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Can Reforming Dismissal Procedures in State Administrative Courts Enhance Transparency and Accountability?

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Abstract

The effectiveness of Indonesia's State Administrative Courts is increasingly under scrutiny, particularly regarding the dismissal procedures that often lack transparency and accountability. This research explores the urgent need for reform in these procedures to foster greater public trust in the judicial system. In a country where citizens' rights and access to justice are vital to democratic governance, the lack of clarity and fairness in dismissal decisions can undermine confidence in the court's integrity. The novelty of this study lies in its focus on dismissal procedures as a critical yet often overlooked area of judicial reform. By examining current practices, legal frameworks, and case law, the research identifies key weaknesses in the system, proposing innovative reforms aimed at enhancing procedural transparency, consistency, and accountability. A comparative analysis with international best practices highlights practical solutions that could be adopted to improve the fairness and efficiency of dismissal processes. This research makes a significant contribution by offering a targeted framework for reform that prioritizes the protection of citizens' rights, ensuring that judicial decisions, particularly dismissals, are made with clarity, fairness, and public scrutiny. It calls for systemic change to align administrative justice with democratic principles of openness and accountability.

Keywords

Dismissal Procedures, State Administrative Courts, Transparency, Accountability, Judicial Reform



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Introduction

The rule of law in Indonesia does not only apply to citizens in general, but also includes state officials. This is a logical consequence of the rule of law accepted by the founders of the Republic of Indonesia. State Administrative Officials (*Pejabat TUN*) cannot escape legal responsibility if the policies they implement are contrary to the rules. In this case, they can be tried by a court that has the authority to give a verdict on the case,¹ The State Administrative Court (PTUN) in Indonesia is tasked with resolving disputes related to state administration. This institution, also known as *Peratun*, is a forum for the community to resolve conflicts or disputes between citizens and government agencies or officials,² One of the main characteristics that distinguishes *Peratun* from other courts is the dismissal procedure, as stipulated in Article 62 of the *Peratun* Law. In this procedure, cases submitted to the Administrative Court will be reviewed through a deliberation meeting chaired by the Chairman of the Administrative Court. Indirectly, the PTUN plays a role in protecting the civil rights of citizens, especially when they face unfair policies from the government. The existence of the Administrative Court is very important for the community as a place of complaint, as can be seen from the increasing number of citizens who choose to sue government officials or agencies. However, behind the large number of complaints, a deeper understanding and clear knowledge of the function and role of this judicial institution is needed, especially for people who feel their rights have been violated.³

As for writing, the author will use one of the legal system theories proposed by Lawrence M. Friedman to serve as a foundation to provide a

¹ Herlambang, P. H., Muhtada, D., Yudhanti, R., Pratama, N. W., Wiguna, C. A., Santalia, M., ... & Safarin, M. H. A. F. (2024). PERANAN PENGADILAN TATA USAHA NEGARA DALAM UPAYA PENINGKATAN EKSEKUSI PUTUSAN PENGADILAN. *Hukum dan Politik dalam Berbagai Perspektif*, 3.

² Jimly Asshiddiqie. (2019). *Pengantar Ilmu Hukum Tata Negara*. Cet-11 (Grafindo Persada), p. 260.

³ SAPUTRO, R. E. (2012). TINJAUAN YURIDIS PELAKSANAAN DISMISSAL PROSEDUR SERTA EKSISTENSINYA DALAM PENYELESAIAN SENGKETA TATA USAHA NEGARA (Doctoral dissertation, Universitas Gadjah Mada).

relevant framework for analyzing this condition. Friedman emphasizes that the legal system consists of three main elements: legal substance, legal structure, and legal culture. In the context of the PTUN, legal substance includes the regulations governing the dismissal process, while legal structure relates to how the court operates and how judges make decisions. Legal culture, on the other hand, reflects the values and norms that underpin judicial practice. This article will explore the various reforms needed to improve transparency and accountability in the dismissal procedure at the PTUN. These reforms aim not only to improve the internal processes of the court but also to build public confidence in the administrative justice system. Through in-depth analysis, it is hoped that this article can make a significant contribution to the understanding and development of better judicial practice in Indonesia.

