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The Debate on the Grace Period in Appealing Cases Against the State Administrative Court

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Abstract

This study delves into the nuanced discourse surrounding the grace period concerning appeals against decisions rendered by the State Administrative Court (*Pengadilan Tata Usaha Negara*, PTUN) in Indonesia. Against the backdrop of Indonesia's evolving legal landscape and commitment to administrative justice, this research critically examines the existing grace period and its implications for litigants, judicial efficiency, and the broader pursuit of fairness. The study considers perspectives from legal scholars, practitioners, and policymakers within the Indonesian context, assessing the necessity and efficacy of the current grace period. Additionally, the research explores comparative legal frameworks, offering insights into how other jurisdictions navigate the delicate balance between finality in administrative decisions and ensuring access to justice. Through case studies and empirical analysis, the study evaluates the practical impact of the grace period on the Indonesian legal system. It aims to identify potential areas for improvement and inform discussions on legal reforms that align with Indonesia's commitment to enhancing governance, rule of law, and the overall administration of justice. By engaging with Indonesia's unique administrative and legal challenges, this research contributes not only to the academic discourse but also holds practical implications for legal practitioners, policymakers, and stakeholders involved in shaping the country's legal framework. Ultimately, the study aspires to be a catalyst for informed discussions and potential reforms that will strengthen the Indonesian State



Administrative Court system, fostering a more equitable and efficient dispensation of administrative justice.

Keywords

PTUN, Grace Period, Justice, State Administrative Court, Administrative Justice

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Introduction

INDONESIA, AS A CONSTITUTIONAL state founded on the Pancasila Law and the 1945 Law of the Republic of Indonesia, prioritizes the primacy of legal foundations.¹ This commitment entails not only citizens adhering to the law but also mandates that those in positions of authority and state administrators exercise power within legal limits. The Pancasila and the 1945 Law form a robust cornerstone for the nation, as emphasized in the fourth paragraph of the Preamble to the Law of the Republic of Indonesia of 1945 outlining the State's objectives. The vision of the Republic of Indonesia is to safeguard the entire nation and its territories, prioritize collective interests, and enhance the intellectual capacity of its people. Ensuring legal equality among citizens is fundamental, entitling everyone to equal status under the law. Achieving this requires concerted efforts to uphold order, justice, truth, and legal certainty, thereby offering protection to the people and government agencies.²

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

² Indonesia as a rule of law state refers to the principle that law holds a high and esteemed position in the governance system and societal life. This concept emphasizes that governmental powers and actions must be subject to the law, and all citizens and entities are obliged to comply with the prevailing legal norms. The key elements of the rule of law concept in Indonesia involve the foundation in Pancasila and the 1945 Constitution. Pancasila, as the philosophical basis of the

In the pursuit of justice, the incorporation of the State Administrative Court (*Pengadilan Tata Usaha Negara*, hereinafter PTUN) into the constitutional structure holds paramount significance, serving as a theoretical cornerstone of the constitution, particularly in the context of the rule of law. The imperative for every legitimate state to unequivocally comply with PTUN decisions solidifies its indispensable role in upholding the foundational principles of justice and legality. This integral role positions PTUN as a linchpin in the seamless functioning of a legal state, dedicated to ensuring the adherence to fairness and legality within its administrative processes.

Meeting the deadline for case submissions to the PTUN is of utmost importance. This is attributed to the fact that one of the involved parties may perceive their interests to be infringed upon by a PTUN decision, and the window for filing such cases is time-sensitive. The State Administrative Court's decision (*Keputusan Tata Usaha Negara*, hereinafter KTUN) holds significant weight, as it marks the conclusion of proceedings within the PTUN. The

