

Principle of Praesumptio iustae Causa or Net Vermoeden van Rechtmatigheid as Principle of Administrative Justice

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Principle of Praesumptio iustae Causa or Net Vermoeden van Rechtmatigheid as Principle of Administrative Justice

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Abstract: One of the principles of administrative justice in procedural law is *praesumptio iustae causa* (in Latin) or *het vermoeden van rechtmatigheid* (in Dutch) which is aimed at providing protection to the government in executing the governance from the claim of the citizen(s). However, in Act No. 30 of 2014 it is not well formulated and in the legislation it is not yet applied as a principle in accordance with its function.

Keywords: Legal principle, administrative procedural law, administrative justice

INTRODUCTION

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In Article 67 of Law No. 5 of 1986 concerning Administrative Court it is stipulated that the lawsuit does not delay or impede the implementation of the decision of the Administrative Board or Officer as well as the action of Administrative Agency or Official of being sued.

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The Elucidation of Article 67 of Law No. 5 of 1986 stipulates that in contrast to the Civil Procedural Law in the Administrative Procedural Law, Administrative Agency or Official always serves as the party who defend that the decision which has been issued

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against the claim of the plaintiff that the challenged decision is against the law. But as long as it has not been decided by the Court, the administrative decision should considered

lawful. And the process before the Administrative Court is intended to examine whether the assumption that the Administrative Decision being sued as against the law is justified or not. That is the basis of Administrative Procedural Law which is built from the assumption that an administrative decision is always according to the law.

In term of legal protection, the Administrative Procedural Law which is the legal means in the concrete circumstances to negate the presumption. Therefore, in principle, as long as it has not been decided by the Court, an administrative decision which is being sued still can be implemented.

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The norm of Article 67 paragraph (1) of Law No. 5 of 1986 above is an embodiment of the principles of administrative law, namely the

principle of justice called “*praesumptio iustae causa*” (in Latin) or “*vermoeden van rechtsmatigheid*” (in Dutch).

But unfortunately the principle of *praesumptio iustae causa* or *vermoeden van rechtsmatigheid* according to Philipus M. Hadjon most of the legislation does not apply this principle. Government decisions relating to the validity of the applicable principle of *praesumptio iustae causa* or *vermoeden van rechtsmatigheid*. On the basis of that set of changes, revocation and cancellation of the decision of the Government.¹

LEGAL ISSUE

The question is whether the meaning of the principle of *praesumptio iustae causa* or *vermoeden van rechtsmatigheid* is as a principle of judicial administration?

LEGAL ANALYSIS

Meaning of Principle of Law

Paul Scholten as quoted by Bruggink gives the definition of legal principles are the basic thoughts contained in and behind the respective ⁶ legal system defined in the rules of law and the judge's decision, in regard to the terms and decision- individual decision can be seen as an elaboration.² Black makes the definition of the principle as a fundamental truth or doctrine, as of law; a comprehensive, rule or doctrine which furnishes a basis or origin for others; a settled rule of action, procedure, or legal determination.³

Legal principles reveal the value, which we must strive to make it happen, but only in part

¹ Philipus M. Hadjon, RUU Administrasi Pemerintahan Dalam Pembangunan ⁴ Hukum Administrasi, p.1.

² Paul Scholten in J.J. H. Bruggink, 1999. *Refleksi tentang Hukum*, translated by Arief Sidharta, 2nd ed. Bandung: Citra Aditya ¹² i, p. 119-120.

³ Henry Campbell Black. 1990. *Black's Law Dictionary*, 6th ed. St. Paul: West Publishing Co., p. 1193.

can be realized in the positive law. As far as the value ⁶ of a principle of law embodied in the rule of law in the legal system is positive, then the legal principles that are in the system. Karl Larenz mentions that legal principle is the idea that guides the legal arrangements (which may exist or existing), which itself is not a rule that can be applied, but that can be converted into such. Robert Alexy distinguishes between legal principles and the rule of law. In his opinion, the legal principle is '*optimierungsgebote*' which means the rule which requires that something based on the possibilities of juridical and factual optimally realized.

