



**INTERNATIONAL JOURNAL OF BUSINESS,
ECONOMICS AND LAW**

E-ISSN 2289-1552

**VOLUME 2
Issue 3**

June 2013

THE INFRINGEMENT LAWSUIT AGAINST THE GENERAL PRINCIPLES OF GOOD GOVERNANCE THROUGH ADMINISTRATIVE COURT OF YOGYAKARTA

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ABSTRACT

This paper is aimed to (1) identify the cases of lawsuit against the general principles of good governance through the State Administrative Court of Yogyakarta (PTUN) from 2005 to 2010; (2) identify the reasons of plaintiff to sue in PTUN Yogyakarta; (3) describe and analyze an assessment basis used by the judge of PTUN Yogyakarta in favor of the plaintiff. The discussion is presented based on a research on law by taking a judge as a research subject and a court clerk who knows well about the problems of infringement against general principles of good governance. The data were collected by documenting the infringement letter proposed by plaintiff and judge verdicts which have a definite force of law and by interviewing the research subject. The findings of the research show that: (1) the largest infringement is an employment dispute, issuing the certificate of land including the Sultan Ground land and the dispute related to permissions, 2) the reasons of plaintiff in proposing his lawsuit, instead of violating the law, an object also violates the general principles of good governance, especially the principles of: legal certainty, arbitrariness, proportionality, accountability, accuracy, professionalism, fairness, orderly organizing the countries, openness, and prudence, 3) the basic tests used by judges in meting out the verdict still refers to the provisions of the General principles of good governance which has been stipulated in the statue law, although based on a description from the subject of the research, the State Administrative Court judges in meting out the court does not bind to the provisions and written law because general principles of good governance based on the theory are actually part of the unwritten legal norms.

Keywords: infringement, lawsuit, general principles of good governance, state administrative court.

INTRODUCTION

The following article discusses the infringement lawsuit against the general principles of good governance through the State Administrative Court of Yogyakarta. The discussion is divided into several parts, namely introduction, discussion, conclusion and recommendations. The introduction discusses the background of the problem and research objectives. The discussion explains: the state administrative Court of Yogyakarta, the identification of cases of state administrative dispute sued through the Administrative Court of Yogyakarta from 2005 to 2010; the identification of the reasons used by the plaintiffs to file a lawsuit in the State Administrative Court of Yogyakarta, as well as the identification and analysis toward the assessment basis used by the judges to pass a decision toward the lawsuit of the plaintiffs. The last parts of this article are conclusion and recommendation. The conclusion proposes three summaries related to the cases of infringement against the general principles of good governance sued through the State Administrative Court, the reasons used by the plaintiffs to file a lawsuit to the court, and the assessment basis used by the judges to pass a decision related to the infringement against the general principles of good governance.

This study was written based on the rationale that in a country which follows the understand of Welfare State, the state apparatus has broad duties and functions are very broad. This is because they have a duty to achieve the welfare their citizen. This condition is found either in Indonesia or other countries. Within a certain limit (how small, simple and authoritarian a certain country is), there isn't a country which doesn't involve as a part of the country. To avoid the possibility of power abuse which can give a bad impact to the citizens, it is necessary to establish laws governing the provision of guarantees and protections for citizens (society) in case the state apparatus perform an action which acts gives a bad affect the citizens and the protection of the state apparatus itself. These legal rules are often known as the law of the state administration.

Public administration law recognizes unwritten law principles, that is, the general principles of good governance. Those principles must be considered by state officials in performing their duties and obligations. Since the fall of the New Order in Indonesia, those principles of law are widely unwritten into written law. Three examples of writing unwritten law principles into written law in Indonesia are: 1) Article 3, Act No. 28 year 1999 about The Implementation of Free and Clean State from Collusion, Corruption and Nepotism on the general principles of organizing the state, which include the principle of: legal certainty; orderly organizing the state; public interest, openness; proportionality; professionalism, and accountability; 2) The provision of Article 20 paragraph (1) Act No. 32 year 2004 concerning the principles of local government in organizing the state,