

Considering, that Syarif Mappiasse in his book “*Logika Hukum Pertimbangan Putusan Hakim*” (the Logic of Law for the Judge Ruling Consideration) wrote that “according to Saut P. Panjaitan, a discretion or *Pouvoir Discretionnaire* (French) or even *Frieies Ermessen* (German) is a form and a breach of a legality principle in *wetmatigheid van bestuur* (the law-based government) sense and therefore, an exception of the legality principle.”

Considering, after the Panel of judges assessed the whole above legal facts, and linked them to the applicable laws and regulations and the opinion of the scholars/doctrines, then the Panel of Judges concluded that there was administrative error, since the Defendant in bringing the case of the object of the dispute (Evidence P- 49 = Evidence T-1) had formed an ANEV Team, which implemented the Analysis and Evaluation stage/step to collect legal document data and data in the field and had informed the result of the ANEV Team’s investigation to the Plaintiff. And according to the expert in legal matters, the act of Discretion or *Frieies Ermessen* taken by the Defendant was done to fill the void in the law or to correct the actions of the lawmakers which had not regulated the steps and stages of legal sanctions for the company of the fishing boats whose boats were built overseas, which in a long period of time an allowance to the violation committed was done while the violations themselves impacted on the loss of State’s and the Nation’s economy due to the misuse of Fishing Business Permit issued for the fishing business in Indonesian seas;

Considering, that based on an expert opinion made by Prof. Dr. Asep Warlan Yusuf, SH who stated that for serious violations of laws, the sanctions given without any previous warnings are lawful since the sanctions given are in the form of withdrawal of the license.

For this expert opinion, the Panel of Judges stated that they agreed and that this was the opinion of the Panel of Judges;

Considering, that the Panel of Judges concluded that the indication of violations of the manpower regulations, the fishing crimes, and other general crimes, which become the main points of consideration of the case brought on the object of the dispute can be further acted upon and proven by the parties in an authorized legal institution in order to obtain a ruling made by a judicial institution with a permanent legal force;

Considering, that based on the above legal consideration, the Panel of Judges concluded that the in the case brought on the object of the dispute Evidence P- 49 = Evidence T-1 was conducted by the Defendant in adherence to the applicable laws and regulations and the principles of good governance, and therefore, there was no judicial error in terms of authority, substantive and formal procedures;

Considering, that since the Panel of Judges assessed that there was no judicial error in the case brought on the object of the dispute, then the charges brought by the Plaintiff based on the laws are ruled rejected entirely and the plea of suspension brought by the Plaintiff is *mutatis mutandis* also ruled rejected, and based on the provision in Article 110 and 112 the Law Number 5 Year 1986 on the State Administrative Justice as amended by the Law Number 9 Year 2004 and finally the Law Number 51 Year 2009 then the Plaintiff as the losing party was forced to pay the entire legal fees borne by the dispute whose amount will be decided in the content of this ruling;

Considering, that the evidences which are relevant to the legal matter/dispute become the basis for ruling consideration, while other evidences which are less relevant according to the Panel of Judges are still included and an integral part of this ruling;

Considering the provisions regulated in the Law Number 5 Year 1986 on the State Administrative Justice as amended by the Law Number 9 Year 2004 and finally by the Law Number 51 Year 2009 as well as other related laws and regulations;

SUSPENDED SENTENCE:

- Rejected the plea for a suspension of the execution of court ruling on the object of the dispute proposed by the Plaintiff;

FOR THE DISPUTE:

1. Rejected all Charges brought by the Plaintiff;
2. Ordered the Plaintiff to pay for the legal fees borne by the dispute an amount of Rp308,000 (three hundred and eight thousand);

It is hereby decided in the consultative meeting of the Panel of Judges of the Jakarta State Administrative Court on the date of Monday, 11 April 2016, by us, Elizabeth I.E.H.L. Tobing, SH, M.Hum as the Chairman of the Panel of Judges, Tri Cahya Indra Permana, SH, MH and Rony Erri Saputro, SH, MH, each as the member of the Panel of Judges, the Ruling said in an open court on the date of **Wednesday, 20 April 2016** by the Panel of Judges assisted by Yeni Yeaniwilda, SE, SH, MH, as the Deputy Registrar of the Jakarta State Administrative Court attended by the Plaintiff's Attorneys and the Defendant's Attorneys;

The Chairman of the Panel of the Judges,
ELIZABETH IEHL TOBING, S.H., M.Hum.

The Members of the Panel of the Judges:
TRI CAHYA INDRA PERMANA, S.H., M.H.
RONI ERRY SAPUTRO, S.H., M.H.

Deputy Registrar,
Hj. YENI YEANIWILDA, S.E., S.H., M.H.

Details of the Court Fees:

- Registration	.....	Rp 30,000
- Stationery	.....	Rp125,000
- Calls	.....	Rp158,000
- Stamp duty for the Rulings	.....	Rp 6,000
- Ruling Editorial	.....	Rp 5,000
- Fee for the Rulings	.....	Rp 3,000

Rp308,000 (three hundred and eight thousand)