



Competence of the State Administrative Court in Resolving Disputes Concerning Unlawful Acts by the Government

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Abstract

Structurally, Indonesian state institutions have many interrelated components. State institutions have undergone numerous policy adaptations and reforms since independence and continue through the post-reform era. The State Administrative Court, one of the state institutions under the authority of the Supreme Court, was the last judicial system established in Indonesia, in line with the enactment of Law Number 5 of 1986 concerning the State Administrative Court. As one of the most recently established courts, it certainly requires several relevant adaptations and reforms to the judicial process in practice. One of these updates is explained in Article 1 number 4 of Supreme Court Regulation number 2 of 2019 concerning Guidelines for Settling Disputes Regarding Government Actions and the Authority to Adjudicate Unlawful Acts by Government Officials that Disputes Regarding Unlawful Acts by Government Agencies and/or Officials (*Onrechtmatige Overheidsdaad*) is a dispute that contains a demand to declare the actions of a Government Official invalid and/or void, or not having binding legal force along with compensation in accordance with the provisions of laws and regulations. Thus, it is necessary to have an explanation regarding the authority, as well as the limits of the authority of the State Administrative Court that adjudicates disputes regarding government actions, along with a systematic dispute resolution process that is in accordance with relevant laws.

Keywords: Authority, Settlement Dispute, Action Against the Law by the Government.

INTRODUCTION

The existence of a state based on law inherent in the Unitary State of the Republic of Indonesia has been established since the era of independence, as stipulated in the 1945 Constitution of the Republic of Indonesia, which is the country's constitution. In fact, law in Indonesia is not merely symbolic, but more than that, practically.¹ The existence of law in Indonesia is as one of the instruments to organize the life of society and the sustainability of a country, in this case closely related to government and state administration.² One of the objectives of the establishment of a state based on law in

¹ Dicky Eko Prasetyo, Muh. Ali Masnun, and Noviyanti Noviyanti, "Post-Election Reconciliation in 2024 as a Constitutional Convention in Indonesia: A Progressive Legal Culture Perspective," *Jambura Law Review* 7, no. 1 (January 31, 2025): 176–196, <https://ejurnal.ung.ac.id/index.php/jalrev/article/view/26999>.

² Dicky Eko Prasetyo, Muh. Ali Masnun, and Hananto Widodo, "Affirmative Action for Persons with Disabilities to Ensure the Right to Be Elected in General Elections," *Nusantara Science and Technology*

this case is in line with the legal principles of certainty, justice, and benefit. In practice, the manifestation of these fundamental legal principles still has several shortcomings, in this case both in terms of legislation, as well as in terms of the fulfillment of comprehensive justice.³

Structurally, Indonesian state institutions have many interrelated components. Changes in leadership always bring about various changes. State institutions, in this case, have made many adaptations and policy updates, starting from the independence era until the present post-reformation era, although some state institutions were only established during the reform era. The State Administrative Court is one of the state institutions under the authority of the Supreme Court. The State Administrative Court was the last judicial environment established in Indonesia, in line with the enactment of Law Number 5 of 1986 concerning the State Administrative Court. Thus, for more than 40 years, Indonesia has been operating without a State Administrative Court System.

Quoting Friedrich Julius Stahl in his thoughts, he stated that the concept of a state based on law/*rechtstaat* consists of 4 crucial elements, namely, Protection of Human Rights, Division of Power, Government based on law, and the existence of State Administrative Courts. With this, Indonesia during 40 years of independence with the constitution stating a state based on law, conceptually the state of law is still inadequate. However, as a follow-up to the PERATUN Law which was enacted at the end of 1986, the State Administrative Court (PTUN) was established in Jakarta, Medan, Palembang, Surabaya, and Ujung Pandang, using the basis of Presidential Decree number 52 of 1990.

The State Administrative Court, which is the last judicial environment formed after the General, Religious, and Military Courts, in this case always carries out reforms, in order to fulfill justice and legal certainty for the Indonesian people.⁴ As one of the courts at the first level, PERATUN also carries out its main duties and functions as regulated in laws or Supreme Court Regulations.⁵ In accordance with the provisions of Article 1 number 3 of Law number 5 of 1986 concerning State Administrative Courts, the absolute competence of PERATUN is to adjudicate cases based on the object, material and subject matter of the dispute, where the object of the dispute that can

Proceedings 1, no. 1 (May 2, 2025): 205-210, <https://nstproceeding.com/index.php/nuscientech/article/view/1350>.

³ Ridwan HR, "Perluasan Kompetensi Absolut Pengadilan Tata Usaha Negara Dalam Undang-Undang Administrasi Pemerintahan," *Jurnal Hukum IUS QUIA IUSTUM* 25, no. 2 (2018): 343.

⁴ Dicky Eko Prasetyo and Muh. Ali Masnun, "Beneficiary Pays Principle: Rekonstruksi Pengaturan Pelindungan Lingkungan Dalam Mewujudkan Kelestarian Sumber Daya Air," *Jurnal Hukum Lingkungan Indonesia* 11, no. 1 (October 9, 2025): 1-22, <https://jhli.icel.or.id/jhli/article/view/957>.

⁵ Muh. Ali Masnun, et-al., "Perlindungan Hukum Atas Vaksin Covid-19 Dan Tanggung Jawab Negara Pemenuhan Vaksin Dalam Mewujudkan Negara Kesejahteraan," *DIH: Jurnal Ilmu Hukum* 17, no. 1 (2021): 39.

be resolved through the PERATUN mechanism is the State Administrative Decision (KTUN).

