering that there are valuable lessons for the management of civil servants.

The law has the highest position so that the implementation of state power does not deviate from the law, thus power will comply to the law, not the other way around. Simorangkir, stated "the state of law is defined as a country that applies the principle of legality, it means that all state actions, based on, and in accordance with the law".¹ The state in carrying out its functions must always be guided by legal norms in the form of

¹ JCT Simorangkir, *Hukum dan Konstitusi Indonesia*, (Jakarta: Gunung Agung, 1983), p. 36

statutory provisions, this is based on one of the characteristics of the state of law according to Julius Stahl, namely 'wetmatig van bestuur (government administration based on law). One of the functions of the state according to W. Friedmann is the function of a regulator (as regulator) which basically gives authority to the state in this case the government to regulate its country.²

The general principle of modern state organizations is to put power not relying on one organ (one hand one function) by interpreting the trias politica or its variants as separation of power or division of power. The basic principle that is universally recognized in the doctrine of separation/division of power is to place judicial power separately from other organs, and it is common for guarantees of independence to be placed in basic norms (the constitution).³

Judges in giving judgment must pay attention not only by looking at the law itself (system denken) but also to their conscience by paying attention to justice and expediency when the judgment is stated (problem denken). When judges only make judgment by considering the law without applying conscience, it can result in failure to present justice and expediency, even though the judge's judgment is actually to resolve a case or dispute within the framework of upholding law and justice.⁴

Universal judicial doctrine: res judicata pro veritate habetur, what has been decided by the judge must be considered correct, because it is the judge (court) who knows the law (ius curia novit).⁵ The judge as one of the law enforcement officers has a duty as one of the determinants of a case judgment from the disputing parties. In order to be able to resolve the problem or dispute for which a decision is requested, then in the process of making a judgment the judge must be independent and free from the influence of any party. Judges in making judgment are only bound to relevant events or facts and legal rules that become or are used as juridical foundations.⁶

The discharge of state civil apparatus that has been in the spotlight is the dishonorable discharge of a civil servant because of convicted of committing a malfeasance or a crime related to his position, such as corruption. Data from the National Civil Service Agency (BKN) on September 12th, 2018 totaled 2,259 civil servants involved in corruption issues who had not been fired spread across the Province and

² Samudra Putra Indratanto1, Nurainun, Kristoforus Laga Kleden, Asas Kepastian Hukum dalam Implementasi Putusan Mahkamah Konstitusi Berbentuk Peraturan Lembaga Negara dan Peraturan Pemerintah Pengganti Undang-Undang, Jurnal Ilmu Hukum, Volume 16 Nomor 1 Februari 2020-Juli 2020, hlm. 88-100, p. 88-89

³ Pembagian Wewenang dan Pertanggungjawaban Kekuasaan Kehakiman Pasca Amandemen UUD 1945, Yuliandri dalam Himpunan Amandemen UUD 1945 Suatu Rekomendasi, (Jakarta: Komisi Hukum Nasional, 2008), p. 56-57

⁴ HM. Soerya Respationo, "Putusan Hakim: Menuju Rasionalitas Hukum Refleksi dalam Penegakan Hukum", Jurnal Hukum Yustisia, No. 86 th. XXII Mei-Agustus 2013, Surakarta: Fakultas Hukum Universitas Sebelas Maret, hlm. 101-107, hlm. 43. Lihat juga Tata Wijayanta, Asas Kepastian Hukum, Keadilan dan Kemanfaatan dalam Kaitannya dengan Putusan Kepailitan Pengadilan Niaga, Jurnal Dinamika Hukum, Vol. 14 No. 2 Mei 2014, hlm. 216-226, p. 219

⁵ Widodo Ekatjahjana, Memperhatikan Rasio Putusan MK dalam Putusan Nomor 122/PUU-VII/2009 tentang Penderogasian Norma Hukum dan Sifat Putusan PTUN, Jurnal Konstitusi, Volume 7 Nomor 5 (Oktober 2010) hlm. 1-12, p.8