Dismissal Procedure in Administrative Courts

State administrative activities carried out by the government include various activities, one of which is the implementation of state government administration. This activity is a way to carry out government functions which are realized through policies in the form of decisions issued by government officials. As a consequence, the government must be prepared to account for its policies through the establishment of administrative justice institutions, including by establishing the State Administrative Court as the main institution.⁴

The dismissal procedure is the initial screening stage of a lawsuit filed with the State Administrative Court (PTUN). This examination is carried out to prepare and finalize the case before entering the main examination stage in a trial that is open to the public. The Chairman of the State Administrative Court has absolute authority to assess the feasibility of the lawsuit filed by the plaintiff, in accordance with the provisions of Article 62 paragraph 1 of Law Number 5 of 1986. If the lawsuit meets one of the provisions in the article, then the lawsuit cannot pass the dismissal process, and vice versa. After the filing of the lawsuit, a dismissal examination will be conducted through a

⁴ Bimasakti, M. A. (2020). Pembaruan Undang-Undang Peradilan Tata Usaha Negara Pasca-Reformasi Di Era Peradilan Elektronik. *Jurnal Hukum Peratun*, 3(2), 111-126.

deliberation meeting. In this meeting, the President of the Court has the authority to issue a determination accompanied by considerations, stating whether the lawsuit is not accepted or unfounded.⁵

In determining the admissibility of a lawsuit, the judge refers to Article 62 paragraph (1) of the *Peradilan Tata Usaha Negara* (Peratun) Law. According to this provision, several considerations guide the court in deciding whether a lawsuit may be accepted. First, a lawsuit is declared inadmissible (*niet ontvankelijk verklaard*) if its content clearly falls outside the jurisdiction of the administrative court. Second, the lawsuit must comply with formal requirements, including the completeness of the plaintiff's and defendant's identities. The plaintiff's identity must include name, nationality, address, and occupation, or, if represented, the identity of the represented party. Similarly, the defendant's identity must include name, official position, and address or place of residence. Failure to meet these formal criteria results in the lawsuit being deemed inadmissible (*niet ontvankelijk verklaard*). The lawsuit must also state the legal basis of the claim and the relief sought from the court.

Furthermore, a lawsuit may be considered to lack sufficient legal grounds (*niet gegrond*), as stipulated in paragraph (1) letter c of the article. A lawsuit is also declared inadmissible if the decision of the state administrative body or official being challenged has already fulfilled the substance of the plaintiff's demands. Lastly, the timing of filing is a crucial factor; a lawsuit may be ruled inadmissible if it is submitted either prematurely or beyond the prescribed statutory deadline, as provided in paragraph (1) letter e of the same article.

After the dismissal procedure is completed and the lawsuit is declared eligible to proceed to the next stage, the Court Clerk, on the instruction of the President of the Court, has the authority to summon the parties involved in the dispute. This summons is made by registered letter in order to attend the determination in a deliberation meeting before the trial schedule is determined. On the other hand, there is an opposition mechanism to the dismissal decision which is regulated in Article 63 paragraph (3) to paragraph (4) of the Peratun Law. Article 63 paragraph (3) states that within 14 days after the dismissal decision is issued, an appeal may be filed with the court. The appeal must be

⁵ Pratama Herry Herlambang. (2024). *Pengantar Hukum Acara Peradilan Tata Usaha Negara* (Jakarta: Sinar Grafika).

filed in accordance with the procedures stipulated in Article 56 of the Peratun Law.

In the mechanism of the dismissal procedure, there must be a goal to be achieved in the provision of the dismissal procedure in the state administrative court where the purpose of the procedure is to uphold law and justice as a whole where the dismissal procedure, as one of the important stages in determining the feasibility of a lawsuit in a State Administrative Dispute, aims to be a means of upholding law and justice for all parties involved. This includes the community, civil legal entities, as well as the State Administrative Body or Official who issued the State Administrative Decision (KTUN) that is considered detrimental.⁶ It can also provide legal certainty for the subjects and objects of state administrative disputes where the parties in a state administrative dispute, both the plaintiff and the defendant, certainly expect legal certainty regarding the state administrative decision (KTUN) which is the object of the dispute. Newly enacted KTUNs often cause concern or harm to the community or certain legal entities. To answer this need, the dismissal procedure serves as an important mechanism in determining the continuation of the validity of the Administrative Decree, so that the rights and obligations of the parties can be fulfilled optimally. as well as the benefits of building a good system in examination and in exercising authority for state officials In the process of forming a State Administrative Decree (KTUN) with the Agency or Official who issues it, sometimes it is less able to meet the legal needs of the community or civil legal entities. This mismatch, especially in the lack of partiality towards civilians, is the reason for the importance of the dismissal procedure. This procedure serves as a means of reflection for state administration officials in formulating more ideal policies, of course based on the public's point of view. With the dismissal procedure, the government can better understand the impact of the KTUN it makes, whether it has a negative influence or actually makes a positive contribution to the development of national law.⁷

⁶ Pattipawae, D. R. (2014). Fungsi Pemeriksaan Dismissal dalam Peradilan Tata Usaha Negara. *Sasi*, 20(1), 37-55.