As one of the most recently established courts, it certainly requires a number of relevant adaptations and updates to the judicial process in practice. Furthermore, if calculated from the formation of PERATUN until now, it has been approximately 30 years. The Supreme Court, in this case the judicial state institution that oversees PERATUN, has made updates regarding the objects of dispute that will fall under PERATUN's competence. One of these updates is explained in Supreme Court Regulation Number 2 of 2019 concerning Guidelines for the Settlement of Disputes Regarding Government Actions and the Authority to Adjudicate Unlawful Acts by Government Officials.

Article 1 number 4 of Supreme Court Regulation number 2 of 2019 concerning Guidelines for Settling Disputes Regarding Government Actions and the Authority to Adjudicate Unlawful Acts by Government Agencies and/or Officials explains that:

"Disputes Regarding Unlawful Acts by Government Agencies and/or Officials (*Onrechtmatige Overheidsdaad*) is a dispute which contains a demand to declare the actions of a Government Official invalid and/or void, or not having binding legal force, along with compensation in accordance with the provisions of statutory regulations.⁶

According to its development, unlawful acts originated from provisions in Private Law / Civil Law, where in its early development the legal subject was more focused on acts that were detrimental to individuals or individuals with groups or vice versa.⁷ However, along with developments and adaptations in efforts to uphold the rule of law in Indonesia, the provisions of civil law have increasingly expanded their meaning and are used in various other legal aspects, one of which is used in the aspect of administrative and state law, which focuses on unlawful acts by government officials.

In exercising its authority, the government is obliged to comply with and comply with applicable laws. This principle is based on the concept that Indonesia is a state of law, namely the idea that all state actions must comply with applicable law. This means that any action or manifestation of government authority that is inconsistent with the law can be considered an unlawful act by the government or government officials.⁸ When unlawful acts by the government occur, they will undoubtedly have detrimental consequences for several parties, both society in general and individuals in particular. As a follow-up to this, the judicial system, particularly the State

⁶ Maximus Watung, "Onrechtmatige Overheidsdaad Dalam Praktik Peradilan Negara Hukum," *Jurnal Lex Et Societatis* 6, no. 1 (2018): 50.

⁷ Muh. Ali Masnun et al., "Legal Reform of Legal Profession Amidst the Development of Artificial Intelligence in Indonesia: The Perspective of Mesu Budi's Philosophy of Law," *Novum: Jurnal Hukum* 12, no. 2 (2025): 277-287.

⁸ Muhammad Adiguna Bimasakti, "Catatan Evaluasi Undang-Undang No.30 Tahun 2014 Tentang Administrasi Pemerintah," *PTUN Mataram*, 2023.

Administrative Court, requires a series of mechanisms to resolve disputes involving unlawful acts by the government. Furthermore, the State Administrative Court needs to draw boundaries regarding the relevant categories of unlawful acts and its authority to examine them.

In general, the renewal of PERATUN's authority is very important and needs to be immediately given supremacy over its authority, so that disputes regarding government actions can be resolved by prioritizing justice and legal certainty for the Indonesian people.⁹ The resolution of disputes regarding actions, when viewed from PERMA number 2 of 2019, will also involve the State Administrative Court as the first level PERATUN institution that will adjudicate. Thus, there needs to be further elaboration regarding the authority, as well as the limits of the authority of the State Administrative Court that adjudicates disputes regarding government actions, along with a systematic dispute resolution process that is in accordance with relevant laws.

Based on explanation previously, the author wants to explain with details about How is the competence of the State Administrative Court in examining disputes over government actions? based on regulations that have been There is previously and supported by an explanation from Regulation Supreme Court Number 2 of 2019 concerning Guidelines for Resolving Disputes Regarding Government Actions and the Authority to Adjudicate Unlawful Acts by Government Agencies and/or Officials. Furthermore, the regulations regarding the resolution of disputes regarding unlawful acts by the government and the concept of disputes regarding government actions will be explained.¹⁰

Thus, the author hopes that this research can provide relevant understanding, information, and contributions of thought regarding the competence of the State Administrative Court in resolving unlawful acts disputes. Practically, it is hoped that this research will be useful as a reference, study material, to be developed further and in detail, for legal practitioners and academics, state officials, and the public in general regarding the competence of the State Administrative Court in deciding unlawful acts disputes, and can be used as a source for relevant research studies in the future.¹¹

As references and references, author list a number of study related previous with problem this. In addition, this This intended For give comparison research and show originality works. The following is a number of study related previously :

1. Research by Ardoyo Wardhana in 2020 entitled "Government Unlawful Acts (*Onrechtsmatige Overheidsdaad*) In the Context of Absolute Competence of State

⁹ Enrico Simanjuntak, "Restatement Tentang Yurisdiksi Peradilan Mengadili Perbuatan Melawan Hukum Pemerintah," *Jurnal Masalah-Masalah Hukum* 48, no. 1 (2019): 44.

¹⁰ Firzhal Arzhi Jiwantara & Gatot Dwi Hendro Wibowo, "Kekuatan Eksekutorial Putusan Ptun Dan Implikasi Dalam Pelaksanaannya," *Jurnal IUS* 2, no. 4 (2014): 165.

¹¹ Muklis Al'anam, "Perbandingan Sistem Peradilan Administrasi Indonesia Dan Jerman," *Proceeding of Airlangga Faculty of Law Colloquium* 1 (2024): 400.

