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Implications of the Limits for Filing a Lawsuit to the State Administrative Court: Upholding Legal Certainty or Injuring Human Rights?

Zaharuddin Sani Ahmad Sabri¹ , Muhammad Zaidan Syafiqy Akhmad^{*2} 

¹ Universiti Pertahanan Nasional Malaysia, Malaysia

² Faculty of Law, Universitas Negeri Semarang, Indonesia

* Corresponding author: zaidansyafiqy@mail.unnes.ac.id

Abstract

The State Administrative Court (PTUN) plays an important role in adjudicating state administrative conflicts, issuing final and impactful State Administrative Decisions (KTUN). Recipients aggrieved by these decisions have a 90-day window, as mandated by Article 55 of the Administrative Court Law (UU PTUN), to file a lawsuit if they believe the KTUN violates established laws, regulations, or principles of good governance. Despite its apparent procedural clarity, the 90-day timeframe has become a subject of public controversy, prompting four challenges to its constitutionality before the Constitutional Court. Critics argue that this stringent deadline, rather than achieving its intended goals of legal certainty and political stability, poses a potential threat to human rights. This study employs normative legal research techniques, library law research, and meticulous data collection to dissect the complexities surrounding the State Administrative Court's lawsuit filing deadline. The findings underscore the contentious nature of the 90-day limit, emphasizing its potential adverse effects on human rights and its perceived departure from its intended purposes. By elucidating these dimensions, the study aims to foster a deeper understanding of the controversy and its implications.

Keywords

Human Rights, Lawsuit, State Administrative Court, Legal Certainty, Justice

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Introduction

THE STATE Administrative Court (*Pengadilan Tata Usaha Negara*, hereinafter referred to as PTUN) stands as a crucial institution in Indonesia, entrusted with the judicious exercise of legal authority to address disputes within the realm of State Administration. Established under the firm legal foundation of Article 24, paragraph (2) of the Indonesian Constitution of 1945, PTUN holds a significant juridical position.¹ Its primary mandate involves the examination, decision, and resolution of state administrative disputes, encompassing conflicts that arise between individuals or civil law entities and legal entities or state administrative officials.²

The creation of PTUN is purposeful, aiming to redress disputes emerging in the domain of state administration. These conflicts, involving individuals, civil law entities, legal entities, or state administrative officials, culminate in the issuance of a State Administrative Decree (*Keputusan Tata Usaha Negara*,

¹ The Constitution of the Republic of Indonesia of 1945, in Article 24, underscores the independence of judicial power as a fundamental authority entrusted with the task of administering justice to uphold both law and justice. This provision highlights the crucial role of the judiciary in the Indonesian legal system, emphasizing its autonomy to ensure fair and impartial adjudication. The independence of the judiciary is a foundational principle aimed at safeguarding the integrity of the legal system. It allows the judiciary to operate without interference from other branches of government, fostering a system where legal proceedings are conducted objectively and in accordance with established laws and principles of justice. This constitutional affirmation reflects Indonesia's commitment to a system of governance that values the rule of law and seeks to maintain a just and equitable society through the independent functioning of the judiciary. *See also* Dola Riza, "Hakikat KTUN Menurut Undang-undang Peradilan Tata Usaha Negara Vs Undang-undang Administrasi Pemerintahan." *Soumatara Law Review* 2, no. 2 (2019): 207-220; Maftuh Effendi, "Peradilan Tata Usaha Negara Indonesia Suatu Pemikiran Ke Arah Perluasan Kompetensi Pasca Amandemen Kedua Undang-Undang Peradilan Tata Usaha Negara." *Jurnal Hukum dan Peradilan* 3 no. 1 (2018): 25-36; Yodi Martono Wahyunadi, "Kompetensi Absolut Pengadilan Tata Usaha Negara dalam Konteks Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan." *Jurnal Hukum dan Peradilan* 5 no. 1 (2016): 135-154.

