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Public Information Dispute Resolution (Perspective of the State Administrative Court Act and the Public Information Disclosure Act)

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ABSTRACT. Specifications in the study use a qualitative approach that is descriptive analytical and uses the type of doctrinal law research with mthe juridical normative research method of synchronization and just remedies in the resolution of public information disputes. The results of research and discussion in the thesis, namely: First, contains ssynchronized resolution of public information disputes based on Republic of Indonesia Law Number 5 of 1986 concerning State Administrative Court as amended by Law of the Republic of Indonesia Number 9 of 2004 and finally with Law of the Republic of Indonesia Number 51 of 2009 with Republic of Law Indonesia Number 14 of 2008 concerning Public Information Openness. Second, it includes just legal remedies in resolving public information disputes. Conclusions based on the results of research and discussion include: First, ssynchronized resolution of public information disputes based on Republic of Indonesia Law Number 5 of 1986 concerning State Administrative Court as amended by Law of the Republic of Indonesia Number 9 of 2004 and finally with Law of the Republic of Indonesia Number 51 of 2009 with Republic of Law Indonesia Number 14 of 2008 concerning Openness of Public Information can be done with a juridical analysis of the competence and position of the State Administrative Court and the Information Commission, as well as the synchronization of laws against the relevant laws. Second, just remedies in resolving public information disputes are carried out with a juridical analysis based on justice theory. Finally, the author provides suggestions in the form of legislative review efforts to amend relevant laws, based on democratic political configurations in order to be able to produce responsive legal products for the realization of legal certainty and justice.

KEYWORDS. Information Commission, Administrative Court, Public Information Dispute Resolution, Synchronization

Public Information Dispute Resolution (Perspective of the State Administrative Court Act and the Public Information Disclosure Act)

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Introduction

The enactment of RI Law Number 14 of 2008 concerning Openness of Public Information and RI PERMA Number 2 of 2011 concerning Procedures for Settling Public Information Disputes in the Court, has expanded the authority of the State Administrative Court specifically in adjudicating public information disputes, namely disputes that occur between Information Users Public and State Public Bodies relating to the right to obtain and use information based on legislation. This is in accordance with the provisions in Article 47 paragraph (1) of the Republic of Indonesia Law No. 14 of 2008 concerning Openness of Public Information in conjunction with Article 2 of the Republic of Indonesia Regulation No. 2 of 2011 concerning Procedures for Settling Public Information Disputes in the Court.

As in Article 23 of RI Law Number 14 of 2008 concerning Openness of Public Information, what is meant by the Information Commission is an independent institution that functions to run RI Law Number 14 of 2008 concerning Public Information Openness and its implementing regulations, establish technical guidelines for public information service standards and resolve disputes public information through mediation and / or non-litigation adjudication. Decisions of the Information Commission derived from agreements through mediation are final and binding. Meanwhile, the

settlement of public information disputes through non-litigation adjudication by the Information Commission can only be taken if the mediation attempt is declared unsuccessful in writing or the disputing parties, or one or the disputing parties withdraw from the negotiations. With regard to the Judicial Decision from the Information Commission, a claim can be filed if one or the parties to the dispute in writing state that they did not accept the decision. As stipulated in Article 47 paragraph (1) of RI Law Number 14 of 2008 concerning Openness of Public Information, namely: "Filing a lawsuit is done through the State Administrative Court if the sued is the State Public Agency".

The formulation of the problem in the study includes: First, how is the synchronization of public information dispute resolution based on RI Law No. 5/1986 concerning State Administrative Court with RI Law No. 14/2008 concerning Public Information Openness? Second, how is a just legal remedy in solving public information disputes? While the objectives in the study include: First, identifying, analyzing, and understanding how to synchronize public information dispute resolution based on RI Law Number 5 of 1986 concerning State Administrative Court with RI Law Number 14 of 2008 concerning Openness of Public Information. Secondly, identifying, analyzing, and understanding how legal remedies are fair in resolving public information disputes.

Overall thesis research conducted by the author has the characteristics as a normative juridical study of synchronization and just remedies in resolving public information disputes. As a theoretical foundation in the form of State Law and State Administrative Law, Legal Synchronization, Administrative Justice and Public Information Disputes, Good Governance, and Justice Theory. Whereas as a conceptual foundation in the form of a review of synchronization of laws and regulations and review of dispute resolution of public information with justice.

Method

Specifications in the study use a qualitative approach that is descriptive analytical and uses the type of doctrinal law research with mthe juridical normative research method of synchronization and just remedies in the resolution of public information disputes. Focusing on the use of secondary data sources, which, as Soerjono Soekanto, in secondary data use

legal materials which include.[1] First, primary legal materials in the form of binding legal materials consisting of norms or the basic rules, basic rules, statutory regulations, legal materials that are not codified, jurisprudence, treaties, and legal materials from the colonial era which still apply today. Second, secondary legal material in the form of materials that provide an explanation of the primary legal material. Third, tertiary legal material in the form of materials that provide instructions and explanations for primary and secondary legal materials.

Synchronization of Public Information Dispute Resolution Based on the Competence of the Information Commission and the State Administrative Court

The competence of a court to examine, try and decide on a case is related to the type and level of justice. Based on its type, the judicial environment is divided into general court, state administrative court, religious court and military court. Whereas based on the level of justice the judiciary is distinguished from the first court, the court of appeal and the court of appeal. RI Law Number 48 of 2009 concerning Judicial Poweradheres to the dual system of courts, namely the two judicial systems in addition to the general court, there is also an independent administrative court. As a consequence of the dual system of courts, it is necessary to confirm the dispute field or administrative case as the field of competence of the relevant court.

There are several ways to find out the competence of a court. First, in the opinion of E. Utrecht, competence can be seen from the subject matter of the dispute (*geschilpunt, fundamentum petendi*). Second, in Sjachran Basah's opinion, competence can be seen by making a distinction on attribution (*absolute competentie* or *distributie van rechtsmacht*).[2] Third, in the opinion of Zairin Harahap, by distinguishing absolute and relative competence.[3] Competence in judging can be divided into two, namely the attribution

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1 Soerjono Soekanto, & Sri Mamudji. *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Jakarta: Rajawali Pers, 2014, pp. 12-13.