Administrative Courts" research This discuss regarding legal protection for the public against unlawful acts by the government using the basis for testing disputes over unlawful acts by the government at the PTUN.

2. Research by Dewi Asimah, et al . in 2020 entitled " Implementation of Expansion Competence of the PTUN in Adjudicating Factual Actions (*Onrechmatige Overheidsdaad*) researcher focuses on the description of the competence of the PTUN, especially in adjudicating factual actions as well as the criteria and classification of unlawful acts by the government.
3. Research by Judges, Supreme Court, & Amnesty, SKW in 2020 entitled " Problems in handling lawsuits for unlawful acts by the government (*onrechtmatige overheidsdaad*) in the State Administrative Court." In this study, the researcher focuses on the authority of the PTUN in adjudicating Unlawful Acts with the provisions of PERMA No. 2 of 2019, but focuses more on the criteria for the act.

Study the provide an overview and comparison about dispute actions oppose law by the government and can made into as one of the complements and comparisons study this.

RESEARCH METHODS

Based on the scope of the background and objectives of the research, this research uses a normative legal research method. Legal research with a normative doctrinal approach , or normative juridical legal research or normative legal research is basically an activity that will examine the internal aspects (to solve existing problems) of positive law. In using the normative research method, a literature study is conducted on laws and regulations, legal principles, legal systematics, and legal comparisons relevant to the existing problems. In line with research on these legal problems, it is necessary to have a conceptual and legislative approach.

Statute The legislative approach is carried out by examining all laws and regulations related to the legal issue being studied to conduct a statute.¹² Using a legislative approach, legal materials that can be used include regulations from relevant agencies. If relevant regulations already exist and the subject matter is appropriate, harmonization can be carried out, which also prioritizes the level or hierarchy of legislation to determine its influence during the approach to the problem. However, literature studies can also be used as a comparison that will complement the research results.

Based on the characteristics of the problem, both conceptual and legislative approaches must complement each other so that it is hoped that this research can also become a model for other legal reforms in the future. For the criteria/categories of

¹² Peter Mahmud Marzuki, *Penelitian Hukum* (Kencana Prenada Media Group, Jakarta, 2005).

legislative literature, starting from the highest hierarchy, namely the 1945 Constitution of the Republic of Indonesia, then UU, up to PERMA which are related to one another. Regarding other literature, it can be taken from books, research, journals, scientific papers, and several other sources that must be relevant.

This research employs two approaches. First, a statutory approach is used to examine legal products and understand their interrelationships with other regulations. The statutory approach emphasizes the use of statutory texts as the primary guideline for interpreting the meaning and legal implications of specific laws.¹³ In this context, laws are considered the result of a legal democratization process involving various parties, including legislative and executive bodies. Therefore, statutory texts should be considered the primary guideline. This view also underscores the importance of adhering to the principles of objective and politically biased statutory interpretation. In interpreting laws, legal interpreters must strive to objectively understand the meaning of the statutory text, without allowing for the interference of personal opinions or political interests. This aims to maintain justice, consistency, and legal certainty.¹⁴

Second, by using a conceptual approach (Conceptual Approach), namely understanding legal issues through expert opinions, theoretical studies, regulations, and similar legal regulations. Simply put, the Conceptual approach emphasizes the conceptual differences that exist in a phenomenon, case, or problem. However, in the scope of legal studies, this tends to focus more on conceptual differences in legislation, such as the conceptual differences between criminal law and civil law (Ibrahim, J., 2019). This approach can produce detailed legal opinion conclusions in reviewing normative legal research related to applicable legal regulations. The legal approach also serves to help understand legal issues that continue to develop and dynamically along with changes and needs.

In research This used a number of source law that aims as complement . The following is material primary law used :

- a. The 1945 Constitution of the Republic of Indonesia
- b. Law Number 5 of 1986 concerning State Administrative Courts
- c. Law Number 48 of 2009 concerning Judicial Power
- d. Law Number 51 of 2009 concerning the second amendment to Law Number 5 of 1986 concerning State Administrative Courts
- e. Law Number 30 of 2014 concerning Government Administration

¹³ Hananto Widodo et al., "Legal Implications of the Authority of Acting Regional Heads Based on Policy Regulations," *Indonesian Journal of Administrative Law and Local Government* 1, no. 1 (November 9, 2024): 65-81, <https://journal.unesa.ac.id/index.php/ijal.gov/article/view/35774>.

¹⁴ Dicky Eko Prasetyo Muh. Ali Masnun, "Reconstruction of The Concept of Authority in Administrative Law Related to National Strategic Projects Based on Substantive Justice," *Mimbar Keadilan* 19, no. 2 (2026): 259-281.

- f. Supreme Court Regulation Number 2 of 2019 concerning Guidelines for Settlement of Disputes on Government Actions and the Authority to Adjudicate Unlawful Acts by Government Agencies and/or Officials

There are also materials law secondary used by the author is in the form of books, journals, and research related to which can give consistent description with research conducted by the author.

ANALYSIS AND DISCUSSION

1. The concept of disputes over unlawful acts by the government and the concept of disputes over government actions

Etymologically, competence can be defined as the ability, knowledge, authority, and power to decide or determine something. In general, it can be defined as the authority to determine or decide anything, and the right and power to act. In the legal field, competence is divided into two types: absolute competence and relative competence. Absolute competence means absolute authority, namely the authority of the court to examine specific types of cases that are basically absolutely incapable of being examined by other courts, whether for courts within the same or different judicial environments.¹⁵

Competence relatively is authority For do inspection or to judge something cases based on distribution power or distribution area law . Explanation about Relative competence is also contained in Article 6 and Article 54 of the Law Number 9 of 2004 concerning PERATUN. Article 6 contains about determination of regional boundaries law from something Administrative Court. Regional boundaries law That shared into 3 regions which include municipalities, districts and provinces.