² 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): 51-64. *See also* Enrico Simanjuntak, *Hukum Acara Peradilan Tata Usaha Negara: Transformasi & Refleksi*. (Jakarta: Sinar Grafika, 2021).

henceforth KTUN). The aggrieved party entitled to file a lawsuit is an individual or civil law entity adversely affected by the KTUN, while the respondent in the legal proceedings is a state administrative agency or official implicated in the dispute. PTUN, therefore, operates as a pivotal institution with the authority to adjudicate and provide resolution in state administrative conflicts, ensuring adherence to legal principles and constitutional mandates.³

The criteria for assessing the validity of a State Administrative Decision are delineated in Article 53, paragraph (2) of Law No. 5 of 1986 pertaining to the State Administrative Court (hereinafter as PTUN Law). This provision specifically addresses the eligibility of a State Administrative Decision (KTUN) for submission. The temporal constraints for initiating legal proceedings with the State Administrative Court (PTUN) are explicitly articulated in Article 55 of the PTUN Law, stipulating that "*a lawsuit can be filed only within a grace period of ninety days from the time of receipt or announcement of the Decision of the State Administrative Agency or Officer.*"⁴

It is imperative to underscore the significance of these temporal restrictions on filing a lawsuit with the State Administrative Court. This statutory limitation is of paramount importance, particularly for individuals or entities whose interests have been adversely affected by a State Administrative Decree issued by the State Administrative Agency or Officer. The restrictive timeframe underscores the time-sensitive nature of seeking redress at the State Administrative Court to annul the KTUN. Therefore, a meticulous understanding of the statutory constraints becomes indispensable for

³ Dola Riza, "Hakikat KTUN Menurut Undang-undang Peradilan Tata Usaha Negara Vs Undang-undang Administrasi Pemerintahan." *Soumatara Law Review* 2 no. 2 (2019): 207-220; Riza, Dola Riza, "Keputusan Tata Usaha Negara Menurut Undang-Undang Peradilan Tata Usaha Negara dan Undang-Undang Administrasi Pemerintahan." *Jurnal Bina Mulia Hukum* 3 no. 1 (2018): 85-102; Anajeng Esri Edhi Mahanani, "Pemetaan Normatif Logika Pengecualian Keputusan Tata Usaha Negara dalam Penyelesaian Sengketa Tata Usaha Negara." *Widya Pranata Hukum: Jurnal Kajian dan Penelitian Hukum* 3 no. 1 (2021): 76-89.

⁴ Republic of Indonesia. *Law Number 5 of 1986 concerning the State Administrative Court (referred as PTUN Law)*. (Jakarta: Sekretariat Negara, 1986). Available online at <https://peraturan.go.id/files/uu5-1986.pdf>

individuals navigating the legal landscape in pursuit of justice following the issuance of a State Administrative Decree.⁵

The enactment of the PTUN Law delineates the avenue for individuals aggrieved by a State Administrative Decision (KTUN) issued by a State Administrative Agency or Officer to seek resolution through legal recourse. In cases where administrative redress proves inadequate for someone sensing harm to their interests and the anticipated remedy remains elusive, the recourse is to file a lawsuit with the State Administrative Court (PTUN) within the specified period of 90 (ninety) days, as mandated by Article 55 of the relevant legislation.⁶

This 90-day timeframe serves as a critical threshold. Failure to initiate legal proceedings within this stipulated period, following the receipt or announcement of the State Administrative Decision, renders the KTUN conclusive and immune from further contestation. Even if the KTUN exhibits deficiencies or significant errors, exceeding the prescribed timeframe forecloses the opportunity for subsequent legal challenge. Thus, a meticulous adherence to the statutory deadline is imperative for individuals seeking to contest the validity of a KTUN and underscores the finality of the decision once the designated period has lapsed.⁷

Additional elucidation of Article 55 in Law No. 5 of 1986 is provided in Supreme Court Circular Number 2 of 1991, serving as a directive for the implementation of several provisions within the PTUN Law. Within Section V of the circular, which corresponds to Article 55 of the PTUN Law, it is stipulated that the computation of the grace period mentioned in Article 55 is

⁵ Yuslism Yuslim, *Hukum Acara Peradilan Tata Usaha Negara*. (Jakarta: Sinar Grafika, 2016)

⁶ Farah Syah Rezah, *Hukum Acara Peradilan Tata Usaha Negara*. (Makassar: CV. Social Politic Genius, 2018)

⁷ Herman Baherman, "Tinjauan Yuridis Terhadap Upaya Administratif Sebagai Syarat Formal Pengajuan Gugatan di Pengadilan Tata Usaha Negara (Studi Analisis Peraturan Mahkamah Agung Republik Indonesia Nomor 6 Tahun 2018 Tentang Pedoman Penyelesaian Sengketa Administrasi Pemerintahan Setelah Menempuh Upaya Admininstratif)". *Thesis*. (Bengkulu: IAIN Bengkulu, 2020).

suspended or deferred ("*geschorst*") upon the registration of the lawsuit at the competent Registrar of the State Administrative Court.