Each type has a principle of law that is different from other types of law. Starting from the substantive law such as criminal, civil, governance, and so on, as well as formal law as the law of criminal procedure, civil, administrative, legal and other events. Therefore, Satjipto Raharjo finds perhaps it is not exaggeration to say that the principle of the law is the heart of the law. So called because, firstly, it is the most comprehensive foundation for the birth of a rule of law, that the rules of law could ultimately be returned to these principles. Unless called the foundation, the legal principle is worth mentioning as the reason to the birth of the rule of law, or the *ratio legis* of the rule of law. Furthermore Satjipto Raharjo adds that with the principle of law, that law is not just a collection of rules, it is caused by the principle which contains the values and ethical demands.⁴

Principle of Law in Administrative Law

Principle of law in Administrative Law contains in Administrative Law itself and in the Judicial

¹⁹ Satjipto Rahardjo. 2014. *Ilmu Hukum*, Bandung: Citra Aditya Bakti, p. 15

Administration. The principles of Administrative Law are as follows:

1. Principle of *ne bis vexari* rule. A principle which requires that every act of the state administration should be based on law.
2. Principle of legality (rule of law). The principle that requires respect for the rights that have been acquired by a person or agency decisions of state administration officials.
3. Principle of proportionality (principle of equilibrium). The principle that requires reasonable proportion between the sentences handed to the employee who made a mistake.
4. Principle of equality (principle of unity in decision making). In facing a case and the same fact, the entire apparatus of state administration should be able to take the same decision.
5. Principle of carefulness (principle act carefully). The principle which requires that the state administration always acts carefully so as not to cause harm to the society.
6. Principle of motivation (principle motivation for any decision). In taking a decision, officials of state administration/government should rely on strong, true, fair and clear reason/motivation.
7. Principle of non misuse of competence (do not mix up the principle of authority). In making a decision, state administration officials do not use the authority or power.
8. Principle of fair play (principle of decent games). In order for the government/state administration provides the widest possible opportunity to citizens/communities to get the right and fair information.

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9. Principle of reasonable or prohibition of arbitrariness (principle of fairness and justice). In taking action, the government should not apply arbitrary or unreasonable force/feasible.

10. Principle of meeting raised expectation (in response to a reasonable expectation). The principle requires that the government could lead to hopes of reasonableness for the benefit of the people.

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11. Principle of undoing the consequence of annulled decision. The principle which negates the effects of the cancelled decision.

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12. Principle of protecting the personal way of life. The principle of the protection of any personal view of life.

13. Principle of public service (principle operation of public interest). That the government in carrying out its duties it should always put the public interest.

14. The principle of wisdom (*sapientia*). Administration officials always state must always be prudent in their duties.

Some of the principles contained in the Administration of Justice are:

1. The principle of the presumption of *rechmatig* (*vermoeden van rechmatigheid* or *praesumptio iustae causa*). This principle is adhered to the ideology that every act of government has always been considered *rechmatig* (lawful) until being annulled by the Court (see Article 67 paragraph (1) of the Administrative Court Act). This principle states that for the sake of legal certainty, any decision issued by state administration should be considered to be true according to the law, and therefore can be implemented in advance until proven otherwise and has not

been declared by the Justice Administration as a decision that is against the law.

2. The principle of verdict characteristically *erga omnes*. Administrative Judicial Court decision has binding on everyone not just those involved in the dispute alone. For this principle is the opposite of the principle of *inter pares*. The principle of *erga omnes* can not be mixed with the jurisprudence. The principle of *erga omnes* judicial decision of administrative court is a law.
3. Principle judge active (*dominus litis*). Before the examination of the dispute, in an assembly meeting, the President of the Court is entitled to decide whether the claim is unacceptable or unlawful (Article 62 of Administrative Court Act) and the preliminary examination to determine whether the claim is not so clear, so that plaintiff needs to complete it (Article 63 of Administrative Court Act). Thus this principle gives a role to the Chairman judge in the trial process to obtain a material truth. If it is deemed necessary to overcome the difficulties of the claimant to obtain information or data required, then the judge may order the agency or official of the Administration as the defendant to provide information or data being required (Article 85 of Administrative Court Act).
4. The principle of the parties should be heard (*audi et alteram partem*). The parties have equal status and should be treated and cared equally. Judges are not justified only to pay attention to the evidence, information, or explanation of one party only. This principle requires the judge to hear both sides together, including the opportunity to provide evidence and submit conclusions.

This principle is the implementation of the principle of equality. For a balanced trial it is introduced the principle of *audi et alteram partem* which means "listen to the two sides," or listen to the opinions or arguments also other parties before making a decision so that justice can be balanced. The principle of *audi et alteram partem* or also known as "the principle of balance". Right to be heard as the embodiment of the principle of *audi et alteram partem* is also a right guaranteed and protected by the 1945 Constitution, namely the right to be heard and considered, both the arguments and evidence presented before a judicial body that is independent and impartial (view that honors the equal rights of every individual).