The competence of the State Administrative Court has been stated in Law Number 5 of 1986 concerning State Administrative Courts, explained in Article 50 that the State Administrative Court has the duty and authority to examine, decide and resolve State Administrative Disputes at the first level, followed by the High State Administrative Court which has the authority to resolve TUN Disputes at the appeal level.

In Law Number 48 of 2009 concerning Judicial Power, the authority of the State Administrative Court is also stated in Article 25 number (5) that

"The state administrative court as referred to in paragraph (1) has the authority to examine, try, decide and resolve state administrative disputes in accordance with the provisions of statutory regulations."

In the provisions of this article, it is further clarified regarding the resolution of state administrative disputes using the provisions of statutory regulations. The State

¹⁵ Muklis Al'anam & Lanny Ramli, "The Expansion of the Absolute Competence of Administrative Courts: A Comparative Legal Study with the French Conseil d'État," *Indonesian Journal of Administrative Law and Local Government (IJALGOV)* 1, no. 2 (2024): 36.

Administrative Court as a judicial institution under the Supreme Court also has regulations in the form of Supreme Court Regulations, the most recent and relevant one regarding the authority of the State Administrative Court is in Supreme Court Regulation Number 2 of 2019 which also contains the authority of the State Administrative Court, which in this case specifically the Authority to adjudicate unlawful acts by officials and / or government agencies.¹⁶

The provisions regarding the authority of the State Administrative Court are also slightly clarified and outlined in Article 87 of Law Number 30 of 2014 concerning Government Administration, which explains that the object of state administrative disputes is in the form of state administrative decisions with several inclusions that TUN Decisions must be interpreted as: "

- a. written determination which also includes factual actions;
- b. Decisions of State Administrative Agencies and/or Officials in the executive, legislative, judicial and other state administration environments;
- c. based on statutory provisions and AUPB;
- d. is final in a broader sense;
- e. Decisions that have the potential to give rise to legal consequences; and/or
- f. Decisions that apply to Community Citizens"

With the enactment of Law Number 30 of 2014, there has been an expansion of the competence of the State Administrative Court, including the examination of disputes over government administrative actions which, prior to the enactment of the State Administrative Law, were examined in the General Court as disputes over unlawful acts by the authorities.

2. The authority of the State Administrative Court in conducting examinations of disputes regarding government actions

State Administrative Disputes, within the scope of the State Administrative Court, have undergone many changes and additions in their categorization. At the beginning of the establishment of the State Administrative Court, which was marked by the enactment of Law Number 5 of 1986, it was stated that the object of state administrative disputes was limited to state administrative decisions, where the state administrative decisions were described as decisions containing written determinations issued or made by officials and/or state administrative bodies and containing legal actions based on statutory regulations with a concrete, individual, final nature and having legal impacts/consequences. In this development phase, the State Administrative Court adjudicates state administrative disputes which basically

¹⁶ Bibianus Hengky Widhi Antoro, "Penguujian Penyalahgunaan Wewenang Di PTUN," *Jurnal Yudisial* 13, no. 2 (2020): 208.

only arise with the existence of a written determination from a state administrative body.

The categorization of state administrative disputes can be divided into two, namely internal disputes as explained by Wicipto Setiadi. This involves issues of authority of State Administrative officials within one agency or between departments/agencies, which arise due to overlapping authority and result in unclear authority. Meanwhile, there are also external disputes explained by Sjachran Basah in Victor Yaved Neno that external conflict is a conflict between state administration and society that involves administrative cases with elements originating from the jurisdiction of pure administrative justice.¹⁷

The dynamics of the State Administrative Court continued to evolve until the enactment of Law No. 30/2014 concerning State Administration (UUAP), which aimed to improve the legal system constructively, thereby fostering a greater sense of justice. The UUAP contains several new provisions not yet included in previous legislation. In the provisions of the Law on State Administration, the provisions regarding the State Administrative Court (KTUN) were further expanded and clarified as follows:

- a) Written determinations include factual actions;
- b) b) Decisions of state administrative bodies and/or officials in the executive, legislative, judicial and other state administration environments;
- c) Based on statutory provisions and AAUPB;
- d) Is final in a broader sense;
- e) Decisions that have legal impact or consequences;
- f) Decisions intended for the community"

With this classification, the scope of PTUN's authority to adjudicate factual cases (actions)/ *Onrechtmatige Overheidsdaad* regarding the meaning of existing factual actions is currently part of government administrative actions, without distinguishing between the meaning of administrative actions and factual actions.¹⁸

Unlawful acts by the authorities or *Onrechtmatige In its early development, the overheidsdaad* was the result of an adoption based on Article 1365 of the Civil Code (Civil Code). If we trace the history of its development, Article 1365 of the Civil Code has existed since before the codification of the Civil Code in the Netherlands, which basically, based on the principle of Concordance, the legal rules applicable in the Netherlands also apply in its colonies. However, the description or provisions of unlawful acts at that time were still too abstract and unfocused. The update that appeared in 1838, namely the codification of the Civil Code, brought quite a change,

¹⁷ Aju - Putrijanti, "The Competence of the Administrative Court and Administrative Justice," *Fiat Justisia: Jurnal Ilmu Hukum* 14, no. 2 (April 2020): 97-112.