state, provides moral and ethical groundwork for the enforced laws. The principle of legal sovereignty underscores that the law has binding and sovereign power, even over the government and public officials. No entity or individual is exempt from obedience to the law. The rule of law in Indonesia includes the protection of human rights, with the law acting as a tool to guarantee citizens' rights and prevent the abuse of power. An independent judicial system, including the State Administrative Court (PTUN), is an integral part of the rule of law. The judiciary's role is to uphold the law, administer justice, and ensure that any government actions or policies violating the law can be fairly examined. Compliance with international law and ratified agreements is another aspect, reflecting Indonesia's commitment to international cooperation and respect for global legal norms. Overall, the concept of Indonesia as a rule of law state reflects a belief in the supremacy of law as the primary foundation in shaping and implementing policies, protecting citizens' rights, and maintaining justice in society. See Rokilah Rokilah. "Dinamika Negara Hukum Indonesia: Antara Rechtsstaat dan Rule of Law." *Nurani Hukum* 2, no. 1 (2019): 12-22; Bambang Panji Gunawan, et al. "The Development of Indonesia as the Rule of Law Based on 1945 Constitution Before and After Amendments." *YURISDIKSI: Jurnal Wacana Hukum dan Sains* 16, no. 2 (2020): 64-73; Rokilah Rokilah. "The Role of the Regulations in Indonesia State System." *Ajudikasi: Jurnal Ilmu Hukum* 4, no. 1 (2020): 29-38; Indah Sri Utari, and Ridwan Arifin. "Law Enforcement and Legal Reform in Indonesia and Global Context: How the Law Responds to Community Development?." *Journal of Law and Legal Reform* 1, no. 1 (2020): 1-4; Ridwan Arifin, "Democracy on Indonesian Legal Reform: How Can People Participate on Laws and Regulations Establishment Process." *Journal of Indonesian Legal Studies* 2, no. 2 (2017): 155-158.

establishment of the PTUN in Indonesia signifies the realization of individuals' rights arising from KTUN decisions issued by the Constitutional Administrator.

Indonesia has instituted PTUN and its Procedural Law through Law No. 5 of 1986, specifically addressing State Administrative Courts. Subsequent amendments were made with Law No. 9 of 2004 (hereinafter referred as PTUN Law), focused on the alterations to Law No. 5 of 1986 concerning State Administrative Courts. Notably, the Supreme Court holds a position of supreme authority and shares jurisdiction with the Constitutional Court of the Republic of Indonesia. This legal framework underscores the intricacies and significance of the PTUN within the broader judicial system of Indonesia.³

Within the framework of the PTUN Law, any citizen who believes that their interests have been adversely affected by a decision of the KTUN is entitled to seek resolution through legal channels. Upon perceiving harm to one's interests in accordance with established norms, there is no prerequisite to initiate official action initially. In cases where public action has been taken but yields unsatisfactory results, the recourse is to file a lawsuit with the administrative body within a grace period of 90 days, as stipulated by Article 55 of the TUN Law.⁴

³ Ahmad Sobari, "Menguji Asas-Asas Umum Pemerintahan Yang Baik Pada UU Nomor 9 Tahun 2004 Menjadi Norma Hukum Yang Dapat Menentukan Kesalahan Berdasarkan Praktik di PTUN." *Populis: Jurnal Sosial dan Humaniora* 8, no. 1 (2023): 92-99; Misranto Misranto. "Penanganan Sengketa Tata Usaha Negara (TUN) Yang Tidak Termasuk Keputusan Tata Usaha Negara (KTUN) Oleh Peradilan Umum (PU) Setelah Penerapan Undang-undang Nomor 9 Tahun 2004 Tentang PTUN." *Perspektif* 11, no. 2 (2006): 120-132; 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.

⁴ Bernadetta Satyaayu Regitaningtyas Kalaij, et al. "Penerapan Gugatan Perwakilan Kelompok dalam Pengujian Keputusan Tata Usaha Negara di Peradilan Tata Usaha Negara." *Padjadjaran Law Review* 11, no. 1 (2023): 91-101; Bambang Arwanto, "Kewenangan PTUN dalam Menyelesaikan Sengketa Perbuatan Melanggar Hukum oleh Pemerintah (Onrechmatige Overheidsdaad)." *Jatiswara* 33, no. 2 (2018).