This implies that for individuals not explicitly mentioned in the State Administrative Decision (KTUN) but who perceive harm to their interests, the grace period specified in the aforementioned provision is calculated on a case-by-case basis. It commences from the moment these individuals discern that their interests have been adversely affected by the decision. The circular, therefore, provides a procedural framework by which the grace period is dynamically calculated, taking into account the initiation of legal proceedings and ensuring fairness in cases where the aggrieved party is not expressly identified in the KTUN but experiences detriment to their interests.

Nevertheless, the contentious 90-day timeframe for filing a lawsuit with the PTUN has generated significant debate.⁸ The rationale behind this temporal constraint is to furnish legal certainty, preventing prolonged uncertainty stemming from a State Administrative Decision (KTUN). Simultaneously, critics argue that this time limit infringes upon human rights by curtailing the ability to defend one's interests before the law.⁹

The constitutionality of the PTUN Law, particularly Article 55, which restricts the challenge of state administrative decisions in court, has been a subject of repeated scrutiny by the Constitutional Court. It is contended that the provision, allowing limitations on the contestation of state administration decisions, is an open legal policy choice outlined in Article 55 of the PTUN Law. This policy option is perceived as a universal legal framework applicable to all Indonesian citizens, thus avoiding discriminatory treatment, as the article

⁸ Renius Albert Marvin, "Polemik Jangka Waktu Pengajuan Gugatan ke Pengadilan Tata Usaha Negara." *Jurnal Hukum & Pembangunan* 49 no. 4 (2019): 942-958.

⁹ David Bourchier, "Magic memos, collusion and judges with attitude: notes on the politics of law in contemporary Indonesia." In *Law, Capitalism and Power in Asia*. (London: Routledge, 2006), pp. 199-215. See also Melissa Crouch, ed. *The Politics of Court Reform: Judicial Change and Legal Culture in Indonesia*. (Cambridge, MA: Cambridge University Press, 2019); Herning Setyowati, "The Judges Ethics and Justice: An Analysis of Law Enforcement in Indonesian Court System." *Law Research Review Quarterly* 7 no. 4 (2021): 403-416.

does not distinguish among individuals in its application. The ongoing constitutional challenges underscore the delicate balance between legal expediency and safeguarding individual rights within the framework of the PTUN Law.¹⁰

Moreover, the 90-day deadline for filing a lawsuit with the State Administrative Court has been a subject of controversy, with concerns raised about its potential to harm human rights.¹¹ Dismissing a judicial claim in an administrative lawsuit can lead to the end of the dispute between parties, either through their consent or due to mistakes made by them.¹² The historical limitation of the plaintiff's qualification in administrative litigation, as outlined in the 1999 judicial interpretation, has been criticized for being too restrictive.¹³ In cases where the people's court makes a wrong judgment, the state is responsible for compensation in civil and administrative suits.¹⁴

¹⁰ Ayu Putriyanti, "Kajian Undang-Undang Administrasi Pemerintahan dalam Kaitan dengan Pengadilan Tata Usaha Negara." *Pandecta Research Law Journal* 10 no. 2 (2015): 180-194. See also Elisabeth Putri Hapsari, Lapon Tukan Leonard, and Ayu Putriyanti. "Kewenangan Hakim Peradilan Tata Usaha Negara Menggunakan Asas Ultra Petita Berdasarkan Putusan Mahkamah Agung No. 5k/tun/1992 (Studi Kasus Putusan No. 32/g/2012/ptun. smg)." *Diponegoro Law Journal* 6.2 (2017): 1-18; Oyaldi Puhi, Rustam Hs Akili, and Roy Marthen Moonti. "The Settlement of Abuse of Authority by Government Officials." *The Indonesian Journal of International Clinical Legal Education* 2 no. 1 (2020): 85-100; Untoro Untoro. "Self-Respect dan Kesadaran Hukum Pejabat Tata Usaha Negara Menuju Keadilan." *Pandecta Research Law Journal* 13 no. 1 (2018): 37-49; Pratama Herry Herlambang, and Tri Sulistiyono. "Peran Pengadilan dalam Proses Eksekusi Putusan Yang Berkekuatan Hukum Tetap di Pengadilan Tata Usaha Negara Semarang (The Role of the Court in the Process of Executing Decisions that Have Permanent Legal Force at the Semarang State Administrative Court)." *Indonesian State Law Review (ISLRev)* 3 no. 1 (2020): 39-45.