⁶ Fence M. Wantu, "Antinomi Dalam Penegakan Hukum Oleh Hakim", Jurnal Berkala Mimbar Hukum, Vol. 19 No. 3 Oktober 2007, Yogyakarta: Fakultas Hukum Universitas Gadjah Mada, p. 387-398, p. 395

Regency/City levels. In addition, there are 98 civil servants at the Ministry or Central level institutions. So that, approximately out of 4 million total state civil apparatus in Indonesia, as many as 2,357 civil servants are involved in corruption issues.⁷

Dishonorable discharge of a state civil apparatus by the Minister of Research, Technology and Higher Education based on Decree Number 14491/M/KP/2019 dated April 26th 2019 as a follow-up to the Corruption Court Judgment at the Makassar District Court Number 31/ Pid.Sus/2016/PN.Mks dated July 14th, 2016. The Ministerial Decree regarding the discharge was retroactively enforced at the end of July 2016 so that it had implications for a lawsuit to the civil court. In accordance with the mandate of Article 87 section (4) letter b, civil servants are dishonorably discharge because they are sentenced to imprisonment or confinement based on a court judgment that has permanent legal force for committing a malfeasance or a crime related to the position.⁸ Article 252 of Verdict Number 11 of 2017 concerning the Management of Civil Servants states that the dishonorable discharge starting from the end of the month since the verdict on the case which has permanent legal force.⁹

In the Judgment of Civil Court Number 164/G/2019/PTUN-JKT, judges have an important role in realizing the legal objectives of all administrative law disputes that are brought before the Civil Court. Judge must choose a branch of law that is more in favor of justice. This is necessary because without justice the law does not deserve to be called law and will be far from the nature of the law that is aspired to.

Based on the description of the background above, the formulation of the problem regarding the Jakarta Civil Court Judgment Number 164/G/2019/PTUN-JKT can be formulated as follows: (1) How is the application of the principle of legal assurance in the judgment? (2) How is the application of the principle of justice in the judgment? (3) How is the application of the principle of expediency in the judge verdict of the Civil Court no. 164/G/2019/PTUN-JKT?

2. METHOD

The nature of this study is normative legal research with the type of literature research. Thus, the main material in the form of secondary data sought is prioritized in the judgment of the Civil Court. However, secondary data other than those sourced from judgment also come from studies of legislation and literature research related to the research topic. Secondary data comes from primary legal materials, secondary legal materials and tertiary legal materials. The method of collecting research data is carried out by the documentation method, namely referring/collecting documented material, while the data collection tool is used by documentation studies, namely studies by studying data in the form of books, research reports, expert writings, verdicts and all applicable laws and regulations related to research material. The research data were analyzed by content analysis. Content analysis is carried out on all secondary data

⁷ <https://news.detik.com/berita/d-4210409/2357-pns-korup-segera-dipecat-ini-data-detailnya> dan <https://news.detik.com/berita/d-4394996/baru-393-orang-dari-2357-pns-korup-yang-dipecat-diambil-pada-27-oktober-2021>

⁸ Indonesia, Undang-Undang tentang Aparatur Sipil Negara, UU No. 5 Tahun 2014, LN Nomor 6, Tahun 2014, TLN No. 5494, Ps. 87. Baca juga Peraturan Pemerintah tentang Manajemen Pegawai Negeri Sipil, PP. No. 11 Tahun 2017 Ps. 250. LN Nomor 63. Tahun 2017. TLN Nomor 6037.

⁹ Ibid

collected, however, content analysis is mainly on documents in the form of civil court judgments.