2 Victor Yaved Neno, *Implikasi Pembatasan Kompetensi Absolut Peradilan Tata Usaha Negara*. Bandung: Citra Aditya Bakti, 2006, pp. 32-33.

3 Zairin Harahap, 2001. *Hukum Acara Peradilan Tata Usaha Negara*. Jakarta: Rajawali Pers, pp. 31-32.

competency judiciary (*attributie van rechtsmacht*) and the distribution judicial competence (*distributie van rechtsmacht*). Attribution judicial competencies are absolute authority or absolute competence, namely the competence of court bodies in examining certain types of cases and absolutely cannot be examined by other judicial bodies. While the judicial competence of distribution or relative competence or relative competence is in accordance with the principle of the actor of the forum rei so that the competent authority is the court of domicile.[4]

Comparison of absolute competence and relative competence each of which is owned by the Information Commission based on RI Law Number 14 of 2008 concerning Public Information Openness and State Administrative Court based on RI Law Number 5 of 1986 concerning State Administrative Court as amended by RI Law Number 9 In 2004 and the latest with RI Law Number 51 of 2009 are as follows:

Table 1 Comparison of Information Commission Competencies and Administrative Court

Competence	Information Commission	Administrative Court
Absolute	- Article 1 number 3 of RI Law Number 14 of 2008 - Article 1 number 5 of RI Law Number 14 of 2008 - Article 23 RI Law Number 14 of 2008 - Article 26 paragraph (1) RI Law Number 14 of 2008 - Article 37 RI Law Number 14 Year 2008	- Article 1 number 3 of RI Law Number 5 of 1986 jo. Article 1 number 9 of RI Law Number 51 Year 2009 - Article 1 number 4 of RI Law Number 5 of 1986 jo. Article 1 number 10 of RI Law Number 51 Year 2009 - Article 3 of RI Law Number 5 of 1986 - Article 47 RI Law Number 5 of 1986
Relative	- Article 26 paragraph (2) and paragraph (3) of RI Law Number 14 of 2008 - Article 27 paragraph (2), paragraph (3), and paragraph (4) of RI Law Number 14 of 2008	- Article 6 RI Law Number 5 of 1986 jo. Article 6 RI Law Number 9 Year 2004 - Article 54 RI Law Number 5 of 1986 jo. Article 54 RI Law Number 9 Year 2004

Source: Authors' Research Data Analysis, 2018

[4] W. Riawan Tjandra, *Hukum Acara Peradilan Tata Usaha Negara*. Yogyakarta: Universitas Atmajaya, 2002, p. 31.

Law No. 14 of 2008 concerning Openness of Public Information gives attributive authority to the Information Commission which includes absolute and relative competencies. The absolute competence of the Information Commission based on the provisions of Article 1 number 3, Article 23, and Article 26 paragraph (1) of RI Law Number 14 of 2008 concerning Public Information Openness states that the functions and duties of the Information Commission are to receive, examine and decide on resolving disputes over public information through mediation and / or non-litigation adjudication. As for the object of the dispute as regulated in Article 1 number 5 of RI Law Number 14 of 2008 concerning Public Information Openness is a public information dispute.

Whereas the relative competence of the Information Commission can be simply defined as the authority of the Information Commission in an effort to resolve public information disputes which are determined based on the level or hierarchy of the Public Agency as stipulated in Article 26 paragraph (2), Article 26 paragraph (3), Article 27 paragraph (2)), Article 27 paragraph (3), and Article 27 paragraph (4) of RI Law Number 14 of 2008 concerning Openness of Public Information. Public bodies are divided into three levels or hierarchies, which include central public bodies, provincial public bodies, and district / city public bodies. Therefore, Law No. 5/1986 concerning State Administrative Court as amended by RI Law No. 9/2004 and finally RI Law No. 51/2009 give attributive authority to the State Administrative Court which includes absolute and relative competence. The absolute competence of the State Administrative Court based on the provisions of Article 47 of RI Law Number 5 of 1986 concerning the State Administrative Court states that the duties and authority of the State Administrative Court are to examine, decide upon, and resolve state administrative disputes. As for the objects of state administration disputes as regulated in Article 1 number 3 and Article 1 number 4 of RI Law Number 5 of 1986 *juncto* Article 1 number 9 and Article 1 number 10 of RI Law Number 51 of 2009 are the State Administration Decree. However, in the case of a State Administration Decree as the object of the state administration dispute there are limitations as mentioned in Article 2, Article 48, Article 49, and Article 142 of RI Law Number 5 of 1986 concerning State Administrative Court in conjunction with Article 2 of RI Law 9 2004 concerning Amendment to RI Number 5 of 1986 concerning State Administrative Court. The restrictions are divided into three which include direct restrictions, indirect restrictions, and temporary restrictions are temporary. and Article 142 of RI Law Number 5 of 1986 concerning State

Administrative Court in conjunction with Article 2 of RI Law Number 9 of 2004 concerning Amendment to RI Number 5 of 1986 concerning State Administrative Court. The restrictions are divided into three which include direct restrictions, indirect restrictions, and temporary restrictions are temporary. and Article 142 of RI Law Number 5 of 1986 concerning State Administrative Court in conjunction with Article 2 of RI Law Number 9 of 2004 concerning Amendment to RI Number 5 of 1986 concerning State Administrative Court. The restrictions are divided into three which include direct restrictions, indirect restrictions, and temporary restrictions are temporary.