¹¹ Adimas Gusti Darmansyah, and Rasji Rasji. "Analysis of Law Evasion Effort to Avoid the 90 Days Time Requisite in Filing a Lawsuit to the State Administrative Court (Decision Number 51/G/2020/PTUN. PLG)." *3rd Tarumanagara International Conference on the Applications of Social Sciences and Humanities (TICASH 2021)*. Atlantis Press, 2022.

¹² Alaa Foad Salam, and Saab Naji Aboud. "Dismissing The Judicial Claim in The Administrative Lawsuit." *Journal of Namibian Studies: History Politics Culture* 33 (2023): 2411-2427.

¹³ Gao Xin-hua, "The Historical Limitation of the Plaintiff's Qualification in Administrative Litigation in the New Judicial Interpretation." *Journal Liaoning Normal University* (2005)

¹⁴ Zhang Liyan, "State Compensation Extent in Civil and Administrative Suit." *Journal of Liaoning Police Academy* (2002).

In response to the aforementioned challenges, this paper aims to explore and comprehend the ramifications of the deadline for initiating legal proceedings in the State Administrative Court. This study employs normative juridical research, commonly referred to as literature law research, and data collection through library research methods. The research draws from diverse sources, including laws and regulations, books, legal journal articles, as well as information disseminated through mass media and social platforms, accessible online.

The applied research approaches include the statutory approach, involving an examination of legal texts, and the analytical approach, emphasizing a comprehensive analysis of legal principles and their applications. The methodology incorporates documentary studies, wherein secondary data is reviewed and collected through an examination of various documents, encompassing legal frameworks, regulations, and other pertinent sources. By adopting these methodological approaches, this paper aspires to shed light on the multifaceted dimensions of the lawsuit filing deadline, offering a comprehensive understanding through a synthesis of legal literature and relevant empirical data.¹⁵

The deadline for filing a lawsuit according to Law Number 5 of 1986

THE CONTROVERSY surrounding the timeframe for filing a lawsuit by an aggrieved party following the issuance and receipt of a State Administrative Decision (KTUN) is intricately tied to the administrative processes within the State Administrative Court system in Indonesia. This system constitutes a distinct and integral component designed specifically for the resolution of state

¹⁵ Christopher McCrudden, "Legal Research and the Social Sciences." In *Legal Theory and the Social Sciences*. (London: Routledge, 2017), pp. 149-167; Mike McConville, ed. *Research Methods for Law*. (Edinburgh, UK: Edinburgh University Press, 2017).

administrative disputes. A State Administrative Decree (KTUN) is a written determination originating from a state administrative agency or official. It encapsulates concrete, individual, and conclusive state administrative law actions grounded in applicable laws and regulations. The implications of a KTUN are far-reaching, as it carries legal consequences that directly impact individuals or civil law entities. Understanding the nexus between the lawsuit filing deadline and the broader administrative framework underscores the significance of timely legal recourse in addressing disputes arising from State Administrative Decisions.¹⁶

In accordance with Law Number 30 of 2014 concerning Government Administration, the term KTUN, or State Administrative Decision, is explicitly defined. As per this legislation, a KTUN is construed as a written determination encompassing several key attributes. It includes actions rooted in factual circumstances, implying a connection to tangible and verifiable occurrences. Moreover, KTUN applies to decisions made by state administrative bodies and officials across various realms, including executive, legislative, judicial, and other state administrative domains.¹⁷

Furthermore, the determinations outlined in a KTUN must adhere to the provisions of the rule of law and the general principles of good government. This requirement ensures a foundation in legality and ethical governance. Another crucial characteristic of KTUN is its finality. Once issued, it concludes the administrative process and is not subject to further revision or modification.

Additionally, KTUN involves decisions that carry legal consequences and are applicable to society at large. These decisions have a direct impact on individuals, organizations, or the broader community, thereby influencing the legal landscape and societal dynamics. This comprehensive interpretation provided by Law Number 30 of 2014 serves as a guiding framework for

¹⁶ Law Number 9 of 2004 concerning the State Administrative Court

¹⁷ Republic of Indonesia. *Law Number 30 of 2014 concerning Government Administration*. (Jakarta: Sekretariat Negara, 2014). Available online at <https://peraturan.go.id/id/uu-no-30-tahun-2014>

understanding the nature and scope of KTUN, elucidating its characteristics and significance within the realm of government administration.¹⁸