The significance of the 90-day grace period for appealing against administrative court decisions cannot be overstated. Once this timeframe lapses, the PTUN decision remains untouched, despite any substantive flaws it may harbor. Consequently, establishing a clear limit for the grace period becomes imperative for the PTUN, ensuring legal certainty without prolonged uncertainty. This delineation of the grace period serves a dual purpose: *first*, to facilitate expeditious resolution and, *second*, to avoid protracted legal uncertainties. It underscores the PTUN Law's prioritization of national equilibrium over individual interests. Contrarily, the grace period for appeals to the PTUN aligns with the legal provisions of the court and typically avoids controversy, as individuals perceive their human rights and interests to have been adequately safeguarded through this established legal recourse.⁵

According to Supreme Court Board's SEMA No. 1 of 2017⁶, the primary objective of the PTUN Procedural Law is to assert the vital role of truth in harmonizing the principles of legality (*srechtmatigheid beginel*) and efficiency (*doelmatigheid beginel*) as standardized priorities. Gustav Radbruch emphasized that the function of formal law or procedural law essentially lies in enforcing and upholding substantive legal principles. Conversely, in its procedural form,

⁵ 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. See also 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.

⁶ Circular Letter No. 1 of 2017 by the Supreme Court of the Republic of Indonesia pertains to the enforcement of the resolutions derived from the plenary session of the Supreme Court's Chambers in 2017, serving as a guideline for the execution of duties within the judiciary. This circular likely includes various aspects intended to guide all courts in Indonesia. See Republic of Indonesia. *Supreme Court Circular Number 1 of 2017 concerning Implementation of the Formulation of the Results of the 2017 Supreme Court Chamber Plenary Meeting as Guidelines for the Implementation of Duties for the Court (Edaran Mahkamah Agung Nomor 1 Tahun 2017 Tentang Pemberlakuan Rumusan Hasil Rapat Pleno Kamar Mahkamah Agung Tahun 2017 Sebagai Pedoman Pelaksanaan Tugas Bagi Pengadilan)*. (Jakarta: Sekretariat Negara, 2017). Available online at <https://jdih.mahkamahagung.go.id/legal-product/sema-nomor-1-tahun-2017/detail>

it takes a more assertive stance in avoiding the denial of case examination and actively pursuing justice.⁷

In addition, the grace period in appealing cases against the State Administrative Court in Indonesia has become a topic of debate and discussion. On one hand, proponents argue that a grace period is necessary to allow individuals sufficient time to gather evidence, consult with legal counsel, and prepare a strong appeal. They believe that imposing strict deadlines for appeals may result in rushed and incomplete submissions, leading to potential injustices.⁸ On the other hand, opponents contend that a grace period may cause delays in the resolution of cases and hinder the efficient functioning of the judicial system. They argue that setting clear and strict deadlines for appeals promotes the timely resolution of disputes and ensures that justice is served in a timely manner. Furthermore, opponents argue that a grace period may be exploited by individuals seeking to prolong their case or stall the legal process. One notable source, the Government Administration Act, emphasizes the importance of a timely response from government officials to requests from the public.⁹

An additional source underscores the challenges faced by the Indonesian judiciary, pointing out issues of understaffing and inefficiency. These factors are identified as potential contributors to delays in the timely resolution of legal

⁷ See Gustav Radbruch, "Five minutes of legal philosophy (1945)." *Oxford Journal of Legal Studies* 26, no. 1 (2006): 13-15. See also Eduardo García Máynez, "Justice and Legal Security." *Philosophy and Phenomenological Research* 9, no. 3 (1949): 496-503; Muhammad Muslih, "Negara Hukum Indonesia Dalam Perspektif Teori Hukum Gustav Radbruch (Tiga Nilai Dasar Hukum)." *Legalitas: Jurnal Hukum* 4, no. 1 (2017): 130-152; Bambang Sutiyoso, "Mencari Format Ideal Keadilan Putusan dalam Peradilan." *Jurnal Hukum Ius Quia Iustum* 17, no. 2 (2010): 217-232.

⁸ 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; Tetti Samosir, "Efektifikasi Peradilan Tata Usaha Negara dalam Menyelesaikan Sengketa Tata Usaha Negara." *ADIL: Jurnal Hukum* 6, no. 2 (2015): 182-197.