First, direct restriction is a limitation which makes it impossible at all for the State Administrative Court to examine, decide upon, and resolve state administrative disputes as referred to in Article 2 and Article 49 of RI Law Number 5 of 1986 concerning State Administrative Court in conjunction with Article 2 of the RI Law Number 9 of 2004 concerning Amendment to the Republic of Indonesia Number 5 of 1986 concerning State Administrative Court. *Second*, indirect restrictions are restrictions that are still possible for the State Administrative Court to examine, decide upon, and resolve state administrative disputes provided that all available administrative efforts have been taken as stated in Article 48 of RI Law Number 5 of 1986 concerning Judiciary State Administration. *Third*, Whereas the relative competence of the State Administrative Court can be simply defined as the authority of the State Administrative Court in the effort to settle state administrative disputes determined based on each territory or place of the competent court whose jurisdiction covers the defendant's domicile as regulated in Article 6 and Article 54 RI Law Number 5 of 1986 concerning State Administrative Court in conjunction with Article 6 and Article 54 of RI Law Number 9 of 2004 concerning Amendment to RI Number 5 of 1986 concerning State Administrative Court. Initially, the State Administrative Court will be established in the regency / city domicile, but in the meantime, it has only been established in the domiciled territory of the provincial capital.

The competence of the State Administrative Court according to RI Law No. 5/1986 concerning State Administrative Court as amended by RI Law No. 9/2004 and finally with RI Law No. 51/2009 is narrower when compared to the competence of the State Administrative Court according to Thorbecke's view and Buys. According to Thorbecke when the *fundamentum petendi* (the subject of the dispute) is located in the field of public law, the state administrative judge has the authority to decide it. Meanwhile,

according to Buys, the measurement that must be used in determining whether or not a state administrative judge is authorized is total (subject to dispute).[5]

Synchronization of Public Information Dispute Resolution Based on the Position of the Information Commission and the State Administrative Court

Constitutionally in the Indonesian constitutional system as regulated in Article 24 of the 1945 Constitution of the Republic of Indonesia, it is stated that the judicial function or judicial power is carried out by the Supreme Court, including judicial bodies that are under it in the general court, state administrative court, religious court, military court, and by a Constitutional Court. Duties and functions as an affirmation regarding judicial authority as stipulated in Article 24 of the 1945 Constitution of the Republic of Indonesia are further regulated in RI Law No. 48/2009 concerning Judicial Power. In addition, along with the needs and demands of the public for justice and the development of the theory of constitutional law, various judicial institutions that have been formed by the state through laws and regulations as a special court appear in their position as a general court whose task and function is specifically to examine and decide on various types of disputes which are the authority to adjudicate from existing judicial institutions. As for the other part of the institution or body or commission as a quasi-judicial with its position that stands alone outside the general court environment whose task and function is to examine and decide upon a dispute through a non-litigation settlement mechanism (Aryani, 2015: 5-6).

Jimly Asshiddiqie specifically gave a view on the quasi-judicial institution based on the consideration of the Texas Court Decision in the Perdue, Brackett, Flores, Utt, and Burns cases against Linebarger, Goggan, Blar, Sampson, and Meeks, LLP, 291 sw 3d 448 which states that a state institution can be categorized as a quasi-judicial institution if it has the following powers as emphasized by Aryani[6]: *a*. Provide judgment and

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5 Nomensen Sinamo, *Hukum Acara Peradilan Tata Usaha Negara*. Jakarta: Permata Aksara, 2016, p. 42.

6 P. Dyah Aryani, *Putusan Komisi Informasi Dalam Bingkai Hukum Progresif*. Jakarta: Komisi Informasi Pusat Republik Indonesia, 2015, pp. 5-6.

consideration; *b.* Hear and determine or confirm facts to make a decision; *c.* Make decisions and considerations that bind legal subjects; *d.* Influence individual rights or individual property rights; and e. Test the witnesses, force the witnesses to attend and to hear the statements of the parties in the trial.

Starting from this view, a comparison of the position of the Information Commission and the position of the State Administrative Court in the judicial function can be elaborated, as follows:

Table 2 Comparison of Information Commission Position and State Administrative Court in Judicial Functions

<table>
<tr><th colspan="6">Judicial</th><th>Quasi-Judicial</th></tr>
<tr><td colspan="6">Article 24 of the Constitution of the Republic of Indonesia 1945</td><td>RI Law No. 14 of 2008</td></tr>
<tr><td rowspan="4">Constitutional Court</td><td colspan="5">Supreme Court</td><td rowspan="4">Information Commission</td></tr>
<tr><td colspan="2">General Courts</td><td rowspan="3">State Administrative Court</td><td rowspan="3">Religious Courts</td><td rowspan="3">Military Justice</td></tr>
<tr><td>Criminal Public</td><td>Civil Code</td></tr>
<tr><td>Special Crimes</td><td>Special Civil Code</td></tr>
</table>

Source: Analysis of Author's Research Data, Adaptation from Jimly Asshiddiqie's Opinion, 2013.

The State Administrative Court is a judicial institution under the Supreme Court in charge of exercising judicial authority to administer justice in order to enforce law and justice within the state administrative court environment in addition to the environment of the general court, religious court and military court. The task or authority has been determined in RI Law No. 5/1986 concerning State Administrative Court as amended by RI Law No. 9/2004 and finally with RI Law No. 51/2009, namely as a judicial institution that has the authority specifically to settle administrative disputes. state effort through the mechanism of dispute resolution in court (in court settlement).

The position of the Information Commission as a consequence of RI Law No. 14 of 2008 concerning Openness of Public Information based on this view can be categorized as a quasi-judicial institution. The presence of the Information Commission in the development of modern law as a quasi-judicial institution that has the authority specifically to resolve public

information disputes through out of court settlement mechanisms becomes an ideal for the process of resolving legal disputes that do not always have to be resolved through the courts (in court settlement).