¹⁸ Bagus Oktavian Abrianto, et-al "Perkembangan Gugatan Perbuatan Melanggar Hukum Oleh Pemerintah Pasca-Undang-Undang Nomor 30 Tahun 2014," *Negara Hukum* 11, no. 1 (2020): 50.

where unlawful acts at that time were interpreted as actions that were detrimental to others and required the perpetrators to be responsible for the losses and to compensate them.

However, the implementation of the provisions of this article was still somewhat rigid and conservative, and the description of the unlawful act was still too narrow, until in 1919 the Hoge Decision emerged. The Dutch Supreme Court on the case of *Lindenbaum vs. Cohen*. This case arose due to the influence of doctrine on the court's decision handling the case.¹⁹ The Dutch Supreme Court, which handled the cassation case of *Lindenbaum vs. Cohen*, at that time gave its opinion on the unlawful act, which ultimately became a major historical event for the change and development of unlawful act disputes. The Dutch Court describes that an unlawful act is also any action:

- a. Those that violate other people's rights are guaranteed by law
Violating another person's rights in this context is meant to be a violation of another person's subjective rights. Subjective rights are rights granted to a person or individual by law. Some examples of subjective rights are the right to freedom, the right to a good name, the right to honor, and the right to property.
- b. Acts that are contrary to the legal obligations of the perpetrator
Legal obligation means an obligation according to law, whether it is a written or unwritten obligation. However, Hoge In its decision, the court only limits written law, which means that it does not only include laws (*wet*), but also includes all statutory regulations.
- c. Actions that are contrary to morality (*Goede Zeden*)
Actions that are contrary to morality/immoral are actions that violate moral norms which in general within the social sphere have been universally accepted and normalized and recognized as legal norms.
- d. Actions that are contrary to good attitudes in society to pay attention to the interests of others (*indruist*) tegen of *zorgvuldigheid* , welke in het home merchant betaamt ten greetings van anders person of good).

An action is declared to be contrary to good attitudes in society to pay attention to the interests of others if:

- 1) Such actions are very detrimental to individuals or other parties without any proper interest.
- 2) This action is not beneficial and causes harm to other people, which according to the basic understanding of normal humans, this is something that must be taken into account.

¹⁹ Agus Budi Susilo, "Makna Dan Kriteria Diskresi Keputusan Dan/Atau Tindakan Pejabat Publik Dalam Mewujudkan Tata Pemerintahan Yang Baik," *Jurnal Hukum dan Peradilan* 4, no. 1 (2015): 140.

Therefore, it is understandable that doctrine can exert significant pressure and influence on the general acceptance of understanding by a court regarding the meaning of unlawful acts (*onrechtmatige daad*). If examined, the terminology of this unlawful act is still in the general scope, meaning that when anyone who commits a violation of the law can be tried using the legal basis of Article 1365 of the Civil Code, in this case including the government (*overheids*).

In its development, disputes regarding unlawful acts have brought about many changes. In the Netherlands, the following categorization of disputes regarding unlawful acts can be found:²⁰

- a. A civil judge who considers that there has been/has been an unlawful act because of the assumption that the announcement of a decision is unlawful;
- b. The civil judge considered that an unlawful act had occurred due to an official cancelling a decision;
- c. The civil judge considered that an unlawful act had occurred, due to the announcement of a law in the material sense being deemed to be unlawful;
- d. The civil judge considers that an unlawful act has occurred due to a real action/ *Feitelijke Handelingen* from the ruler is against the law.

Disputes regarding government administrative actions in the UUAP are not fully explained, where Article 87 letter (a) of the UUAP states:

"A written determination that includes factual actions."

According to Maria Louise, as quoted and translated by Enrico Simanjuntak in the book *State Administrative Court Procedure Law: Transformation and Reflection*, explains that factual action is a factual action. In addition to legal facts and legal actions, there are actions without actual ones. Actual action is a human action that is independent of or not, directed at any legal consequences.²¹ Whether the legal consequences of the legal fact are intended or not in this case is not important. The most well-known factual actions are wrongful actions and legitimate actions. In the example of a case of unlawful action in the form of an accident often arises due to a particular individual. For example, there is a car that collides with a truck, there is a wrongful action. In the case of an accident, of course, it is not intended to have a legal impact on life, namely an unintentional legal consequence, a consequence. However, the law connects an accident. For example, someone must be responsible and someone must pay compensation.

Rechtshandelingen , or Legal Actions, in theory can be interpreted as actions that cannot be directly felt by the subject affected by them, while *Feitelijke Handelingen* , or Factual Actions, can be defined as concrete actions undertaken by

²⁰ Philipus M. Hadjon, "Peradilan Tata Usaha Negara Dalam Konteks Undang-Undang No. 30 TH. 2014 Tentang Administrasi Pemerintahan," *Jurnal Hukum dan Peradilan* 4, no. 1 (2015): 53.