⁹ Nyoman Martana, et al. "Discourses of Legal Certainty in Execution of Administrative Court Decision." *Substantive Justice International Journal of Law* 2, no. 2 (2019): 89-117.

cases. This circumstance brings attention to a crucial concern regarding the Indonesian judicial system. The mention of understaffing suggests that there may be an insufficient number of personnel within the judiciary, including judges, clerks, and administrative staff. This shortage can strain the capacity of the system to handle the caseload effectively. Additionally, the reference to inefficiency implies that there may be inefficiencies or bottlenecks in the processes and procedures followed by the judiciary, which further compounds the challenges associated with resolving cases promptly.¹⁰

Given the aforementioned statement, the formulation of the research questions can be articulated as follows: *Firstly*, an exploration into the procedural aspects of the grace period for initiating a lawsuit at the State Administrative Court (PTUN) is warranted. This involves an examination of the specific steps and requirements involved in filing a lawsuit within the context of the grace period. *Secondly*, an investigation into the perspectives and considerations of Gustav Radburch concerning the temporal aspects related to the submission of matters to PTUN is crucial. This entails an analysis of Radburch's thoughts and opinions regarding the timing intricacies associated with the application of legal proceedings to PTUN. By addressing these questions, the study aims to provide a comprehensive understanding of the procedural nuances and temporal considerations surrounding the initiation of legal actions at PTUN.

This study constitutes normative legal research, focusing on the evaluation of legal logic accuracy from a normative perspective. It aligns with Soerjono Soekanto's assertion that normative juridical writing is essentially juridical

¹⁰ Novia Isro'atul Mutiah, "Legal Injustice in the Perspective of Pancasila: Various Recent Developments in Indonesia." *Indonesian Journal of Pancasila and Global Constitutionalism* 2, no. 1 (2023): 85-102. See also Laurens Bakker, and Jaap Timmer. "Justice in Indonesia: The social life of a momentous concept." *The Asia Pacific Journal of Anthropology* 15, no. 4 (2014): 293-301; Stefanus Hendrianto, "The rise and fall of heroic chief justices: constitutional politics and judicial leadership in Indonesia." *Washington International Law Journal* 25, no. 3 (2016): 489-528; Ridwan Arifin, "Translating the Meaning of Justice and Legal Protection: What exactly is justice?." *Journal of Indonesian Legal Studies* 7, no. 1 (2022): i-iv.

writing focused on values.¹¹ Consequently, the writing employs normative methods, drawing on legal instruments such as Law No. 9 of 2004, which amends Law Number 5 of 1986 related to the State Administrative Court, Law Number 30 of 2014 concerning Government Administration, and the 2009 Amendment of Law. The analytical framework for this research is anchored in Law No. 5 of 1986 regarding the State Administrative Court, serving as a guiding reference. The adoption of normative methods adheres to Austin's perspective that scientific research is an integral facet of scholarly writing, necessitating the use of systematic approaches to yield valid and verifiable findings. Hence, a comprehensive understanding of the research's nature is paramount, considering the intricacies involved in legal analysis and the pursuit of substantive, well-grounded outcomes.¹²

PTUN Case Submission Grace Period: Between Justice and Legal Certainty

TUN OFFICIALS issue written regulations, embodying TUN constitutional acts derived from permanent laws and regulations.¹³ These regulations are specific, individual, and conclusive, addressing the constitutional rights of individuals or legal entities. KTUN interprets Law No. 30 of 2014 on Government Administration as a set of written provisions outlining practical actions. Decisions made by state administrators, as well as executive, legislative, judicial, and other state administration institutions, adhere to legal provisions and abstract principles of good corporate governance. These decisions have far-

¹¹ Soerjono Soekanto, "Penelitian Hukum dan Pendidikan Hukum." *Jurnal Hukum & Pembangunan* 6, no. 6 (2017): 429-439.

¹² Andrew Halpin, "Austin's Methodology? His Bequest to Jurisprudence." *The Cambridge Law Journal* 70, no. 1 (2011): 175-202. See also Philip M. Langbroek, et al. "Methodology of legal research: Challenges and opportunities." *Utrecht Law Review* 13, no. 3 (2017): 1-8.