3. RESULTS AND DISCUSSION

3.1. Principle of Legal Assurance, Principle of Justice, and Principle of Expediency in Legal Theory

The principle is something that becomes the basis for thinking or giving opinion. Principles can also mean basic laws. The principle is a general postulate which is stated in general terms without requiring special ways of implementation which are applied to a series of actions to be the right instructions for that action. The principles of general law are basic norms that are derived from positive law and which legal science does not ascribe to more general rules. The principle of law is the deposition of positive law in a society. Legal principles should not be considered as concrete legal norms, but should be viewed as general principles or guidelines for applicable law.¹⁰

The theory of legal ideals (*idee des recht*) since the beginning of the development of legal theory and philosophy, especially since the theory of legal ideals (*idee des recht*) were developed by Gustav Radbruch¹¹ as quoted by Sudikno Mertokusumo states that there are 3 (three) elements of legal ideals that must exist proportionally, namely legal assurance (*rechssicherheit*), justice (*gerechtigkeits*), and expediency (*zweckmasigkeit*). The formulation of the three elements of the legal ideals must be built in the legal reasoning of a judge in a balanced manner.¹²

The ideals of law (*idee des recht*) taught by Gustav Radbruch are one unity, cannot be separated one by one, all three must be endeavored to exist in every rule of law. Radbruch does not deny that the principle of "assurance" requires the law to be positive. However, this does not reduce the equality of the principle of justice.¹³ In its implementation, the three elements of legal ideals need each other. These three elements of legal ideals are manifested in society, but that does not mean that the three are always in a harmonious relationship. In enforcing the law there must be a compromise between the three elements, but in practice it is not always easy to seek a proportionally balanced compromise between the three elements.¹⁴

H.L.A. Hart's key feature of modernity is the existence of legal assurance. Legal assurance is laws that are arranged in a system, and this is what distinguishes them

¹⁰ Wijayanta, Asas...p. 219

¹¹ Gustav Radbruch understands law as "empirical and normative cultural science" in other words that Radbruch combines two approaches at once namely normative and empirical approaches. For Radbruch, jurisprudence is knowledge about things that are or are sourced from humans or from God. With regard to the science of what is fair and what is unjust, Radbruch also has a dualistic method, which distinguishes sharply between values (*sollen*) and facts (*sein*). Ahmad Ali, *Menguak Teori Hukum, (legal theory) dan Teori Peradilan (judicialprudence) termasuk Interpretasi Undang-Undang (legisprudence)*, (Jakarta: Kencana Prenada Media Group; 2009), p.183

¹² Sudikno Mertokusumo, *Mengenai Hukum Suatu Pengantar*, (Yogyakarta: Liberty, 2004), p. 15

¹³ Ian Ward, Durham, 'Rechtsphilosophie' Radbruch: Hukum, Moralitas dan Bentuk, *Filsafat Hukum dan Filsafat Sosial*, 1992, Vol. 78, No. 3 (1992), <https://www.jstor.org/stable/23679995>, pp. 332-354, p. 343

¹⁴ Pagar M. Wantu, "Peranan Hakim Dalam Mewujudkan Kepastian Hukum, Keadilan dan Kemanfaatan dalam Peradilan Perdata" (Yogyakarta: Universitas Gadjah Mada, 2011). p. 13

from primitive laws.¹⁵ The principle of legal assurance requires legal stability, in the sense that a product that has been issued by an authorized institution or official must contain certainty and will not be revoked even if it contains deficiencies.¹⁶

Thomas Aquinas, a natural law thinker distinguishes justice in two groups, namely general justice (*justitia generalis*) and special justice. General justice is justice according to the will of the law, must be carried out in the public interest. While special justice is justice on the basis of equality or proportionality. Special justice is divided into distributive justice (*justitia distributiva*), commutative justice (*Justitia commutiva*), and vindicative justice (*justitia vindicativa*).¹⁷ Distributive justice is justice that gives each person based on their services or distribution according to their respective rights. Commutative justice is justice that is received by each member regardless of their respective merits. While vindicative justice is justice in terms of imposing penalties or compensation in criminal acts.¹⁸