Upon the issuance of a State Administrative Decree (KTUN), individuals who perceive themselves adversely affected possess the prerogative to initiate a legal challenge. This legal action is grounded in the assertion that the KTUN, as issued by the state administrative agency or official, contravenes established laws and regulations and/or the general principles of good governance. The entity vested with the authority to scrutinize and adjudicate the validity of such lawsuits is the State Administrative Court (PTUN). Operating within the parameters of applicable laws and regulations and/or general principles of good governance, the PTUN assumes the responsibility of deliberating on the filed lawsuit. Following due consideration, the PTUN has the discretion to either annul or uphold the lawsuit against the issued KTUN, thus playing a pivotal role in safeguarding legal adherence and upholding the principles of good governance in the administrative domain.¹⁹

In the procedural law of State Administration (TUN), it has been stated that the filing of a lawsuit for losses motivated by the issuance of a KTUN by a TUN agency or official can be done only within a grace period of 90 (ninety) days calculated from the receipt or announcement of the KTUN. This can be interpreted that if the lawsuit is filed beyond the time limit of 90 (ninety) days, then the court will not accept (reject) the lawsuit and the KTUN issued will be considered valid even if there are fatal errors in it.²⁰ The existence of a limit on

¹⁸ See Putu Gede Arya Sumerta Yasa, et al. "Position of Fictitious Positive Administrative Decisions as Dispute Object of State Administrative Court: Indonesia Omnibus Law Perspective." *Journal of Legal, Ethical and Regulatory Issues* 24 no. 5 (2021): 1-12; Anom Wahyu Asmorojati, "The urgency to establish state administrative court to actualize the concept of state law in Indonesia." *International Conference on Law Reform (INCLAR 2019)*. Atlantis Press, 2020; Fadli Zaini Dalimunthe, "The Comparison of Evidence in State Administrative Court Between Indonesia and South Korea." *Jurnal Hukum dan Peradilan* 9 no. 2 (2020): 232-254.

¹⁹ Budi Aspani, "Eksistensi Peradilan Tata Usaha Negara dalam Penyelenggaraan Pemerintahan." *Jurnal Universitas Palembang* 17, no. 2 (2019): 114-121.

²⁰ Teuku Saiful Bahri. *Hukum Tata Negara dan Hukum Administrasi Negara dalam Tataran Reformasi Ketatanegaraan Indonesia*. (Yogyakarta: Deepublish, 2018).

the time of filing a lawsuit to the PTUN plays a very important role, conceptually the time limit regarding the filing of a lawsuit to the PTUN aims to ensure legal certainty and government stability.²¹

Regarding the filing of a lawsuit, the TUN dispute is regulated in Article 54 of the PTUN Law which is submitted in writing to the competent court in its jurisdiction, in this case covering the defendant's residence. However, if the defendant referred to in the lawsuit is more than one state administrative agency or official and is not domiciled in the same jurisdiction (PTUN), then the lawsuit is filed in a court whose jurisdiction includes the residence of one of the state administrative agencies or officials. In the event that the defendant's residence is not within the jurisdiction of the court where the plaintiff lives, the lawsuit can be filed with the court of residence of the plaintiff which will later be forwarded to the court concerned. And if the plaintiff and defendant are abroad, then the lawsuit can be filed with the Jakarta State Administrative Court.²²

In principle, a lawsuit filed with the State Administrative Court does not delay or hinder the implementation of decisions issued by state administrative bodies or officials, as well as state administrative agencies or officials. Thus, the plaintiff can apply to the court so that the decree that is the object of the lawsuit can be postponed in advance regarding the time of its implementation while the application process is filed.

The calculation method as stipulated in article *a quo* in terms of filing a lawsuit to the PTUN is as follows:

²¹ Abdul Kadir Jaelani, "Implementasi Daluarsa Gugatan dalam Putusan Peradilan Tata Usaha Negara di Indonesia." *Pena Justisia: Media Komunikasi dan Kajian Hukum* 18 no. 2 (2020): 56-70; Kartika Widya Utama, "Surat keputusan tata usaha negara yang bersifat fiktif positif." *Notarius* 8 no. 2 (2015): 141-251.

²² Adimas Gusti Darmansya, and Rasji Rasji. "Analisis Upaya Penyelundupan Hukum dalam Upaya Menghindari Syarat Jangka Waktu 90 Hari dalam Mengajukan Gugatan ke Peradilan Tata Usaha Negara (Studi Putusan Nomor 51/G/2020/PTUN. PLG)." *Jurnal Hukum Adigama* 4 no. 2 (2021): 1509-1533. See also Adriaan Bedner, *Administrative Courts in Indonesia: A Socio-Legal Study*. Vol. 6. (Leiden: Martinus Nijhoff Publishers, 2001).