⁷ Prakasa, A. W., & Adlhiyanti, Z. (2022). ESENSI PROSEDUR DISMISSAL DALAM TAHAP PRA-PERSIDANGAN SENGKETA TATA USAHA NEGARA. *Borneo Law Review*, 6(2), 175-186.

Lawrence M. Friedman's theory in its application to reform in the state administrative court

Lawrence M. Friedman's view of the legal system has made a significant contribution to understanding and analyzing the development and history of law in America. Friedman argues that law cannot be separated from the social, cultural and political context in which it develops. He emphasizes the reciprocal relationship between law and society, where law is influenced by social forces as well as influencing society in a particular time and place.⁸

Lawrence M. Friedman's theory is a legal theory used to analyze a legal problem regarding the effectiveness or success of law enforcement. Lawrence M. Friedman argues that the effectiveness and success of law enforcement depends on three elements of the legal system, namely:

First, legal structure. The legal structure includes three main elements: institutions, organizations, procedures, and human resources of the apparatus. The institution functions as a law implementing body, while the organization consists of an arrangement of parts that work towards a common goal. The organization acts as a work system or operational guideline (SOP) in the administration and decision-making process. The human resources of the apparatus, both inside and outside the organizational structure, run the legal system with performance influenced by their values and attitudes towards the law. Overall, the legal structure is a combination of these elements that support each other in the implementation of the law.⁹

Second, legal substance. The substance of the law includes rules and norms that apply with binding force and serve as guidelines for law enforcement officials. As an implementation reference, the substance of the law ensures that actions can be carried out in a measured and directed manner in achieving goals, while providing legal certainty in every step. These rules or norms act as *das sollen*, the ideal law expressed by experts in the theoretical realm (law in the books), describing the law as it should be. The substance of the law is also related to the community's response to these rules and norms, how these rules

⁸ Halim, M. A. A., Amni, S. Z., & Maulana, M. (2023). Legal System in the Perspectives of HLA Hart and Lawrence M. Friedman. *Peradaban Journal of Law and Society*, 2(1), 51-61.

⁹ Friedman, Lawrence M. *Sistem Hukum Perspektif Ilmu Sosial*, terj. M. Khozim Jakarta: Nusa Media, 2009

relate to legal structures such as the hierarchy of legislation, and the interests of the lawmaking apparatus in compiling and implementing them.¹⁰

Third, legal culture. Legal culture relates to people's views on the law and the existing legal system. People's attitudes towards the law include their beliefs, values, ideas and expectations. To understand legal culture more deeply, legal culture is the atmosphere of social thought and social forces that influence how law is understood, applied, or even misused. Without a legal culture, the legal system would be dead and undeveloped. Every society, country or community has its own legal culture. There are always attitudes and opinions about the law, although not everyone shares the same views. One very important branch of culture is individual legal culture.¹¹

Friedman emphasized that these three components need to function in harmony for the legal system to run effectively and achieve the goal of justice. Among the three components, legal culture is considered the most important, as it reflects the way people interact with the law, both within law enforcement circles and outside, among the general public. The legal system theory proposed by Lawrence M. Friedman can be applied in the reform of the State Administrative Court (PTUN), especially regarding dismissal procedures. Friedman asserts that the legal system is formed from the dynamic interaction between three main elements: structure, substance, and legal culture. In the context of PTUN, the structure includes judicial institutions, legal apparatus, and procedures applied. The renewal of dismissal procedures at the PTUN needs to pay attention to this structure, with a focus on increasing the capacity of human resources of the apparatus and improving the management to ensure that the legal process runs efficiently and fairly. Legal substance in this case includes the rules governing dismissal procedures, which must be clear and consistent to avoid legal uncertainty. In addition, legal culture also affects the effectiveness of dismissal procedures, as the attitude of the public and legal officials towards the justice system will affect the course of the legal process. The reform of dismissal procedures based on Friedman's theory requires a

¹⁰ Suyatno, S. S. (2023). Kelemahan Teori Sistem Hukum Menurut Lawrence M. Friedman Dalam Hukum Indonesia. *IUS FACTI: Jurnal Berkala Fakultas Hukum Universitas Bung Karno*, 2(1 Juni), 197-205.