²¹ Enrico Simanjuntak, "Restatement Tentang Yurisdiksi Peradilan Mengadili Perbuatan Melawan Hukum Pemerintah."

the government, also known as Factual Actions. In practice, factual actions can be described as actions undertaken by the government that are actually felt by the parties who are the objects of those actions, for example, such as bridge infrastructure construction, land evictions, and the like.²² Legal acts in the realm of state administrative law are defined as any act carried out by the government with the aim and intention of carrying out public interests, this also includes making regulations or can also be an act of making provisions or agreements.²³

Broadly speaking, legal acts by the government, or administrative acts, can be classified into two types: non-legal acts (ordinary acts) and legal acts. Ordinary acts are those carried out by the government but do not have further legal consequences. Meanwhile, the classification of legal acts can be interpreted as acts where both the act and its consequences are regulated by law.²⁴

Basically, legal actions by the government are classified into 2, namely one-sided legal actions and two-sided legal actions. One-sided legal acts can be interpreted as legal acts in which the legal consequences of the act arise directly along with the implementation of the act by the government without the need to wait for a reaction or response from the parties involved or affected by the act. E. Utrecht stated that legal acts are one sided with the term "decree", which is generally known as "beschikking" in Dutch. Meanwhile, a two-sided legal act is where a legal act whose legal consequences can only arise when there is an agreement between the government and the affected parties .

KTUN disputes submitted to the PTUN can be resolved using 2 examination mechanisms, namely bound testing (*Gebonden Beschikking*), and free testing (*Vrije Beschikking*). Bound testing is a form of dispute testing/examination effort where the basis of the testing used is a written legal basis, in this case, statutory regulations. Meanwhile, free testing is an effort to examine/examine a dispute using an unwritten legal basis.²⁵

Unlawful acts in the context of similarities between the objects of disputes in the State Administrative Court (PTUN) provide a brief overview of dispute resolution efforts, particularly regarding the examination/testing of the dispute. While in State Administrative Court (KTUN) disputes, two test bases can be used: binding and free,

²² Sri Nur Hari Susanto, "Good Governance Dalam Konteks Hukum Administrasi," *Administrative Law & Governance Journal* 2, no. 2 (2019): 213.

²³ E Utrecht, *Pengantar Hukum Administrasi Indonesia Cet-8* (Surabaya: Pustaka Tinta Mas, 2020).

²⁴ Hari Sugiharto dan Bagus Oktafian Abrianto, "Upaya Administratif Sebagai Perlindungan Hukum Bagi Rakyat Dalam Sengketa Tata Usaha Negara," *Arena Hukum* 11, no. 1 (2018): 30.

²⁵ Sjahan Basah, *Eksistensi Dan Tolak Ukur Badan Peradilan Administrasi Di Indonesia* (Bandung: Alumni, 1985).

then based on the characteristics of unlawful acts disputes, they can also be tested/examined using these two standards.²⁶

The principle of unlawful acts is generally found in Article 1365 BW (Civil Code), which reads: "Every act that violates the law and causes loss to another person, requires the person who caused the loss due to his mistake to compensate for the loss." Through the explanation of this article, it can be seen that the elements of an unlawful act are:

1. There is an unlawful act;

The existence of an unlawful act means that there is an act or action by the perpetrator that violates/goes against the law. An act can be said to be unlawful if:

- a) There is a violation of other people's rights
- b) Contrary to the legal obligations of the maker
- c) There is a conflict with good morality
- d) There is a conflict with the existing propriety in society regarding the self or property of others.

2. There was an error;

Mistakes can be divided into two categories: intentional and negligent. Intentional actions arise when a normal person is aware that their actions will harm others. Negligence, on the other hand, can be defined as neglecting to do something that should be done, or failing to exercise due care and attention, resulting in harm to others.

3. There is a connection between the loss and the act;

This means that a causal relationship exists between the loss suffered and the act committed. In other words, the resulting consequence is caused by the act committed.

4. There is a loss

Losses are categorized into two categories: material and non-material. Examples of material losses include lost costs, profits, costs of goods/services, and so on. Meanwhile, non-material losses include feelings of disappointment, regret, fear, trauma, and so on. In practice, non-material losses are calculated or valued in monetary terms.

Initially, when the government carried out its duties based on public law, it could not be seen/categorized as an Unlawful Act as referred to in Article 1365 of the Civil Code , an example of which can be seen in the Vrouw case. Elske (Arrest HR 29 May 1896) and Rhodense Koe (Arrest 12 April 1898). However, in 1901 , the Arrest 10 May 1901 emerged, which stated that the ruler must be responsible for violations of a

²⁶ Muklis Al'anam & Lanny Ramli, "The Expansion of the Absolute Competence of Administrative Courts: A Comparative Legal Study with the French Conseil d'État."

person's subjective rights, both in their capacity as individuals or as actions of the ruler in the realm of public law. However, it remains unclear whether violations of public law obligations committed by the ruler can be interpreted as *onrechtmatige daad*. Finally, through *Osterman Arrest* (HR 20 November 1924, NJ 125 No. 89), *Hoge Raad* (Dutch Supreme Court) ruled that anyone, whether they commit an act or do not commit an act, which violates statutory regulations, is deemed to have committed an unlawful act, regardless of whether the act is of a civil or public law nature.²⁷

Government action is a translation of the legal phrase in Dutch, namely "*bestuurs handelingen*" which means actions or deeds carried out by the state administration in carrying out its duties. Van Wijk and Willem Konijnenbelt also classify government actions (*bestuurs handelingen*) into 2, namely legal actions (*rechtshandelingen*) and real/factual actions (*feitelijke handelingen*).²⁸ Hereby, Government Action means all government actions, whether classified as legal actions or factual actions. Government Legal Action means a statement of will arising from an administrative organ in special circumstances, aimed at creating legal consequences in the field of Administrative Law.²⁹

Legal Actions are actions that can give rise to certain legal consequences based on their nature. Ten Berg explains that legal action is an action intended to create rights and obligations. Meanwhile, factual action can be defined as an action intended solely to produce factual consequences without any impact on the legal status of citizens³⁰.