- 1) Positive Fictitious, calculated from the day of receipt of the challenged State Administrative Decision (KTUN) containing the name of the Plaintiff, and from the day of the announcement of the KTUN in terms of its basic regulations determines that a decision must be announced.
- 2) Negative Fictitious, the calculation of the grace period for filing a lawsuit of 90 (ninety) days must be seen in advance whether in the basic regulations it is determined that the grace period for the state administrative agency and/or official to react to an application that has been entered. It can be concluded that the commencement of the calculation regarding the grace period for filing a lawsuit for a negative fictitious decision is as follows:
 - a. In the event that the lawsuit is a decision as stipulated in Article 3 paragraph (2), it is calculated after passing the time limit specified in the basic regulations, which is calculated from the date of receipt of the application concerned.
 - b. In the event that the lawsuit is a decision as stipulated in Article 3 paragraph (3), it is calculated after passing the 4-month time limit, which is calculated from the date of receipt of the application concerned.

From the limitation on the time of filing a lawsuit to the PTUN, it raises pros and cons among academics and the public. If this time limit is associated with Article 3 of Law No. 5 of 1986, it will cause a problem, especially against negative TUN decisions.²³ The provision regarding the deadline for filing a lawsuit for 90 (ninety) days has no exception provision, meaning that it is still calculated from the receipt of the decision issued by the TUN Agency or Officer to someone to be sued. This provision also applies to the filing of lawsuits filed against KTUN in an effort to object or carry out administrative supervision that is preventive or repressive in nature and against KTUN in an

²³ Moch Chafid, and Anna Erliyana. "Implikasi Procedural Time-Limits atas Gugatan Keputusan Administrasi Negara (Studi Banding: Indonesia, Australia, Kanada)." *Administrative Law and Governance Journal* 3 no. 4 (2020): 742-763.

administrative objection and appeal²⁴. For ordinary or positive KTUNs, if it has passed the 90 (ninety) day deadline, it will make the lawsuit expired, while for negative or fictitious KTUNs if it has not passed the predetermined time limit, it will make the lawsuit premature.²⁵

Controversies Surrounding the Timeframe for Initiating Legal Proceedings in the State Administrative Court

AS STATED in Article 55 of Law Number 5 of 1986 concerning the State Administrative Court, it has clearly stated that there is a time limit in terms of filing a lawsuit for someone who has suffered losses to the PTUN for 90 (ninety) days after the issuance of the State Administrative Decree (KTUN) by the state administrative agency or official. The purpose of the limitation regarding filing a lawsuit to the PTUN is to provide legal certainty from a KTUN so that it does not drag on in uncertain circumstances. It can be concluded that the Law *a quo* prioritizes government stability over the interests of individuals, especially those who feel disadvantaged by the existence of KTUN.²⁶ This causes polemics because instead of being able to provide legal certainty, it will injure human rights to defend their rights and interests before the law. This is because the non-fulfillment of the provisions for the period of filing a lawsuit to the PTUN by someone can cause the lawsuit filed to be void in the dismissal process.

²⁴ Ivan Mawardi. *Paradigma Baru PTUN Respon Peradilan Administrasi Terhadap Demokratisasi*. Yogyakarta: Thafa Media, 2016).

²⁵ Unu Putra Herlambang, "Permasalahan Tenggang Waktu Pengajuan Gugatan oleh Pihak Ketiga Dalam Perkara Tata Usaha Negara." *AL WASATH Jurnal Ilmu Hukum* 2 no. 2 (2021): 111-122.

²⁶ Abdul Kadir, La Ode Bariun, and Winner Agustinus Siregar. "Tenggang Waktu Pengajuan Gugatan Pada Pengadilan Tata Usaha Negara Kendari Pasca Berlakunya Perma No. 6 Tahun 2018." *Jurnal Restorative Justice* 6 no. 1 (2022): 56-75.