¹³ Darda Syahrizal, *Hukum Administrasi Negara dan Pengadilan Tata Usaha Negara*. (Jakarta: Media Pressindo, 2013).

reaching implications, potentially leading to constitutional consequences and influencing the choices of community members on a broader scale.¹⁴

In the event we perceive harm inflicted by KTUN, the recourse is to file an appeal with PTUN, alleging violations of the permanent constitution and AAUPB's general principles.¹⁵ This appeal triggers an evaluation to determine cancellation based on regulations, applicable laws, and the overarching principles of good corporate governance. The establishment of a grace period for case submissions is crucial for shaping legal provisions during the trial process. This temporal allowance empowers private societies or legal entities, in

¹⁴ Syssy Nurhidayati, and Arif Wibowo. "Konsekuensi Kompetensi Absolut Terhadap PTUN Pasca Berlakunya Undang-Undang Administrasi Pemerintahan." *MAQASIDI: Jurnal Syariah dan Hukum* 3, no. 2 (2023): 118-128; Kartika Widya Utama, "Surat Keputusan Tata Usaha Negara Yang Bersifat Fiktif Positif." *Notarius* 8, no. 2 (2015): 141-251.

¹⁵ *Asas-Asas Umum Pemerintahan yang Baik* (AAUPB), or General Principles of Good Governance, encapsulates foundational concepts guiding effective public administration. These principles, while subject to variation across countries, commonly include transparency, accountability, rule of law, responsiveness, equity, and inclusiveness. Transparency is a fundamental principle, emphasizing openness in government actions, decision-making processes, and communication. Accountability holds public officials responsible for their actions and decisions, ensuring mechanisms for oversight. The rule of law underscores the importance of legal supremacy and equal treatment before the law. Responsiveness dictates that governments address the needs and concerns of the public while being receptive to feedback. Equity and inclusiveness ensure fairness, justice, and inclusion in policies, irrespective of social, economic, or other status. Encouraging citizen engagement and involvement in decision-making processes is another critical principle, promoting participation. Together, these principles contribute to a governance framework fostering ethical conduct, citizen trust, and effective public administration. While specific variations may exist, the overarching goal is to establish a governance system that serves the public interest and upholds democratic values. See Andy Gunawan, and I. Wayan Arthanaya. "Fungsi Asas-Asas Umum Pemerintahan yang Baik dalam Menyelesaikan Sengketa Hukum Acara Tata Usaha Negara." *Jurnal Analogi Hukum* 1, no. 1 (2019): 28-33; Muhammad Kamil Akbar, "Peran Peradilan Tata Usaha Negara dalam Mewujudkan Pemerintahan Yang Baik." " *Dharmasisya* 1, no. 1 (2021): 352-363; M. Aunul Hakim, and Sheila Kusuma Wardani Amnesti. "Problematisa Penanganan Gugatan Perbuatan Melanggar Hukum oleh Pemerintah (Onrechtmatige Overheidsdaad) Pada Peradilan Tata Usaha Negara." *De Jure: Jurnal Hukum dan Syari'ah* 14, no. 1 (2022): 125-139; Muhammad Addi Fauzani, "The Shifting in the Legal Politics of Regulating the General Principles of Good Governance in Indonesian Legislation." *As-Siyasi: Journal of Constitutional Law* 3, no. 1 (2023): 1-24; Ayu Putriyanti, "Kajian Undang-Undang Administrasi Pemerintahan dalam Kaitan dengan Pengadilan Tata Usaha Negara." *Pandecta Research Law Journal* 10, no. 2 (2015): 180-194.

accordance with civil law, to pursue their legal interests by presenting cases in court within a designated timeframe, referred to as "*bezwaartertermijn*" or "*klaagtermijn*." Article 55 of the PTUN Law explicitly outlines the calculation of the lawsuit filing deadline to the State Administrative Court, fixed at 90 calendar days, excluding non-working days, as announced by the organization or state entity involved.

The calculation of the time limit for filing cases in court, as stipulated by Article 55 of the PTUN Law, operates on calendar days, not weekdays. This method can be flexibly applied to various variables. In the absence of administrative burden, the deadline for initiating a case against PTUN under this provision stands at 90 days following the notification from KTUN. A detailed explanation of these provisions is elucidated in the explanatory section of Article 55, paragraph (1), of the Law on State Administrative Courts.

for the party named in the State Administrative Decision of the claimed, the grace period of ninety days is calculated from the day of receipt of the challenged State Administrative Decision.