In the context of judicial verdicts, especially those that are often mentioned are in the form of procedural justice and substantive justice. Procedural justice is justice based on provisions formulated from formal legal regulations, such as regarding deadlines and other court requirements. Substantive justice is justice based on values born from responsive legal sources according to conscience.¹⁹

3.2. Principle of Legal Assurance, Principle of Expediency, and Principle of Justice in State Civil Apparatus Law and Government Administration Law

Law Number 5 of 2014 concerning state civil apparatus aims to realize national ideals as stated in paragraph 4 of the Preamble to the 1945 Constitution, which requires professional state civil apparatus, free from political intervention, free from practices of corruption, collusion, and nepotism able to provide public services for the community and able to carry out the role as the glue of national unity and integrity based on Pancasila and the 1945 Constitution.²⁰

To achieve this goal, Law Number 5 of 2014 concerning the state civil apparatus implements several principles in the implementation of policies and management of the state civil apparatus. These principles include: legal assurance, professionalism, proportionality, cohesiveness, delegation, neutrality, accountability, effectiveness and efficiency, openness, non-discrimination, unity and integrity, justice and equality, and welfare.²¹

Based on the provisions in Law Number 5 of 2014 concerning state civil apparatus, the three elements of law enforcement have been accommodated in the law. The concept of legal assurance is summarized in the principle of legal assurance. The element of justice in law enforcement is reflected in the principles of justice and equality, while the

¹⁵ The arrangement in a system here does not mean the same as legal positivism. see E. Fernando F. Manullang, *Legisme, Legalitas dan Kepastian Hukum*, (Jakarta: Kencana, 2016), p. 17

¹⁶ SF Marbun, *Peradilan Tata Usaha Negara*, (Yogyakarta: Liberty, 2013), p. 148

¹⁷ E. Sumaryono, *Etika Hukum (Relevansi Teori Hukum Kodrat Thomas Aquinas)*, (Yogyakarta: Kanisius, 2000), p. 160

¹⁸ Muhamad Erwin, *Filsafat Hukum Refleksi Kritis terhadap Hukum dan Hukum di Indonesia dalam Dimensi Ide dan Aplikasi*, (Depok: Rajawali Pers, 2019), p. 302

¹⁹ Bambang Sutiyoso, *Mencari Format Ideal Keadilan Putusan dalam Peradilan*, *Jurnal Hukum*, No. 2, Volume 17 (April 2010), pp. 217-232, h. 227

²⁰ Indonesia, *Undang-Undang tentang Aparatur ...*, *Penjelasan Umum*

²¹ *Ibid*, Pasal 2

element of expediency can be seen as the principles of professionalism, proportionality, integration, delegation, neutrality, accountability, effectiveness and efficiency, openness, non-discrimination, unity and integrity, and welfare.

Law Number 30 of 2014 concerning Government Administration aims to create an orderly administration of government, create legal assurance, prevent abuse of authority, ensure accountability of Government Agencies and/or Officials, provide legal protection to citizens and government officials, implement provisions laws and regulations and apply the general principles of good governance, and provide the best possible service to citizens.²²

The principles applied in order to carry out the purpose of the law are: the principle of legality, the principle of protection of human rights, and the general principles of good governance (including legal certainty, expediency, impartiality, accuracy, not abusing authority, openness, interests of general, and good service).²³ The elements of legal certainty and benefit in Law Number 30 of 2014 concerning Government Administration are reflected in the general principles of good governance. While the element of justice is reflected in the principle of legality and the principle of protection of human rights.

²² Indonesia, Undang-Undang tentang Administrasi Pemerintahan, UU No. 30 Tahun 2014 LN Nomor 292, Tahun 2014, TLN No. 5601, Ps. 3.