Four constitutional challenges have been brought before the Constitutional Court, targeting the norms embedded in Article 55 of the PTUN Law concerning the timeframe for initiating lawsuits with the PTUN. The applicants contend that the specified deadline for filing a lawsuit, as articulated in the aforementioned provision, engenders legal uncertainty, disrupts the pursuit of true justice, and is unduly brief when juxtaposed with the time limits prescribed in the civil procedure law, outlined in Article 835, Article 1963, and Article 1968 of the Civil Code. Additionally, the petitioners argue that Article 55 of the PTUN Law contradicts the stipulations in Article 1, paragraph (3), Article 27, paragraph (1), and Article 28D, paragraph (1) of the 1945 Constitution of the Republic of Indonesia, asserting that it lacks binding legal force.²⁷

Nevertheless, the four Constitutional Court Decisions scrutinizing the stipulation of "within a period of ninety days" paradoxically fortify the standing of Article 55 of the PTUN Law as a constitutional provision in harmony with the 1945 Constitution of the Republic of Indonesia. In Constitutional Court Decision Number 1/PUU-V/2007, the Court concluded that the incorporation of these norms into Article 55 did not infringe upon the constitutional rights of the applicants acting as individual citizens. In this particular decision, the applicant failed to meet the criteria for legal standing due to the argument posited that their lack of awareness of the provisions in Article 55 of the PTUN Law could not be excused using a fictitious theory, which posits that ignorance of the law is not a valid justification. Consequently, the Constitutional Court determined that the applicant lacked legal standing, leading to the rejection or inadmissibility of the application.

²⁷ See Sri Pujiati, "Aturan Batas Waktu Gugatan dalam UU PTUN Digugat", *Online News Constitutional Court the Republic of Indonesia*, March 26, 2018. Available online at <https://www.mkri.id/index.php?page=web.Berita&id=14378>. See also Letter of Application for Material Review Article 55 of Law no. 51 of 2009 concerning the Second Amendment to Law no. 5 of 1986 concerning the State Administrative Court (PTUN) regarding the 1945 Constitution of the Republic of Indonesia (UUD 1945), available online at https://www.mkri.id/public/filepermohonan/Permohonan_3353_3081_Permohonan.pdf

Furthermore, in the Constitutional Court Decision Number 57 / PUU-XIII / 2015 explained that the subject matter of the application submitted by the applicant was because Article 55 of the PTUN Law was considered contrary to the rights of citizens and human rights as contained in Article 28D paragraph (1), Article 28H paragraph (2), and Article 28I paragraph (2) of the NRI Constitution of 1945. In *a quo decision*, the Constitutional Court considered that the enactment of Article 55 of the PTUN Law does not limit and eliminate the human rights of the applicant, even though the applicant is serving a prison sentence, filing a lawsuit to the PTUN against KTUN can still be filed. Regarding the application of the time limit for filing a lawsuit to the PTUN as stipulated in article *a quo*, it is an option for an open legal policy from the framer of laws and regulations that apply to all Indonesian citizens and is not discriminatory.

The further constitutionality test of Article 55 of the PTUN Law is contained in the Constitutional Court Decision Number 76/PUU-XIII/2015 which in its main petition states that article *a quo is contrary to the NRI Constitution of 1945 and has no binding legal force, and requests the Constitutional Court to give a constitutional interpretation to Article 55 of the PTUN Law which* is article *a quo*. This PTUN lawsuit is not limited to ninety days from the time of receipt or announcement of the Decision of the State Administrative Agency or Officer. In *a quo ruling*, the Constitutional Court cited considerations in Decision Number 57/PUU-XIII/2015 which stated that Article 55 of the PTUN Law is an *open legal policy*²⁸ forming laws and

²⁸ The term *open legal policy* in the context of the State Administrative Court Law of Indonesia (UU PTUN) refers to a legislative approach that provides flexibility and openness in its application. In essence, an open legal policy means that the law allows for interpretation and adaptation to different circumstances, ensuring that it can be applied effectively in various situations without being overly rigid. In the case of UU PTUN in Indonesia, an open legal policy may be reflected in the law's provisions that provide room for interpretation by the judiciary. For example, certain principles or criteria for filing a lawsuit or specific legal standards may be broadly defined, allowing the courts to consider various factors and apply the law in a manner that aligns with the specific details of a case. The open legal policy in UU PTUN acknowledges the dynamic nature of administrative disputes and aims to accommodate diverse

regulations that apply to all Indonesian citizens and is not discriminatory. Therefore, the Constitutional Court dismissed the petitioner's application in its entirety.