5. The principle of unity of proceedings in similar cases both in the examination in court *judex facti*, as well as an appeal to the Supreme Court as the apex. On the basis of the unity of law based on an insight into the country, then the dualism of procedural law in the territory of Indonesia becomes irrelevant. As in the days of the Dutch East Indies were set in HIR, R.Bg, and Rv. which divided the territory of Indonesia (Java and non Java-Madura) and separated the proceedings *Landraad* and *Raad van Justitie*.
6. The principle of operation of the judicial power is independent and free from any interference of other powers either directly or indirectly intended to affect the objectivity of the court decision (Article 24 of the 1945 Constitution in conjunction with Article 4 of Act No. 4 of 2004).
7. Principle of justice is done with a simple, fast, and low cost way (Article 5 paragraph (2) of Act No. 4 of 2004). "Simple" is the

procedural law that is easy to understand and straightforward. With easy way to understand the procedural law then the trial will run in a relatively quick time. Thus the court fees also become cheaper.

8. The principle that the trial is open to the public. This principle brings the consequence that all the court's ruling is only valid and have the legal force if it is read out in a session open to the public (Article 19 of Act No. 4 of 2004 *juncto* Article 70 of Administrative Court Act).
9. The principle of judicial stages. Studying justice starting from the lowest level, namely the Administrative Court, then the High Administrative Court, and culminates in the Supreme Court. With this principle, the error in the judgment that can be corrected by a higher court. The verdict of the Administrative Court can be appealed to the High Administrative Court, and a cassation to the Supreme Court. While the decision which has a legal effect can still petitioned for legal action of judicial review to the Supreme Court.
10. The principle of the Court as a final attempt to get justice. This principle puts the court as a *ultimum remedium*. State Administration dispute to the possible extent must firstly attempt to reach a settlement through consultation and consensus rather than confrontation. Settlement through administrative effort governed by Article 48 of Administrative Court Act. If consensus is not reached, then the settlement is through the administrative court.
11. The principle of objectivity. To achieve fair decision, the judge or the clerk shall resign, if he/she is related by blood or marriage until

the third degree or the relationship of husband or wife despite having been divorced, with one of the Judge Members or the court clerk also contained relationship as mentioned above, with the defendant, the plaintiff and the lawyer or the judge or the court clerk has a direct or indirect interest in the dispute (Article 78 and Article 79 of Administrative Court Act).

Meaning of the Principle of *Het Vermoeden Van Rechtmatigheid* or *Praesumptio Justae Causa*

As mentioned above that the principle of *vermoeden van rechtmatigheid* or *praesumptio justae causa*. This principle states that for the sake of legal certainty, any decision issued by state administration should be considered to be true according to the law, and therefore can be implemented in advance unless proven otherwise, and until it has not been declared by the Administrative Court as a decision that is against the law. *Praesumptio justae causa* principle is one of the principles contained in the law of the Administrative Court. When interpreted literally, it obtains the following definitions:

1. *Praesumptio*: an inference required or permitted by law as to the existence of one fact from the proof of the existence of other facts or a conclusion derived from a particular set of facts based on law, rather than probable reasoning.
2. *Justae*: justice, the law and its administration.
3. *Causa*: (in the abl.) On account of, for the sake of; case at law, case, lawsuit/situation, condition; cause/reason, motive, pretext/interest.

When described in the narrative, the principle of *praesumptio justae causa* interpreted as the government's decision should always be considered correct and valid before there is a final and binding court decision stating that the decision is canceled. For example it often happens these days that the decision of the Head of Region regarding the procurement of land for public purposes, in which citizens who inhabit the land which do not belong to them must vacate it for the public interest. In this case, the decision of the local government in a cursory look does not consider the interests of citizens. However, it must be noted that although there is no court decision which states that the local government's decision is legally flawed, then the decision of the local government shall remain in effect and enforced ynag written in the decision. Related to the validity of a decision of the government applies the principle of *het vermoeden van rechtmatigheid* or *praesumptio justea causa*, then set changes, revocation, suspension and revocation decision. Amendment to the Government's Decree is regulated in Article 63 of Act No. 30 of 2014 on Government Administration points out that:

- (1) The decision can be amended if there are:
 - a. errors in the preamble;
 - b. editorial errors;
 - c. basic amendment in the decision-making; and or
 - d. new facts.
- (2) The changes referred to in paragraph (1) by stating objective reasons and taking into account to the general principles of good governance.
- (3) The changes of the decision referred to in paragraph (1) may only be set by the

government officials who establishes the decree and is applicable since the enactment of decree on the said change.