Synchronization of Public Information Dispute Settlement Based on the Substance of Article in RI Law Number 5 of 1986 concerning State Administrative Court and RI Law Number 14 of 2008 concerning Public Information Openness

Synchronizing the settlement of public information disputes based on RI Law No. 5/1986 concerning State Administrative Court as amended by RI Law No. 9/2004 and finally with RI Law No. 51/2009 with RI Law No. 14/2008 concerning Openness of Public Information can be done with analysis of the substance of the articles which are related to one another. So as to find out the extent of synchronization of the substance of the articles governing the authority to adjudicate in efforts to resolve public information disputes based on the competence of the State Administrative Court and the competency of the Information Commission can be described through the following table:

Table 3 Synchronization of Article Substance

No.	Classification	Law No. 5/1986 concerning State Administrative Court as amended by Law No. 9/2004 and finally Law No. 51/2009	Law Number 14 of 2008 concerning Openness of Public Information
1	Chapter	Chapter I. General Provisions	Chapter I. General Provisions
	Part	First part	Part One
	Subject	Definition	Definition
	Article	Article 1 number 10	Article 1 number 5
	Description of Substance	State Administration Dispute is a dispute arising in the field of state administration between a person or a Civil Legal	Public Information Disputes are disputes that occur between public bodies and users of public

		Entity and a State Administration Agency or Officer, both at the central and regional levels, as a result of issuing state administrative decisions, including employment disputes based on statutory regulations applicable.	information relating to the right to obtain and use information based on legislation.
2	Chapter	Chapter IV A lawsuit	Chapter X. Lawsuit and Court Appeals
	Part	First part	Part One
	Subject	A lawsuit	Lawsuit to court
	Article	Article 53 paragraph (1)	Article 47 paragraph (1)
	Description of Substance	Individuals or Legal Entities who feel their interests have been harmed by a State Administration Decree can file a written claim to the competent court which contains demands that the disputed State Administration Decree be declared null or void, with or without claims for compensation and / or rehabilitated.	Filing a lawsuit is done through a state administrative court if the sued is the State Public Agency.

Source: Authors' Research Data Analysis, 2018

Based on the synchronization of article substance in RI Law Number 5 of 1986 concerning State Administrative Court as amended by RI Law Number 9 of 2004 and finally with RI Law Number 51 of 2009 with RI Law Number 14 of 2008 concerning Openness of Public Information above, found a connection between one another. There is an expansion of the competence of the State Administrative Court, where previously the duties and authority of the State Administrative Court were to examine, decide upon, and resolve state administrative disputes with the object of the dispute being the State Administrative Decree, expanded to include public information disputes submitted by the State Public Agency and / or Public Information Applicant.

Legal Synchronization of Public Information Dispute Settlement Based on RI Law Number 5 of 1986 concerning State Administrative Court and RI Law Number 14 of 2008 concerning Public Information Openness

The authority to adjudicate by the State Administrative Court in the settlement of public information disputes originates from RI Law No. 14 of 2008 concerning Public Information Openness. So that it can be said that the authority is an attributive authority obtained by the State Administrative Court from Law outside of Republic of Indonesia Law No. 5/1986 concerning State Administrative Court as amended by RI Law No. 9/2004 and finally with RI Law No. 51 Year 2009, the substance of which contains material and formal law in the administration of state administrative justice. Therefore, a legal system has a principle that is a measure of the existence of the legal system itself. According to Lon L. Fuller, the legal system must contain a certain morality. Failure to create such a system not only gives birth to a bad legal system, but rather something that cannot be called a legal system. Lon L. Fuller's opinion on the measurement of the legal system is laid out on eight principles called principles of legality, which are as follows: (Satjipto, 2000: 51-52) a. A legal system must contain regulations, not just ad hoc decisions; b. Every legal rule must be published; c. Legal regulations are not retroactive; d. The rules must be arranged in an understandable formulation; e. A system is prohibited to contain rules that conflict with each other; f. Regulations are prohibited containing demands that exceed what is done; g. It is forbidden to change the rules frequently so that someone will lose orientation; and h. There must be a match between the legal regulations enacted and their implementation.

Maria Farida Indrati Soeprapto stated that the theory of statutory regulation (*gesetzgebungstheorie*) is oriented to look for clarity and clarity of meaning or meanings and is cognitive.[7] A normative study must use a statutory approach (statue approach), because it conducts research on various legal rules which are the focus and central theme of the study. Must see the law as a closed system that has the following characteristics: *a*. Comprehensive, meaning that the legal norms contained therein are logically

[7] Maria Farida Indrati Soeprapto, *Ilmu Perundang-Undangan, Jenis, Fungsi, dan Materi Muatan*. Yogyakarta: Kanisius, 2007, pp. 8-9.

related to one another; *b.* All-inclusive, that the set of legal norms is quite capable of accommodating existing legal problems, so that there will be no lack of law; and *c.* Systematic, that besides linking one another, the legal norms are also arranged hierarchically.[8]

The function of legal norms according to Hans Kelsen include governing, prohibiting, authorizing, allowing, and deviating from the provisions. In a legal norm system, for example there is a hierarchy of tiered legal norms, which stipulates that the norms below are valid and have validity if formed by or based on and are based on the highest norms (basic law) called *grundnorm*. The validity of a norm in a legal norm system is relative, dependent on higher norms forming and determining the power of conduct.[9]

The theory of the level of Hans Kelsen's legal norms was inspired by a student named Adolf Merkl, who put forward the theory of *die Lehre vom Stufenbau der Rechtsortnung* (legal stage), namely that law is a hierarchical regulation, a legal system that conditions, is conditioned, and legal actions. Norms that codify contain conditions for making other norms or actions.[10] Thought about the hierarchy of laws and regulations is a result of the influence of thought about the law by Hans Kelsen, where law is a normo-dynamic norm because the law is always formed and erased by the institution or authority authorized to shape it.[11] Adolf Merkl also stated *das Dolpelte Rechsantlizt*, which is a norm that always has two faces, Hans Nawiasky's theory divides the hierarchical structure of legal norms into four types, namely *staatsfundamentalnorm, staatsgrundgesetz, formall gesetz, and verordnungen autonome satzung*. If it is connected with the state of law of Indonesia, then there is the structure of the arrangement as follows: *(1) Staatsfundamentalnorm* (state fundamental norms): Pancasila (OpeningThe 1945 Constitution of the Republic of Indonesia); *(2) Staatsgrundgesetz* (basic rules of the state / basic rules of the state): The Body / articles in The 1945 Constitution of the Republic of Indonesia, the Resolution of the People's Consultative Assembly, and the Constitutional Convention; *(3) Formell*

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8 Johnny Ibrahim, *Teori dan Metode Penelitian Hukum Normatif*. Malang: Banyumedia Publishing, 2006, pp. 302-303.