The mandate for the establishment of the State Administrative Court (TUN) has existed since the enactment of Law Number 19 of 1964 concerning the Basic Provisions of Judicial Power, which was subsequently amended during the New Order era by Law Number 14 of 1970 concerning the Basic Provisions of Judicial Power. The establishment of the TUN Court was implemented on January 14, 1991, in accordance with Law No. 5 of 1986 concerning the State Administrative Court. This lengthy process reflected the lack of seriousness or a strong political decision to establish the State Administrative Court. At the time, the government tended to be dominated by the executive, who played a significant role. Executive power at that time aimed to uphold national stability.

National stability is a top priority in the Development Trilogy, which consists of: achieving national stability, significant economic growth, and equitable distribution

²⁷ Muhamad Raziv Barokah & Anna Erliyana, "Pergeseran Kompetensi Absolut Dari P Ompetensi Absolut Dari Peradilan Umum K Adilan Umum Ke Peradilan T Adilan Tata Usaha Negar Ata Usaha Negara: Gugatan P a: Gugatan Perbuatan Melawan Erbuatan Melawan Hukum Oleh Penguasa (Onrechtmatige Overheidsdaad)," *Jurnal Hukum & Pembangunan* 51, no. 4 (2021): 825.

²⁸ H.D. Van Wijk, *Hoofdstukken van Administratief Recht* (Utrecht: Uitgeverij Lemma BV, 1995).

²⁹ Muklis Al'anam, "Perbandingan Sistem Peradilan Administrasi Indonesia Dan Jerman."

³⁰ Philipus M. Hadjon et al., *Hukum Administrasi Dan Tindak Pidana Korupsi*, Cetakan Ke. (Yogyakarta: Gadjah Mada University Press, 2012).

of its results. To maintain national stability, social and political order is necessary, so anything deemed to interfere with government (executive) power must be eliminated. In such a situation, the only democracy that can apply is procedural democracy, in which formally there are institutions and procedures and democratic institutions, but cannot achieve the core substance or main goal of democracy itself. At that time, there were also political parties, but they only operated down to the sub-district level; there was a People's Representative Council, but its members consisted of appointed or designated government officials; and there was a judicial institution, but with limitations in terms of its jurisdiction, procedures, and other administrative restrictions. In this context, the State Administrative Court (TUN) Law was enacted and the TUN Court system was established.³¹

After the Reformation era, government power was no longer centralized in the hands of the executive, but was dispersed and distributed to prevent abuse of power and authority.³² The role of the House of Representatives and the Judicial Institution was also strengthened. The State Administrative Court (TUN) Law has been amended, first by Law Number 9 of 2004, and second by Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning the TUN Court. These laws emphasize the independence of the judiciary, which is free from interference from executive power (in terms of centralized judicial management). The peak of the strengthening of the TUN Court through legislative policy was achieved with the enactment of Law Number 30 of 2014 concerning State Administration, which is an important law today.

The types of objects of disputes regarding Government Actions can be classified into 3, namely: Division using the concept of *bestuurshandelingen*, division based on action criteria, and division according to object accumulation criteria.

The following is the division of criteria for disputed objects in the State Administrative Court based on the concept of *bestuurshandelingen*:

- a. *Rechtshandelingen*, is a form of government action that is intended to give rise to legal consequences, for example, such as the action of the ESDM Agency/Official who temporarily stops mining activities based on government coercion (*bestuurdwang*), another example is the action of the Civil Service Police Unit in carrying out the eviction of buildings without permits.
- b. *Feitelijke Handelingen*, is a form of factual action that is not intended to cause legal consequences, however, in its implementation it can also potentially cause legal consequences, for example: actions by the PUPR Department in repairing highway water channels, but the task turns out to be carried out

³¹ Titik Triwulan & Ismu Gunadi Widodo, *Hukum Tata Usaha Negara Dan Hukum Acara Peradilan Tata Usaha Negara Indonesia Edisi Pertama* (Jakarta: Kencana, 2011).

³² Enrico Simanjuntak, *Hukum Acara Peradilan Tata Usaha Negara: Transformasi Dan Refleksi*, 1st ed. (Jakarta: Sinar Grafika, 2018).

unprofessionally (taking a very long time to work, so that materials and tools are abandoned and scattered around the road, and can be dangerous because they are not accompanied by notification or temporary road barriers) this is very detrimental to residents who live around the work area, and also motorists who pass through the area.³³

Based on the criteria of action, government actions can be divided into:

- a. Act of Action, is when the government takes concrete action, for example when the government demolishes unlicensed buildings.
- b. Acts of inaction are actions in which the government neglects to carry out its main duties and functions, for example when the government carries out road repairs but does not provide special signs or caution signs, thus causing traffic accidents.

Based on the criteria for the accumulation of objects, government actions can be divided into several criteria:

- a. One Government Action. In this case, only one government action is being sued, for example when the Public Order Agency (Satpol PP) disciplines street vendors who are disrupting the road.
- b. Multiple Government Actions. This occurs when the defendant is suing for more than one government action. For example, when the government demolishes unlicensed buildings, while at the same time the Public Order Agency (Satpol PP) also closes roads.
- c. Government Actions Accumulated by Decisions. These are where the objects are decisions and actions of the government. Examples include a warrant to demolish a building and the act of executing the demolition.