¹¹ Al Kautsar, I., & Muhammad, D. W. (2022). Sistem hukum modern Lawrance M. Friedman: Budaya hukum dan perubahan sosial masyarakat dari industrial ke digital. *Sapientia Et Virtus*, 7(2), 84-99.

balance between these three elements to ensure that the PTUN can operate more transparently, accountability and responsively to the changing needs of society. Thus, the reform of dismissal procedures will not only improve judicial efficiency, but also strengthen public trust in the legal system as a whole, which is where the theory put forward can be the basis for reforming dismissal procedures at state administrative courts to realize the principles of good governance and increase transparency and accountability of state administrative courts in dismissal procedures.

Enhancing Transparency and Accountability of Dismissal Procedure in Administrative Court

In the context of reforming the dismissal procedure at the State Administrative Court (PTUN), transparency refers to the principle of openness that guarantees access and provision of information regarding the dismissal process to all interested parties. Transparency includes the provision of detailed and easy-to-understand information regarding each stage of the procedure, from the filing of a lawsuit, the reasons for accepting or rejecting a case, to the final decision made by the judge. With transparency in place, parties involved in a dispute, both plaintiffs and defendants, can understand the legal basis and logical reasoning behind each decision. In addition, transparency allows the public to monitor the legal process, thereby increasing public trust in the state administrative justice system. Meanwhile, accountability is the responsibility that must be carried out by the authorities, especially judges and court officials, to carry out their duties in accordance with the rule of law and the principles of justice.¹² In the context of the dismissal procedure, accountability includes the obligation of the judge to provide an explanation and accountability for each decision taken, both to the parties to the dispute and the wider community. Accountability also involves assessing the integrity, professionalism and independence of judges in determining whether a case should proceed to trial. These two principles complement each other. Transparency ensures that court processes and decisions can be accessed and assessed by the public, while accountability ensures that every decision has a clear legal basis, reflects fairness,

¹² Raba, M. (2006). *Akuntabilitas konsep dan Implementasi* (Vol. 1). UMMPress.

and can be held morally and legally accountable. In the context of updating the dismissal procedure at the PTUN, the implementation of transparency and accountability aims to prevent potential abuse of authority, while increasing efficiency, effectiveness, and public confidence in the state administrative law system. Increased transparency allows the public and parties to disputes to better understand their rights and the applicable legal process. On the other hand, the application of accountability ensures that every dismissal decision is based on the principles of fairness, supports trust in the court, and strengthens its function as a law enforcement institution that protects the interests of society at large. By applying these two principles, the reform of dismissal procedures can create a more open, responsive and credible justice system.

There are several things that make this dismissal procedure need renewal, this is based on several things that are the basis for renewal, in carrying out the dismissal procedure there are still frequent dysfunctionalities in the dismissal procedure which often experience effectiveness problems, which result in the handling of cases that take too long. This situation contradicts the principle of a simple, fast and low-cost trial. For example, in the case of decision number 41/G/LH/2018/PTUN.PBR, there was a lawsuit that should not have had a disputed object, but was still processed until the final decision stage.¹³ Inconsistent Assessment Criteria in the Dismissal Procedure is also one of the reasons Although the State Administrative Court Law has established the requirements for the dismissal procedure, its implementation in the field often shows uncertainty in the application of these criteria. For example, there are cases where a lawsuit is dismissed even though it has administratively met the basic requirements. The impact of such inconsistency in assessment is enormous, which affects the transparency and accountability of the administrative court itself, which as a result of the ambiguity of the administrative court itself results in the potential for injustice arising from the dismissal procedure and in carrying out the dismissal process is often carried out in closed consultative meetings, so that the decisions taken are not always transparent to the parties concerned. This can lead to dissatisfaction and perceptions of injustice among the plaintiffs themselves. This occurs because there is a legal vacuum in the procedure where there is a legal vacuum regarding

¹³ Disfungsional Proses Dismissal Pada Peradilan Tata Usaha Negara: Studi Kasus Putusan Nomor 41/G/LH/2018/PTUN. PBR.

the mechanism for implementing the dismissal procedure, which causes uncertainty in practice. Although Supreme Court Circular Letter (SEMA) No. 2 of 1991 provides guidelines, it is limited in scope and does not specify all aspects of the procedure clearly and in detail,¹⁴ This results in inconsistencies in the dismissal procedure, which in turn reduces the transparency and accountability of the dismissal process itself in the state administrative court. There are opinions regarding the shortcomings in the Resistance Procedure, where the resistance procedure is very limited, which means that the mechanism for resistance to dismissal decisions is available, but often does not provide sufficient space for the plaintiff to defend his rights. If the resistance is rejected, the plaintiff has no further legal remedies that can be pursued.¹⁵