9 Tanto Lailam, *Teori & Hukum Perundang-Undangan*. Yogyakarta: Pustaka Pelajar, 2017, p. 12.

10 Jimly Asshiddiqie, & Ali Syafa'at, *Teori Hans Kelsen Tentang Hukum*. Jakarta: Sekretariat Jenderal & Kepaniteraan Mahkamah Konstitusi Republik Indonesia, 2006, pp. 109-110.

11 Shandra Lisya Wandasari, Sinkronisasi Peraturan Perundang-Undangan Dalam Mewujudkan Pengurangan Risiko Bencana. *UNNES Law Journal*, 2(2), 2013, pp. 146-147.

Gesetz (formal law): Constitution; and *(4) Verordnungen autonome satzung* (implementing rules and autonomous rules): hierarchically from Government Regulations to Decisions of Regents or Mayors.

The theory of Hans Kelsen and Hans Nawiasky basically provides an understanding that methodologically the search for a legal norm that underlies the lower norm and the search for a lower norm contrary to the higher norm does not take place indefinitely (*regressus ad infinitum*), because in the end there must be a norm that is considered the highest norm or until it stops at the norm above which there is no higher norm[12] (called the *grundnorm* as the highest norm by Hans Kelsen or *staatsfundamentalnorm* as the fundamental norm by Hans Nawiasky.[13]

In connection with legal principles and principles, Purnadi Purwacaraka and Soerjono Soekanto are of the opinion that in order for a statutory regulation to be effective, a substantial principle must be paid attention to. First, the law does not apply retroactively, meaning that the law can only be applied to the events mentioned in the law and occur after the law is declared effective. Second, laws made by higher authorities have a higher position (lex superior derogate legi inferiori). Third, special laws override general (lex specialist derogate legi generali) laws. Fourth, the new law defeats the old one (lex posterior derogate legi priori). Fifth, the law cannot be contested, meaning that the law can only be revoked and / or amended by the agency that created it. Sixth, the law is a means to achieve spiritual and material welfare for society and through individuals through preservation or renewal or innovation.[14]

Ronny Hanitijo Soemitro as quoted by Yudho Taruno Muryanto and Djuwityastuti stated that synchronization of laws and regulations can be examined both vertically and horizontally. If the synchronization of the laws and regulations is examined vertically, it will be seen how hierarchical it is. Then, if the synchronization of the laws and regulations is examined horizontally, it means that the extent to which the laws and regulations governing these various fields have functional relations consistently.[15] Peter Mahmud Marzuki argues that in approaching the synchronization level of

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12 Tanto Lailam, *Teori & Hukum Perundang-Undangan*, 2017, pp. 26-27.

13 Maria Farida Indrati Soeprapto, *Ilmu Perundang-Undangan, Jenis, Fungsi, dan Materi Muatan*, 2007, pp. 48-49.

14 Yuliandri, *Asas-Asas Pembentukan Peraturan Perundang-Undangan yang Baik*. Jakarta: Rajawali Pers, 2010, pp. 117-118.

15 Yudho Taruno Muryanto, & Djuwityastuti, "Model Pengelolaan Badan Usaha Milik Daerah (BUMD) Dalam Rangka Mewujudkan Good Corporate Governance". *Jurnal Yustisia* 3(1), 2014, pp. 129-130.

legislation, in addition to understanding the type, hierarchy, and principles of forming legislation.[16]

To find out the position RI Law No. 5/1986 concerning State Administrative Court as amended by RI Law No. 9/2004 and most recently RI Law No. 51/2009 and RI Law No. 14/2008 concerning Openness of Public Information isby using the statutory approach (statue approach) to conduct research on the synchronization level of legislation whether vertically or horizontally. Normatively synchronize the two laws based on theory *die Lehre vom Stufenbau der Rechtsortnung* from Hans Kelsen and Hans Nawiasky as well as based on the type and hierarchy of the laws and regulations as regulated in Article 7 paragraph (1) and paragraph (2) of the Republic of Indonesia Law No. 12 of 2011 concerning the Formation of Laws and Regulations stipulating that the legal force of the legislation is in accordance with the type and hierarchy of the laws and regulations The rules are as follows:

Table 4 Legal synchronization

Types and Hierarchy Based on Article 7 of Law Number 12 Year 2011	**Laws and regulations**	***die Lehre vom Stufenbau der Rechtsortnung***
The 1945 Constitution of the Republic of Indonesia	-	*Staatsgrundgesetz*
Decree of the People's Consultative Assembly	-	
Government Act / Regulations in Lieu of Law	RI Law Number 5 of 1986 concerning State Administrative Court	*Formell Gesetz*
	Republic of Indonesia Law Number 9 of 2004 concerning Amendment to Law of the Republic of Indonesia Number 5 of 1986 concerning State Administrative Court	
	RI Law Number 51 of 2009 concerning Second	

[16] Peter Mahfud Marzuki, *Penelitian Hukum*. Jakarta: Prenadamedia Group, 2016, pp. 75-76.