²³ *Ibid*, Article 5 and Article 10

3.3. The Application of the Principle of Legal Assurance of State Civil Apparatus Dishonorable Discharge in Judgment Number 164/G/2019/PTUN-JKT

Legal assurance can be interpreted that someone will be able to get something that is expected in certain circumstances. Assurance is defined as the clarity of norms so that they can be used as guidelines for people who are subject to this regulation. The definition of certainty can be interpreted that there is clarity and firmness towards the enactment of the law in society. This is not to cause a lot of misinterpretation. Legal certainty is the clarity of behavioral scenarios that are general and binding on all citizens, including the legal consequences. Legal assurance can also mean things that can be determined by law in concrete matters.²⁴

Legal assurance is a guarantee that the law is carried out, that those entitled by law can obtain their rights and that decisions can be implemented. Legal assurance is a justifiable protection against arbitrary actions which means that someone will be able to get something that is expected in certain circumstances. Law is tasked with creating legal assurance because it aims to create order in society. Legal assurance is a characteristic that cannot be separated from law, especially for written legal norms. Law without the value of legal assurance will lose its meaning because it can no longer be used as a behavioral guide for everyone.²⁵

In the case of dishonorable discharge, if Article 87 of Law Number 5 of 2014 concerning state civil apparatus is constructed, it will be understood with the following construction: First, Article 87 of the State Civil Apparatus Law regulates the discharge of civil servants; Second, there are two types or two kinds of discharge of civil servants, which are honorable discharge and dishonorable discharge; Third, civil servants are discharge with honorarium based on the reasons as stipulated in Article 87 section (1) and section (3); Fourth, civil servants are discharge with honorarium based on the reasons as stipulated in Article 87 section (4); Fifth, in the event of a situation as referred to in section (2), the civil servant can be discharge or not.²⁶

The reasons of discharge: first, a civil servant who violates the Pancasila and the 1945 Constitution is reasonable and has a legal basis if the related person is dishonorably discharge, as regulated in Article 87 section (4) letter a. As if that happens, it means that the concerned civil servant has violated his oath to obey and be loyal to Pancasila and the 1945 Constitution. The oath to obey and be loyal to Pancasila and the 1945 Constitution is not just a meaningless formality but something fundamental in nature because, as confirmed in Article 3 juncto Article 4 of the Civil Servant Law, upholding the ideology of Pancasila and being loyal to and defending the 1945 Constitution are part of the basic values inherent in the civil servant profession as a civil servant.

²⁴ Van Apeldoorn, 1990, *Pengantar Ilmu Hukum*, Cetakan Kedua puluh empat, Jakarta: Pradnya Paramita, p. 24-25

²⁵ Fence M. Wantu, *Peranan...*, p. 193

²⁶ Constitutional Court, Constitutional Court Decree Number 87/PUU-XVI/2018, h. 127-128

Second, a civil servant who becomes a member and/or administrator of a political party is reasonable and also legally grounded if the related person is dishonorably discharge because it is Contrary to the principle of neutrality. The neutrality of a civil servant is fundamental because civil servants as part of the state civil apparatus are attached to public service tasks, government duties, and certain development tasks. So, if a civil servant becomes a member, especially if he becomes an administrator of a political party, naturally and within the limits of reasonable reasoning, it will greatly affect the neutrality of a civil servant because this situation has the potential to cause a conflict of interest when the concerned civil servant is carrying out his duties. public services or government tasks or certain development tasks must deal with the interests of the party in which the concerned civil servant becomes a member or even becomes an administrator. Such a situation will also conflict with the basic values inherent in civil servants as part of the state civil apparatus which requires them to serve the country and the people of Indonesia, not to certain groups, and carry out their duties professionally and impartially.²⁷

Third, a civil servant who is sentenced to prison based on a court judgment that has permanent legal force for committing a criminal offense with a minimum imprisonment of 2 (two) years and a crime committed with a plan is also reasonable according to law if the concerned civil servant is dishorably discharged. As civil servant as part of the state civil apparatus should set an example not only ethically but also legally. However, in this case the legislators have wisely determined the limit, namely that the court judgment which has permanent legal force cannot entirely be used as a basis for dishonorably dismissed a civil servant, but only criminal acts that are sentenced to a minimum imprisonment of two years and criminal acts premeditated crime. In other words, the legislators have proportionally considered the legal reasons that can be used as the basis for dismissing a civil servant dishonorably.²⁸