Every judicial process must be oriented towards legal certainty that is equitable¹⁶. All matters relating to the merits of the case, including legal requirements, should ideally be examined through a trial and should not be dismissed through a dismissal procedure. The authority of the President of the Court in the dismissal procedure increases the parties who play a role in determining justice, while prolonging the process of fighting for justice. However, this can maximize the function of the Administrative Court as an institution that exercises indirect judicial control. With this mechanism, the government will feel continuously monitored by the public, thus encouraging the public to submit corrections or legal challenges to decisions of Administrative Bodies or Officials that are considered detrimental. This step is also important to prevent arbitrary action (*willekeur*) or abuse of authority (*détournement de pouvoir*) by the government. In addition, it ensures that the government continues to pay attention to and comply with the general principles of good governance (*algemene beginselen van behoorlijk bestuur*) in order to create good transparency and accountability in state administrative

¹⁴ Kansil, C. S., & Ma'rifa, G. S. (2024). EFEKTIVITAS PEMERIKSAAN DISMISSAL PROSES. *Jurnal Pendidikan Sejarah dan Riset Sosial Humaniora*, 4(2), 163-169.

¹⁵ Khair, A., Siswanto, S. E., & Saleh, M. (2016). Penyelesaian Sengketa Keputusan Tata Usaha Negara Melalui Upaya Banding Administratif. *Jatiswara*, 31(3), 416-436.

¹⁶ Triwulan, T., & Sh, M. H. (2016). *Hukum Tata Usaha Negara dan Hukum Acara Peradilan Tata Usaha Negara Indonesia*. Prenada Media.

justice in Indonesia,¹⁷ With all processes in administrative courts must be based on a legal basis in running and based on Lawrence M. Friedman's theory of the legal system that can be a reference in running the government, to optimize the administrative court requires a Reform of Dismissal Procedures in State Administrative Courts, which needs further explanation and detailing of the shortcomings of the administrative court. Friedman's theory of the legal system that can be a reference in running the government, then to optimize the state administrative court, there is a need for a Reform of Dismissal Procedures in State Administrative Courts, which requires further explanation and detailing of existing deficiencies and legal lacunae in dismissal procedures in order to minimize the potential for errors and injustice in making decisions, The purpose of this is also to support the transparency and accountability of the state administrative court itself, which is important because transparency and accountability are the main pillars in building public trust in the justice system and transparency and accountability can be a benchmark for the performance of government officials in exercising their authority.¹⁸

Conclusion

Improving transparency and accountability in the Administrative Court (PTUN) is a crucial step towards building public trust in the justice system. Through the reform of the dismissal procedure, this article emphasizes the importance of reforming the dismissal procedure in order to simplify and further elaborate the existing process to be used as a reference in carrying out the dismissal procedure in the administrative court so that in the future it will be better and can increase transparency and accountability in the dismissal procedure itself, so that the parties involved can clearly understand the reasons and legal basis behind each decision taken. Reforming the dismissal procedure will not only reduce confusion and dissatisfaction among the public, but will also improve the efficiency of the court in handling incoming cases. However,

¹⁷ Riri, S. (2023). Eksistensi dalam Mengoptimalisasikan Pelaksanaan Proses Dismissal dan Pemeriksaan Persiapan di Pengadilan Tata Usaha Negara: Prosedur Dismissal, PTUN, Gugatan. *Jurnal Penelitian Multidisiplin*, 2(1), 124-127

¹⁸ Arja, S. (2000). Akuntabilitas dan Pengukuran Kinerja Pemerintah. *Jurnal Akuntansi & Keuangan Vol 2, Nopember 2000: 138, 150.*

the current dismissal procedure at the PTUN still faces various challenges related to transparency and accountability. Some of the issues that need to be rectified include the lack of clear standard operating procedures (SOPs) for decision-making, unclear criteria for case resolution, and limited effective oversight of the process. To improve transparency and accountability, reforms are needed to update SOPs, provide training to judges and court staff on more transparent procedures, and strengthen both internal and external oversight systems, with the aim of increasing public confidence in the justice system, creating more efficient and fair dispute resolution, and improving the quality of professional legal services. These reforms will also support efforts to create a judicial system that is clean, free from corruption, and more responsive to the needs of society. With these steps, the State Administrative Court is expected to transform into a more responsive, fair and trusted institution, and be able to provide better justice in the settlement of state administrative disputes. Finally, active public participation in the judicial process will further strengthen the legitimacy and integration of the legal system, creating a more conducive environment for the enforcement of law and justice.

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