	Amendment to Law of the Republic of Indonesia Number 5 of 1986 concerning State Administrative Court	
	RI Law Number 14 of 2008 concerning Openness of Public Information	
Government regulations	-	*Verordnungen autonome satzung*
Presidential decree	-	
Provincial Government Regulation	-	
District / City Government Regulations	-	

Source: Authors' Research Data Analysis, 2018

Based on methodological understanding in Hans Kelsen and Hans Nawiasky's Theory, the position of RI Law Number 5 of 1986 concerning State Administrative Court as amended by RI Law Number 9 of 2004 and finally with RI Law Number 51 of 2009 and RI Law Number 14 The year 2008 regarding Openness of Public Information is a formal law which is hierarchically contained instructural structure of formell gesetz. Whereas based on the type and hierarchy of laws and regulations as regulated in Article 7 paragraph (1) and paragraph (2) of RI Law Number 12 of 2011 concerning Formation of Legislation the position of Republic of Indonesia Law Number 5 of 1986 concerning State Administrative Court as amended by Law of Republic of Indonesia Number 9 of 2004 and the latest to Law of Republic of Indonesia Number 51 of 2009 and Law of Republic of Indonesia Number 14 of 2008 concerning Openness of Public Information is located on the same level, namely in type and hierarchy in the position as Law.

Substantially the two laws are synchronized in a horizontal level with the enactment of the principle *lex specialist derogate legi generali*. RI Law Number 14 Year 2008 concerning Openness of Public Information that is of a nature *lex specialist* push aside RI Law No. 5/1986 concerning State Administrative Court as amended by RI Law No. 9/2004 and finally RI Act No. 51/2009 which is *legali generali*. Because the lex specialist nature of RI Law No. 14 of 2008 concerning Openness of Public Information is a source of positive written law that has implications for the expansion of the

competency level of the State Administrative Court in the dispute of public information disputes.

Legal Efforts to Settle Public Information Disputes Based on Plato's Theory of Justice

Plato's theory of justice emphasizes harmony. Plato gives the definition of justice as the supreme virtue of the good state, while the definition of a just person is the self-disciplined man whose passions are controlled by reason. Justice is not directly related to law, because according to Plato justice and the rule of law are the general substance of a society that makes and maintains its unity.[17]

Plato's view of justice is known for individual justice and justice in the state. To find the correct understanding of individual justice, first must find the basic characteristics of justice in the state, therefore Plato expressed "let us inquire first what it is the cities, then we will examine it in the single man, looking for the likeness of the larger in the shape of the smaller". Although Plato said so, it does not mean that individual justice is identical with justice in the state. It is just that Plato saw that justice arises because of adjustments that give a harmonious place to the parts that make up a society. This conception of Plato's justice is formulated in the phrase giving each man his due, which is to give everyone what they are entitled to. Therefore, laws need to be upheld and laws need to be formed.[18]

In relation to law, the material object is about the value of justice as the essence of the principle of legal protection, while the formal object is a juridical normative perspective with the intention of finding basic principles that can be applied to resolve problems that arise in the field of using the value of justice as intended. Concerning the value of justice in question, especially with regard to the object, namely the rights that must be given to citizens. Usually this right is assessed and treated from various aspects of political and cultural considerations, but the essence remains unchanged namely *suum cuique tribuere*.[19]

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17 Julia Bader, and Jörg Faust. "Foreign aid, democratization, and autocratic survival." *International Studies Review* 16(4), 2014, pp. 575-595.

18 Julia Bader, and Jörg Faust, *Ibid.*

19 Julia Bader, and Jörg Faust, *Ibid.* for further reading concerning Theory of Justice, please also see David Keyt, "Plato on justice." *Socratic, Platonic and Aristotelian Studies: Essays in Honor of Gerasimos Santas*. Springer, Dordrecht, 2011, pp. 255-270; Afifeh Hamedi, "The concept of justice in Greek philosophy (Plato and

Based on the methodological understanding of Plato's Justice Theory that was born from the philosophy of idealism, it can be seen that to view a problem which in this case is a dispute of public information, it requires regulation with positive written law that must reflect justice, because the law and the law is not solely to maintain order and maintain state stability, but the most important thing of the law is to guide the people to achieve priority, so that they are eligible to become citizens of the ideal state.

Legal Efforts to Settle Public Information Disputes Based on Aristotle's Theory of Justice

Aristotle's theory of justice emphasizes proportion or balance. Aristotle gives the definition of justice in two distinctions. First, distributive justice is giving the distribution and appreciation of each individual according to his position as a citizen and wants equal treatment for those who are equal according to the law. Second, corrective or remedial justice, namely providing a measure of the technical principles that govern administration rather than the law implementing the law. In regulating legal relations, it is necessary to find a general measure to deal with the consequences of actions regardless of individual subjects and their intentions can be assessed according to an objective measure.[20]

Punishment must correct the crime, compensation must correct the error or civil misappropriation, the return must correct the profit that is obtained improperly. The conception of Themis, the Goddess who weighs the balance without looking at individual subjects, implies this form of justice. However, corrective, or remedial justice must be understood as subject to distributive justice.[21]

Based on the methodological understanding of the Aristotelian Justice Theory that was born from the flow of the philosophy of realism, it can be seen that efforts to resolve distributive justice disputes with equality before the law in the implementation of RI Law Number 5 of 1986 concerning State Administrative Court as amended with RI Law Number 9 Year 2004 and

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Aristotle)." *Mediterranean Journal of Social Sciences* 5 (27 P2), 2014, pp. 1163-1163; Mfonobong David Udoudom, and Samuel Akpan Bassey. "Plato and John Rawls on Social Justice." *Researchers World* 9(3), 2018, pp. 110-114.

20 Teguh Prasetyo, & Abdul Halim Barkatullah, *Filsafat, Teori, dan Ilmu Hukum: Pemikiran Menuju Masyarakat yang Berkeadilan dan Bermartabat*. Jakarta: Rajawali Pers, 2012, p.268.

21 Teguh Prasetyo, & Abdul Halim Barkatullah, *Ibid.*

finally with RI Law Number 51 Year 2009 with RI Law Number 14 Year 2008 concerning Public Information Openness.