If a civil servant is dismissed for committing a malfeasance or a crime related to his position, this is reasonable because by committing a crime or crime a civil servant has abused or even betrayed the position entrusted to them to be carried out as a state civil apparatus . This is because a civil servant who commits such a crime has actually, directly or indirectly, betrayed the people because this act has hampered efforts to realize the ideals or goals of the state which should be the main reference for a civil servant as a civil servant in carrying out the duties, both public service tasks, government tasks, or certain development tasks.²⁹ In accordance with the provisions of Article 252 of Verdict Number 11 of 2017, the dismissal of a civil servant for committing a malfeasance or a crime related to the position is determined starting at the end of the month since the court judgment on the case which has permanent legal force.

²⁷ *Ibid*, h. 133-135

²⁸ *Ibid*

²⁹ *Ibid*

In Decision Number 164/G/2019/PTUN-JKT, the Civil Court judge confirmed the dismissal of a civil servant lecturer at the State Polytechnic of Ujung Pandang, by a staffing officer. The civil servant was dishonorably dismissed by the Minister of Research, Technology and Higher Education as the official staffing officer (state universities are under the Ministry of Research, Technology and Higher Education) because he has been proven to have legally participated in corruption crimes based on Criminal Law No. 31/Pid.Sus.2016/PN.Mks spoken in an open trial on July 14th, 2016. The object of dispute in the Civil Court is an order from the law with the fact that there is a general court judgment.

This verdict provides legal assurance for the enforcement of the mandate of the Civil Servant Law Article 87 section (4) letter b, where a person who has committed a crime because of his position, is dismissed dishonorably. In the provisions of Article 25, Article 53, and Article 87 section (4) letter b of the State Civil Apparatus Law as well as Article 1 number 17, number 19, and Article 290 of Verdict Number 11 of 2017, legal assurance is fulfilled if there are conditions: first, there is a general court judgment who has proven that a civil servant has been proven legally to have committed a crime related to his position and has permanent legal force. Second, it is proposed by the authorized official, and third, there is a condition that the judgment to dismiss is determined by the Civil Service Supervisory Officer.

For civil servants who do corruption, the punishment is punishment (penalty) and for the plaintiff's error has been carried out by the judiciary, so that the authorized official only continues or bases on court decisions that have permanent legal force (*incracht van gewijsd*). The Director of the State Polytechnic of Ujung Pandang has carried out the procedure based on his letter which attaches the court judgment.

3.4. The Application of the Principle of Justice of State Civil Apparatus Dishonorable Discharge in Judgment Number 164/G/2019/PTUN-JKT

Justice is one of the basic values of human life and is a classic problem that has never been completely solved. The lack of conformity in interpreting justice encourages people to try to formulate and define it according to their respective background of knowledge and experience. Justice is defined as a constant and continuous distribution to provide everyone's rights. The constant and perpetual disposition to render every man his due. Justice demands that each case be weighed individually, *ius suum cuique tribuere*.³⁰

Justice in legal ideals is a human struggle that evolves according to the rhythm of time and space.³¹ The regularity of living together must be adjusted to natural necessity.³² The essence of justice is an assessment of a treatment or action by reviewing it with a norm that according to a subjective view exceeds other norms. The law is supposed to contain the value of justice, but the law itself is not identical with justice because there are legal norms that do not contain the value of justice.³³

Justice is an abstract concept. However, inside the concept of justice sometimes means the protection of rights, equality, and position before the law, as well as the principle of proportionality between individual interests and social interests. The abstract nature of justice is that justice is not always can be born of rationality, but also determined by the