- (4) Decision of the changes referred to in paragraph (1) shall be carried out in five (5) working days after the finding of the reasons for the changes referred to in paragraph (1).
- (5) The decision of the change should not be harmful to the citizen designated in the Decree.

Elucidation of Article 63 mentions that:

- "change" is a change in some of the contents of the decision by government officials.
- "mistake in the preamble" is a discrepancy in placements of formulation either consideration and legal basis in the preamble to consider and or to take account of.
- "redactional errors" is negligence in the writing and other technical errors.

Article 63 is related to the change of government decisions that must have objective reasons that determines the location of the problem there are errors in the preamble, editorial, changes in legal basis or any new facts, but these changes must not be detrimental to citizens who are designated in the decision. Then you can make changes only the government that sets the decision.

Then with regard to revocation of a government decision under Article 64 of Act No. 30 of 2014:

- (1) The decision can only be revoked if there are defects on:
 - a. authority;
 - b. procedure; and or
 - c. substance.

(2) In the case of revoked decree, a new decree shall be issued by stating the legal basis for the revocation and by paying attention to ¹ the general principles of good governance.

(3) The decision of revocation as referred to in paragraph (2) can be done:

- a. by government officials who set decision;
- b. by higher official who sets decision; or
- c. upon the order of the Court.

(4) The decision of revocation conducted by government officials and higher official referred to in paragraph (3) letters a and b shall not later than 5 (five) working days after the finding of ground of the revocation ⁷ as referred to in paragraph (1) and shall be valid as from the date of the stipulation of the revocation.

(5) The decision of the revocation is done based on the order of the Court ¹⁶ as referred to in paragraph (3) letter c shall be conducted at the latest 21 (twenty one) working days since the order of the Court, and a decision is effective from the date of revocation.

According to the Elucidation of Article 64 what is meant by "substantial defect" are among others:

1. The decision was not implemented by the recipient of the decision until the specified time limit;
2. The facts and legal requirements which become the ground of the decision have changed;
3. Decisions may endanger and harmful to the public interest, or
4. Decisions are not used in accordance with the objectives stipulated in the contents of the Decree.

The revocation of the government decision in principle of revocation procedure is as difficult

as the procedure of its issuance. In practice, the right to revoke a decree is in the hand of the official administrative agency which have issued the decree, including if there is an administrative mistake or judicial disability. As an example we can refer to the Supreme Court Verdict No. 111 K/TUN/2000. In the consideration of the judges in the verdict, as we digest, that because there is an error and defective juridical in the procedures to issue an administrative decree, then administrative officials concerned after doing checking again, can and authorized to annul the administrative decision *a quo* on its own initiative (*spontane vernietiging*). However, with the conditions as stipulated in Act No. 30 of 2014, to delay the government decision as mentioned in Article 65 of Act No. 30 of 2014:

(1) The decision which has been set, its implementation can not be postponed, unless it is potential to create:

- a. state losses;
- b. environmental damage; and or
- c. social conflict.

(2) The postponement of the decision referred to in paragraph (1) can be done by:

- a. Government officials who have set the decision; and or
- b. Superior officials.

(3) To delay decision can be done based on:

- a. request of the related government officials; or
- b. Court verdict.

To postpone the decision of the Government under Article 65 is extended not only because the court verdict but it can also be done by the government itself making the decisions or the superior.

Regarding the cancellation of the government decision is regulated under Article 66 of Act No. 30 of 2014:

- (1) The decision may only be canceled if there are defects:
 - a. authority;
 - b. procedure; and or
 - c. substance.
- (2) In the case a decision is canceled, a new decision must be made by stating the legal basis of the cancellation and must refer to the general principles of good governance.
- (3) The decision of cancellation referred to in paragraph (1) may be made by:
 - a. Government officials who set decision;
 - b. Superior official who set decision; or
 - c. the verdict of the Court.
- (4) The decision to revoke committed by government officials and superior officials referred to in paragraph (3) letters a and b shall made at he latest 5 (five) working days after the finding of the reasons of cancellation as referred to in paragraph (1) and shall be valid from the date of the stipulation of the decision of the revocation.
- (5) The decision of revocation which is done on the order of the Court as referred to in paragraph (3) letter c shall be conducted at the latest 21 (twenty one) working days from the order of the Court, and a decision shall be effective from the date of revocation decision.
- (6) Cancellation decisions concerning public interest must be made public through the mass media.

Article 67 of the Act certifies that:

- (1) In the case a decision is canceled, the Agency and or government officials should withdraw all documents, files, and or goods which become the legal consequences of the

Decree or the basis for the stipulation of the Decree.