Legal Remedies for Public Information Disputes Based on Justice Theory John Rawls

Another theory that talks about justice is the theory put forward by John Rawls. In his theory it was stated that there are three things that are the solution to the problem of justice. First, the principle of freedom is the same for everyone (principle of greatest equal liberty). Second, the difference principle. Third, the principle of fair equality to obtain opportunities for everyone (the principle of fair equality of opportunity).[22]

The principle of equality is further advanced by Wolfgang G. Friedmann which basically contains two meanings. First, equality is seen as an element of justice, in which there are universal values and justice can be interpreted on the one hand as law, this can be seen from the term justice, which means law, but on the other hand, justice is also the goal of law. In achieving this goal, justice is seen as impartiality. This attitude contains the idea of equality, which is the equality of fair treatment for all people. Second, equality is a right, equality as a right can be seen from the provisions of The Universal Declaration of Human Rights 1948, as well as in the International Covenant on Economic, Social and Cultural Rights 1966.

Based on the methodological understanding of the John Rawls Justice Theory, it can be seen that efforts in resolving equitable public information disputes require the principle of equal freedom for everyone (the principle of greatest equal liberty), the principle of difference (the difference principle), and the principle of equality fair to get the opportunity for everyone (the principle of fair equality of opportunity) in the implementation of RI Law No. 5/1986 concerning State Administrative Court as amended by RI Law No. 9/2004 and finally with RI Law No. 51/2009 with RI Law Number 14 of 2008 concerning Openness of Public Information. In relation to the regulation of human rights and citizens' freedom, the theory is a theory that is quite relevant to be applied.

[22] Julia Bader, and Jörg Faust, 2014, *Ibid.*

Legal Efforts to Resolve Public Information Disputes Based on The Theory of Working of Law William J. Chambliss and Robert B. Seidman

Related to synchronizing the settlement of public information disputes based on RI Law No. 5/1986 concerning State Administrative Court as amended by RI Law No. 9/2004 and finally with RI Law No. 51/2009 with RI Law No. 14/2008 concerning Public Information Openness examined using the Theory of Law Work from William J. Chambliss and Robert B. Seidman. The constructions contained in the theory are as follows.[23]

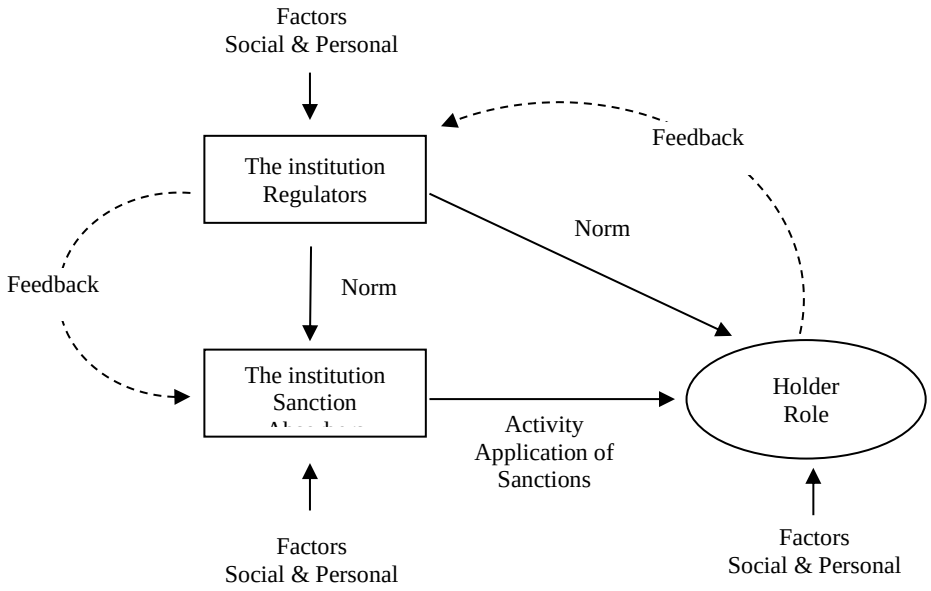

Figure 1 The Theory of the Operation of the Law by William J. Chambliss and Robert B. Seidman

Based on the methodological understanding of the Theory of William J. Chambliss and Robert B. Seidman, it can be seen that the position of the subject of public information disputes which includes the Public Information Applicant, and the State Public Agency is the role holder. The Public Information Applicant and the State Public Agency are targets of a law that is related to the achievement of the objectives of the promulgation of RI Law No. 14 of 2008 concerning Openness of Public Information, including: a. Guaranteeing the right of citizens to know the plans for making public

[23] Satjipto Rahardjo, *Hukum dan Masyarakat*. Bandung: Angkasa, 1980, p. 27.

policies, public policy programs, and public decision-making processes, and the reasons for making public decisions; b. Encourage community participation in the process of making public policy; c. Increase the active role of the community in public policy making and good management of public bodies; d. Realizing good state administration, which is transparent, effective and efficient, accountable and can be accounted for; e. Knowing the reasons for public policies that affect the lives of many people; f. Develop science and educate the life of the nation; and / or g. Improve information management and services within the Public Agency to produce quality information services. and / or g. Improve information management and services within the Public Agency to produce quality information services. and / or g. Improve information management and services within the Public Agency to produce quality information services.

Therefore, it is expected not to be bound by legalistic-positivistic thinking. Because, if the two judicial institutions are shackled in legalistic-positivistic thinking patterns, the public will only look at the mouthpiece or mouth of the law (*la bouche de la loi*).[24] Therefore, the Information Commission and / or the State Administrative Court are expected to be able to seek legal progression outside the source of positive written law which is not entirely determined limitatively because of the dynamic nature of the law with the aim of resolving public information disputes based on the nature of the law that is as stated by Gustav Radbruch, which includes the value of justice based on a philosophical basis, the value of expediency based on a sociological basis,

RI Law No. 14 of 2008 concerning Openness of Public Information has a harmonizing spirit as an Act that contains general provisions in information disclosure which are also equipped with institutions that can review policies related to the implementation of disclosure through information dispute resolution. Thus, RI Law No. 14 of 2008 concerning Openness of Public Information has an implicit function as an instrument of coordination and harmonization of laws and regulations. Based on that, RI Law Number 14 Year 2008 regarding Openness of Public Information related to the authority to adjudicate by the Information Commission and the State Administrative Court in an effort to resolve public information disputes does not complicate its application in judicial practices because there is no disharmony. Because,

[24] P. Dyah Aryani, 2015, pp. 8-9.