In the Constitutional Court Decision Number 22/PUU-XVI/2018 in which the petition points out that the phrase 90 (ninety) days contained in Article 55 of the PTUN is contrary to Article 28D paragraph (2), Article 28H paragraph (2), and Article 28I paragraph (2) of the NRI Constitution of 1945. The petitioner postulates that article *a quo* has deprived the petitioner of the right to proportionate justice in terms of claiming damages received for the issuance of the KTUN by the state administrative body or official. The applicant also explained that the application of article *a quo* would be a dilemma and problem that would never end because there were still provisions regarding the limitation of filing a lawsuit to the PTUN for 90 (ninety) days without any special or exceptional options as stipulated in the Supreme Court Circular (SEMA) Number 2 of 1991. In *a quo* decision, the Constitutional Court held that with the expansion of the meaning of the norms contained in Article 55 of the PTUN Law, there will be no expiration time limit which will result in legal uncertainty, and is contrary to Constitutional Court Decision Number 1 / PUU-V / 2007. Furthermore, the Constitutional Court also reaffirmed that article *a quo* *is not discriminatory because the norms contained in article a quo apply to all groups and social strata without any element of distinction regarding the treatment of a person.*

The petitioner's argument in the four instances of testing Article 55 of the PTUN Law, asserting their lack of qualification as an applicant and alleging

situations that may arise. This approach allows for a more nuanced and context-specific application of the law, promoting fairness and justice in the resolution of state administrative conflicts. *See also* Mardian Wibowo, I. Nyoman Nurjaya, and Muchammad Ali Safaat. "The Criticism on the Meaning of "Open Legal Policy" in Verdicts of Judicial Review at the Constitutional Court Mardian Wibowo." *Constitutional Review* 3 no. 2 (2018): 262-286; Winda Wijayanti, "Eksistensi Undang-Undang Sebagai Produk Hukum dalam Pemenuhan Keadilan Bagi Rakyat (Analisis Putusan Mahkamah Konstitusi Nomor 50/PUU-XI/2012)." *Jurnal Konstitusi* 10 no. 1 (2013): 179-204.

constitutional harm, is deemed unsubstantiated. Moreover, the petitioner's contention that the article in question does not ensure legal certainty for testing State Administrative Decisions (KTUN) lacks legal foundation. Consequently, the application should be dismissed not on constitutional grounds but rather redirected as a matter of legislative review, falling under the purview of the legislative authorities who formulate laws and regulations.

Therefore, it is highlighted that, the four Constitutional Court Decisions scrutinizing the constitutionality of Article 55 of the PTUN Law, specifically pertaining to the deadline for filing lawsuits with the PTUN, are primarily aimed at upholding government stability and ensuring legal certainty. The PTUN Judge, vested with the authority to assess the application of the aforementioned article, is tasked with delivering proportional justice, in accordance with Article 24 of the 1945 Constitution of the Republic of Indonesia. This constitutional mandate underscores the judiciary's commitment to preserving both law and justice within the Indonesian legal system.

Conclusion

IN SUMMARY, this study highlighted and concluded that the regulations concerning the deadline for filing a lawsuit with the State Administrative Court (PTUN) are clearly outlined in Article 55 of Law Number 5 of 1986 concerning the State Administrative Court (PTUN Law). This provision stipulates that a lawsuit can only be initiated within a specified window of ninety days from the time of receiving or announcing the Decision of the State Administrative Agency or Officer. Individuals who feel aggrieved by the issuance of a State Administrative Decision (KTUN) by a state administrative agency or official, purportedly contrary to laws, regulations, and general principles of good governance, are eligible to file a lawsuit at the PTUN during this timeframe.

The rationale behind imposing a strict 90-day limit for filing lawsuits with the PTUN, as delineated in Article 55 of the PTUN Law, is to ensure legal certainty in the face of KTUNs, preventing prolonged uncertainties and maintaining government stability. However, this temporal constraint has triggered debates among academics and the public, particularly when associated with Article 3 of Law No. 5 of 1986, potentially leading to challenges against negative State Administrative Decisions. This controversy raises concerns as critics argue that, instead of bolstering legal certainty and government stability, the limitation on the filing period may infringe upon human rights, particularly for applicants aggrieved by KTUNs issued by state administrative bodies or officials.

Evidencing the depth of this debate, the Constitutional Court has been petitioned four times to assess the constitutionality of the norms embedded in Article 55 of the PTUN Law pertaining to the deadline for filing lawsuits with the PTUN. Surprisingly, each of the four Constitutional Court Decisions has affirmed the constitutional standing of Article 55, reinforcing its alignment with the provisions of the 1945 Constitution of the Republic of Indonesia.

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