³⁰ Tata Wijayanta, *Asas...h*. 221

³¹ M. Rasjidi dan H. Cawindu, *Islam untuk Disiplin Ilmu Filsafat* (Jakarta: Bulan Bintang, 1988), p. 17

³² Theo Huijbers, *Filsafat Hukum dalam Lintas Sejarah*, (Yogyakarta: Kanisius, 1986), p. 20

³³ *Ibid*.

social atmosphere that is influenced by other values and norms in society. Therefore, justice also has a dynamic nature that sometimes cannot be accommodated in positive law.³⁴

In the State Civil Apparatus Law, justice and equality are intended to regulate the implementation of state civil apparatus must reflect a sense of justice and equality to obtain opportunities for functions and roles as state civil apparatus employees.³⁵ Civil servants of state civil apparatus who are dismissed dishonorably as civil servants will lose one of their employment rights, such as, the right to pension insurance. Becoming a civil servant is still the dream of most Indonesians, who aspire to work in this government sector because they expect a pension that they will receive after retiring/quitting a civil servant. This pension guarantee is expected to be able to meet the survival in old age, so not worrying about life sustainability when entering retirement age.³⁶

The panel of judges who decided on the case Number 164/G/2019/PTUN-JKT, outlined the principle of *actio temporaris*, that there is a grace period in filing a state administrative lawsuit. For this matter, the judges are guided by Law Number 5 of 1986 concerning Civil Courts (Civil Judicial Law), Law Number 30 of 2014 concerning Government Administration (Government Administration Law), and Supreme Court Regulation Number 6 of 2018 concerning Guidelines for Settlement of Government Administration Disputes after Undertaking Administrative Efforts.

The procedure for filing a lawsuit is based on the provisions of Article 55 of the Civil Court Law which stipulates that a lawsuit can be filed only within a grace period of 90 days from the time of receipt or announcement of the Judgment of the Civil Court Officer.³⁷ Meanwhile, in Article 75 and Article 76 of the Government Administration Law, it is regulated that people who are harmed by government officials may file an administrative effort in the form of an appeal or objection first. Supreme Court Regulation No. 6 combines the regulations in these two laws.

The judges panel considered the need to provide a sense of justice for justice seekers (justiciable) so as not to lose their right to sue because they were exposed to a grace period due to the enactment of the Civil Court Judicial Law and the Government Administration Law. The duration of time for filing a lawsuit is 90 days from the lapse of the 10 days period for the completion of administrative efforts. In his decision, the judge rejected the defendant's exception arguing that the filing of the lawsuit had expired if it was counted from the time the object of the lawsuit was received by the plaintiff, not from 10 after the objection or appeal was filed.

The implementation of the principle of justice, especially general justice (*justitia generalis*) and procedural justice (*procedural justice*) is reflected in the judge's consideration which states that the object of the dispute in the form of a dismissal decision issued on April 26th 2019 and retroactively enforced at the end of July 2016 is not can be justified. This is Contrary to Article 57 of Law 30 of 2014 concerning government administration (decisions take effect on the date of stipulation, unless

³⁴ Renius Albert Marvin dan Anna Erliyana, Polemik Jangka Waktu Pengajuan Gugatan ke Pengadilan Tata Usaha Negara, *Jurnal Hukum & Pembangunan* 49 No. 4 (2019), pp. 942-958, p. 953

³⁵ Indonesia, Civil Servant Law...Explanation Article 2 letter l

³⁶ Fitri Rahmadhani Muvariz, Analisis Aspek Keadilan dari Pemberhentian Tidak dengan Hormat sebagai Pegawai Negeri Sipil di Indonesia, *Jurnal Legislasi Indonesia*, Vol 16. No. 2 (Juni 2019), h. 198

³⁷ Indonesia, Civil Court Law, UU No. 5 Year of 1986 LN Number 77, Year of 1986, TLN No. 2244, Ps. 55.

otherwise stipulated in the decision or the provisions of the laws and regulations that form the basis of the decision). The Corruption Court Judgment was read out on July 14th, 2016 and has permanent legal force after the 7 (seven) days period for filing an appeal. The Minister of Research, Technology and Higher Education should immediately issue a discharge decision as soon as it becomes legally binding. The negligence of the defendant (Minister) cannot be charged to the plaintiff on the pretext of implementing Article 252 of PP. 11 of 2017. So that the defendant is required to revoke the object of dispute and reissue it.