In connection with the discussion, it can become a formulation of strategic legal efforts to meet legal certainty and justice in resolving disputes over public information, which includes: First, applying the nature *lex specialist* RI Law Number 14 of 2008 concerning Openness of Public Information which rule out the legali generali nature of RI Law No. 5/1986 concerning State Administrative Court as amended by RI Law No. 9/2004 and finally RI Law No. 51/2009. Second, considering the existence of PERMA RI Number 2 of 2011 concerning Procedures for Settling Public Information Disputes in Courts as the formal law needed in settling public information disputes. Third, it makes it imperative for the Information Commission and / or the State Administrative Court in examining, adjudicating and deciding public information disputes not to be bound by legalistic-positivist mindset. Because it is necessary to realize that the formation of written law or legislation is basically a state political policy formed by the House of Representatives and the President.[25]

There is an assumption that political determinants of law so that law is a political product, where politics as an independent variable is extreme distinguished from democratic politics and authoritarian politics, while the law as a dependent variable is distinguished from responsive law and orthodox law. Democratic political configurations give birth to responsive laws while authoritarian political configurations give birth to orthodox or conservative laws, seeing the reality that law in the sense of abstract rules (imperative articles) is the crystallization of political wills that interact with each other and compete.[26] (Mahfud MD, 2014: 7-10). In addition, because each dispute is not as a whole determined in a limitative manner in the substance of positive written law so that legal progress is needed in order to fulfill the resolution of public information disputes that are based on the nature of the law which includes the value of justice on the basis of philosophical grounds,

Conclusion

This research highlighted some points, *First*, whereas the State Administrative Court as a judicial institution that has the authority

[25] Daniel Zuchron, *Menggugat Manusia Dalam Konstitusi Kajian Filsafat atas UUD 1945 Pasca-Amandemen*. Jakarta: Rayyana Komunikasindo, 2017, pp. 217-218.

[26] Moh. Mahfud MD, *Politik Hukum di Indonesia*. Jakarta: Rajawali Pers, 2014, pp. 7-10.

specifically resolves state administrative disputes and obtains an attribute expansion of authority to resolve public information disputes that occur between the Public Information Applicant and the State Public Agency through the mechanism of dispute resolution in court (in court settlement) as an appellate court against a lawsuit against the Information Commission Judicial Decision. 2. Based on*die Lehre vom Stufenbau der Rechtsortnung*, the position of RI Law No. 5/1986 concerning State Administrative Court as amended by RI Law No. 9/2004 and finally with RI Law No. 51/2009 and RI Law No. 14/2008 concerning Openness of Public Information is a formal law that is hierarchically contained within structural structure of *formell gesetz*. Whereas based on the type and hierarchy of laws and regulations as regulated in Article 7 paragraph (1) and paragraph (2) of RI Law Number 12 of 2011 concerning Formation of Legislation the position of the Republic of Indonesia Law Number 5 of 1986 concerning State Administrative Court as amended by the Republic of Indonesia Law Number 9 of 2004 and finally to the Republic of Indonesia Law Number 51 of 2009 and the Republic of Indonesia Law Number 14 of 2008 concerning Openness of Public Information lies in the equivalent position, namely in type and hierarchy in the position as Law. Thus, substantially the two Laws are synchronized in a horizontal level with the enactment of the principle *lex specialist derogate legi generali*. *Second*, regarding just legal remedies in resolving public information disputes are: 1. Based on a methodological understanding of Plato's Justice Theory that was born from the idealism philosophical flow, efforts to resolve public information disputes require regulation with positive written law that must reflect justice that is not merely to maintain order and maintain the stability of the state, but rather to guide the people to achieve virtue, so that they are worthy of being citizens of an ideal state. Therefore, written positive law manifested by RI Law No. 5/1986 concerning State Administrative Court as amended by RI Law No. 9/2004 and finally RI Act No. 51/2009 with RI Law No. 14/2008 concerning Openness of Public Information must be closely related with the moral life of every citizen. 2. Based on a methodological understanding of the Aristotelian Justice Theory that was born from the philosophy of realism, efforts in resolving equitable distributions of public information disputes require equality before the law in the implementation of RI Law No. 5/1986 concerning State Administrative Court as amended by RI Law Number 9 of 2004 and finally with RI Law Number 51 of 2009 with RI Law Number 14 of 2008 concerning Openness of Public Information. Other than that, in the settlement of public information

disputes that have a corrective or remedial justice requires remedies for the consequences of the act regardless of individual subject matter and its purpose can be assessed according to an objective measure by providing penalties against perpetrators who are legally proven guilty of a public information dispute must correct their actions, giving compensation must correct mistakes or misappropriation that must correct the benefits obtained improperly. 3. Based on the methodological understanding of John Rawls's Theory of Justice, efforts in equitable dispute resolution of public information require the principle of equal freedom for everyone (the principle of greatest equal liberty), the principle of difference (the difference principle), and the principle of fair equality to get the opportunity for everyone (the principle of fair equality of opportunity) in the implementation of RI Law Number 5 of 1986 concerning State Administrative Court as amended by RI Law Number 9 of 2004 and finally with RI Law Number 51 2009 with RI Law Number 14 of 2008 concerning Openness of Public Information. 4. Based on the methodological understanding of the Theory of William J. Chambliss and Robert B. Seidman, the position of the subject of a public information dispute which includes the Public Information Applicant, and the State Public Agency is the role holder. Public Information Applicants and State Public Agencies are targets of a law that is related to the achievement of the objectives of the promulgation of RI Law No. 14 of 2008 concerning Openness of Public Information.

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Quote

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

United Nations, Universal Declaration of Human Rights