Based on the provisions of Article 1 number 8 of PERMA number 2 of 2019, a lawsuit against government actions is in the form of an application containing demands against government actions as explained in number 1, which is submitted to the court to obtain a decision.

Article 1 number 1 of PERMA 2/2019 which refers to the elements of action in Article 1 number 8 of the UUAP states that:

"Government action is the action of a government official or other state administrator to carry out and/or not carry out concrete actions in the context of carrying out government"

In accordance with the provisions of the PERMA mentioned above, it is understood that the object is government action. Government action has three elements, namely: Actions by Government Officials or other State Administrators. Are actions by Government Officials or other State Administrators in carrying out the Functions of

³³ Muhammad Adiguna Bimasakti, "Dispute Settlement in the Ombudsman and the Court of Law Regarding Compensation Public Service Dispute," *Jurnal Hukum dan Peradilan* 10, no. 2 (2021): 281.

Government, both within the government environment and other state administrators.³⁴

Carrying out and/or not carrying out concrete acts. The UUAP does not provide a concrete conceptual description in Article 1 number 8. The concrete meaning can be found in the Explanation of Article 1 number 3 of Law Number 5 of 1986, namely: "...not abstract, but tangible, specific or determinable...". In the context of governance. This is the implementation of procedures for decision-making and/or actions by government agencies and/or officials.

Referring to the provisions of Article 1 number 1 of PERMA 2/2019 in conjunction with Article 1 number 8 of UUAP, Government Administrative Actions can be interpreted as the actions of government officials or other state organizing bodies in carrying out government functions, both within the government or other state organizers, and in the form of actions or not carrying out actions that are concrete or real.³⁵

As one of the established judicial institutions independent, PTUN also has several limitations that arise due to existence dispute in principle is at outside PTUN's authority, however Still requires PTUN in its court efforts, one of which is dispute tax.³⁶ According to with provisions of Article 1 number 5 of Law No. 14 of 2002 concerning Tax Court; "Tax Disputes are disputes that arise in field taxation between Taxpayers or Taxpayer with authorized official as consequence issuance decisions that can be made filed an appeal or Lawsuit to Tax Court based on regulation legislation taxation, including Lawsuit on implementation billing based on Constitution Tax Collection by Distress Warrant".

PTUN as one of the competent court adjudicating State Administrative Decisions (KTUN) also touches on with field tax especially due to in dispute taxation generally there is lawsuit on letter provisions, such as letter provisions not enough taxes and others, which are things This including in the State Administrative Decision. In practice, the PTUN is limited in handle dispute taxation that is when the dispute tax the problematic with validity authority, error procedure or even There is suspicion abuse authority, action oppose law (*onrechtmatige daad*). Meanwhile, the Tax Court has his authority Alone like explained in Article 25 paragraph (1) of the KUP Law, the essence is explain that base submission object must tax is related with amount loss, amount tax, deduction or collection party the third one that doesn't as should be.

³⁴ Tatiek Sri Djatmiati, et-al "The Government Responsibilities in Handling the Covid-19 Pandemic and Improving the Declining Economy in Indonesia," *IJEBD: International Journal of Entrepreneurship and Business Development* 5, no. 2 (2022).

³⁵ Hendi Setiawan, Et-al "Some Commentary Notes On Law Number 30 Of 2014 Concerning Government Administration," *Simbur Cahaya* 31, no. 2 (2024): 280.

³⁶ Bayangsari Wedhatami Dicky Eko Prasetyo, Muh Ali Masnun, "Legal Uncertainty of Golf Game as Sports and Entertainment Branch in Local Tax Imposition," *Wawasan Yuridika* 4, no. 1 (2024): 76-93.

CONCLUSION

1. In the development of law in Indonesia, before the establishment of the State Administrative Court, the authority to examine and decide cases of unlawful acts or lawsuits against the government was the District Court according to Article 2 RO as per Supreme Court Decision Number 241K/SIP/1969. In 1991 the State Administrative Court was established, but its competence was still limited to state administrative decisions. After the enactment of the UUAP, all cases of unlawful acts by the government in the District Court were transferred to the PTUN. If the authority of the State Administrative Court to resolve disputes over unlawful acts is linked to the UUAP which states that the authority of the State Administrative Court is to resolve disputes over Decisions and/or Actions, then disputes over unlawful acts here must be interpreted as one part of disputes over Government Actions because in PERMA 2/2019 the phrase Government Actions is repeatedly mentioned, and the authority of the State Administrative Court to adjudicate disputes over government actions. based on this, the context of unlawful acts by the government referred to in PERMA 2/2019 is included in the part of disputes over government actions.
2. The State Administrative Court has the authority to examine disputes over government actions, namely disputes between individuals or civil legal entities against bodies and/or officials resulting from government actions, namely acts of officials government or other state administrators For do and/ or No do actions concrete in frame organization The mechanism for examining disputes over government actions in the State Administrative Court is the same as for resolving disputes over State Administrative Decisions, starting with filing a lawsuit, dismissal, preparatory examination, response, rejoinder, duplicate, evidence, and a decision. Therefore, based on the provisions of the UUAP and PERMA 2/2019, the authority to adjudicate cases of unlawful acts by the government is delegated to the State Administrative Court. Therefore, cases of unlawful acts must be submitted to and adjudicated through the State Administrative Court. The State Administrative Court has the authority to judge dispute actions violate law must accept all overflow case from General Court which previously there is dispute actions violate the proposed law to justice general. The State Administrative Court must accept appropriate lawsuit with competence, with done mechanism inspection as in the examination disputes over State Administrative Decisions.

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