- (2) The owner of documents, records, and or goods referred to in paragraph (1) is obliged to return the to the Agency and or government officials who stipulate the cancellation of the decision.

When a government decision (*beschikking*) does not meet the requirements can be declared void. According to Muchsan there are 3 (three) kinds of cancellation, namely:⁵

1. Absolutely canceled: all the deeds that have been done, shall never been considered. Officers are who entitled to declare it are the judges through its verdicts.
2. Null and void. There are two (2) alternative null and void, namely:
 - a) All the deeds that have been done shall never been considered.
 - b) Most of the act is considered valid, only part of it is canceled. Officers who are entitled to declare are the judiciary and the executive.
3. Voidable: can be canceled where all actions undertaken are considered valid, since the cancellation takes effect it shall be canceled. Officers who are entitled to express it are commonly the executive, legislative and others.

According to the theory *functionare de faite*, a government decree shall still be considered valid even if it does not meet the above requirements (formal and material), if it meets two (2) cummulative conditions, namely:

- a. The invalidity of that decision as vague, especially for the recipient's decision.

⁵ Muchsan. 2008. *Teaching Materials of Administrative Law*. Yogyakarta: Master of Law of UGM.

b. As a result of that decision for the interest of society.

On the expiration of the government under Article 68 of Act No. 30 of 2014:

- (1) The decision ends if:
 - a. It is expired;
 - b. revoked by the competent government official;
 - c. canceled by the competent authority or by the Court verdict; or
 - d. stipulated in the legislation.
- (2) ⁹ In the case of expiry of decision referred to in paragraph (1) letter a, the decision itself shall end and has no legal force.
- (3) ⁹ In the case of expiry of decision referred to in paragraph (1) letter b, which revoked Decree has no legal force and government officials shall set the revocation Decision.
- (4) ⁹ In the case of expiry of Decision referred to in paragraph (1) letter c, government officials should set a new decision to follow up the cancellation decision.
- (5) In the event of the expiry of the Decree referred to in paragraph (1) letter d, the Decision ends by following the provisions of the legislation.

In the explanation of Article 68 is described the examples of decisions that end by itself. The official appointment decision concerned the term of office has expired, then the appointment decision itself ends and has no legal force. If the provisions of the legislation governing the validity of a decree, whereas in the Decision of appointments in question does not explicitly contain the expiry of Decision requires the issuance of a new decree for the sake of legal certainty.

¹³ The example in the event of changes in the organization structure of the old organization to the new organization that result in changes in the nomenclature of positions, whereas the position holders is not specified period of validity of the appointment decision, it is necessary to establish a new decision to end the tenure of officials concerned.

According to Muhsan, an administrative decision can be expressed as removed if it satisfies the following elements:

- a. When it expires;
- b. Revoked or declared invalid by the authorities (judicial, executive and legislative);
- c. If a new administrative decision is issued which is substantially equal to an administrative decision;
- d. If a legal event that becomes the motivation the making of the decision is no longer relevant. It is based on the opinion of Van Poe Lie in *sic stantibus theory* which states that any legal event occurs because of the particular motivation-motivation.⁶

Article 69 certifies that agency and or government officials may change the decision on the request relevant citizens, both the new decision or decisions that have been changed, revoked, suspended or canceled for reasons as stipulated in Article 63 paragraph (1), Article 64 paragraph (1), Article 65 paragraph (1), and Article 66 paragraph (1).

Of the norms that govern changes, revocation, suspension and cancellation of the decision, in Act No. 30 of 2014 it is clearly visible in upholding *het vermoeden van rechtmatigheid* or *praesumptio justea causa*. *Het vermoeden van rechtmatigheid* or *presumptio*

⁶Ibid.

justea causa, is not possible for government decision in civil law because it is likely to occur *dwang*, *dwaling*, and *bedrog*. Because in general the government authority over the government decision is addressed to echelon II officials as seen from their education, working experience and tenure. Moreover, any government action which constitutes government decision should not be interrupted which may cause vacuum of law by applying the principle of *het vermoeden van rechtmatigheid* or *presumptio justea causa*.

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CONCLUSION

Based on the above descriptions it is clear that the principle of *vermoeden van het rechtmatigheid* or *presumptio justea causa* is important in order to smoothen the governance. Therefore, the development of new norms related to changes, revocation, suspension and revocation of the government decision is not too far from the intent of the principle of *vermoeden van het rechtmatigheid* or *presumptio justea causa*.

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