3.5. The Application of the Principle of Expediency of State Civil Apparatus Dishonorable Discharge in Judgment Number 164/G/2019/PTUN-JKT

Law is everything that is useful to the people. As part of legal ideals (*idee des recht*), justice and legal certainty require a complement, which is expediency. Benefits can be interpreted as happiness. The good or bad of a law depends on whether the law gives happiness or not to humans. Good law is law that can benefit every legal subject. The law can be categorized as good if it is able to provide happiness to the largest part of society.³⁸

The society expects benefits in the implementation and enforcement of the law. Law is for humans, so the implementation of law or law enforcement must provide benefits or uses for the society. The implementation and enforcement of the law must be able to prevent the emergence of riots in the community. A good law is a law that brings benefits to humans. Benefits here can also be interpreted with happiness. The community will obey the law without the need to be forced with sanctions if the community really feels the benefits.³⁹

The application of the principle of expediency in the Civil Court Judgment in case Number 164/G/2019/PTUN-JKT is stated in the judge's refusal to apply the retroactive principle to the object of the dispute. This is to avoid legal consequences that can harm the plaintiff or other parties. After the criminal judgment, the plaintiff has finished serving the sentence and the civil servant has been reinstated so that he has carried out many legal actions such as teaching, giving assessments, testing students, receiving salaries and honoraria for his work and others. The defendant should immediately issue a discharge decision since it was declared legally binding.

The legal consequences for the delay in the issuance of the disputed object cannot be delegated to the plaintiff, so it must be enforced at the time of stipulation. The object of the dispute violates Article 57 of the Government Administration Law and the principle of prohibition of retroactive application, the object of the dispute must be declared null and void and the plaintiff must be dishonorably discharge from the date of the decision in accordance with the date the object of the dispute is enforced. With the dismissal, a professional state civil servant can be obtained, has basic values, professional ethics, is free from political intervention, and is free from practices of corruption, collusion, and nepotism.

4. CONCLUSION

The Judge Panels of the Civil Court case number 164/G/2019/PTUN-JKT focuses on aspects of legal assurance and procedural justice compared to aspects of substantive justice in making judgment. The judge has made a breakthrough in order to fulfill the

³⁸ Fence M. Wantu, *Antinomi...*p. 395

³⁹ *Ibid*

sense of justice and benefit for the applicant by canceling the decision to dishonorable discharge which is retroactive so that legal actions such as teaching and testing students and the rights that have been received by the plaintiff in the post-free period from serving a sentence to being discharged can be valid and There were no losses suffered by the plaintiff or other related parties. On the other hand, the judge also applies the principle of expediency by providing solutions to the defendant as a civil service officer so that he continues to carry out the law to dismiss civil servants who are convicted of being related to positions starting from the issuance of the decision. By the discharge, the public will get benefit in the presence of a civil servant that is free from practices of corruption, collusion and nepotism.

There are two suggestions that can be used as a solution to the problem of applying the principles of legal certainty, justice, and expediency in the practice of resolving lawsuits for decisions to dishonorably discharge in the Civil Court. First, the need for judges to explore the concepts of legal assurance, justice, and expediency which have been regulated in Law Number 5 of 2014 concerning State Civil Apparatus and their derivative regulations and Law Number 30 of 2014 concerning Government Administration in order to fulfill the sense of justice of those seeking justice. Second, with the judgment of the Jakarta Civil Court, the government must be more responsive, careful, careful, and not procrastinate in implementing statutory orders, especially the dishonorable discharge of a civil servant.

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