Paragraph 5 which reads:

In the event that the basic rules provide that a decision must be promulgated, then the grace period of ninety days shall be counted from the day of the announcement.

The second provision utilized for determining the grace period limit for filing court cases involves the time limit for instances where oral action has been taken, and administrative measures have been implemented, but the outcomes of such administrative actions fail to satisfy the involved parties.¹⁶ In such scenarios, if the sole administrative burden is in the form of a lawsuit, the case must be brought before the court within 90 days from the issuance of an

¹⁶ Titik Triwulan. *Hukum Tata Usaha Negara dan Hukum Acara Peradilan Tata Usaha Negara Indonesia*. (Jakarta: Prenada Media, 2016).

unfavorable decision by KTUN, which serves as the subject of the lawsuit arising from a review of objections raised. Conversely, when an administrative appeal is part of the administrative burden, the deadline for filing the appeal is set at 90 days from the date of receiving KTUN's review results. The subject of the administrative appeal aligns with the subject of the lawsuit, with the case being brought to the local PTUN for resolution.

Provision three is the time limit for submitting cases to the PTUN against the "*mere negative*" KTUN. Regarding these provisions, there is an explanation in Article 55(3) of the PTUN Law, namely:

In the event that the suit is a decision under the provisions of Article 3 paragraph (2), the grace period of ninety days shall be calculated after the lapse of the grace period specified in the basic regulations, which is calculated from the date of receipt of the application concerned.

Hence, whether it pertains to the establishment of national administrative authority or civil decrees, the grace period is computed from the moment the relevant KTUN exhausts the opportunity to comply with the deadline for adopting or responding to the incoming decision application.¹⁷

In the absence of regulations constraining government offices or agencies in terms of decision-making time frames or response to decision requests, the 90-day grace period is computed after a lapse of four months from the submission of the claim. This provision is explicitly articulated in the Explanatory Note to Article 55, paragraph (4) of the PTUN Law.

In the event that the suit is a decision under the provisions of Article 3 paragraph (3), the grace period of ninety days shall be calculated after the lapse of the four-month deadline calculated from the date of receipt of the application concerned.

¹⁷ Syahrizal, *Hukum Administrasi Negara dan Pengadilan Tata Usaha Negara*.

Provision 4 delineates a grace limit for a third party whose interests are not explicitly evident to initiate a lawsuit at the local PTUN. Examining the language of Article 55 of the PTUN Law and its interpretation reveals that the grace limit for bringing cases exclusively pertains to parties who perceive their interests as infringed by KTUN. Therefore, a pertinent question arises: beyond the parties mentioned by KTUN whose rights are affected, which other party holds the prerogative to file a lawsuit with the PTUN. Chapter V outlines the deadline (Article 55). As elucidated in SEMA No. SK No. 2 of 1991, it is emphasized that parties who, despite lacking direct contact with KTUN, contend that their interests have been harmed by KTUN should carefully consider the element of the time limit.

For those who are not addressed by a State Administrative Decree but who feel their interests are harmed, the grace period referred to in Article 55 is calculated casuistically from the moment they feel their interests are harmed by the State Administrative Decision and become aware of the existence of the Decree.

Clarifying SEMA No. SK No. 2 of 1991, it underscores that individuals or groups who assert that KTUN has adversely affected their interests, despite not having direct contact with KTUN, should take into account the relevant aspect of the grace period.¹⁸

First, the appeal period is 90 days calculated based on chance. This is interesting because the determination of the deadline for raising cases in PTUN is uncertain because it depends on SEMA No. 2 of 1991.¹⁹ Thus, SEMA decision No. 2 which set the deadline for appeals in 1991 tends to contradict the intent of constitutional law to prioritize national stability over individual

¹⁸ See SEMA No. SK No. 2 of 1991 Guidelines for the Implementation of several provisions in Law No. 5 of 1986 concerning State Administrative Court. Available online at <https://jdih.mahkamahagung.go.id/index.php/legal-product/sema-no-02-tahun-1991/detail>

¹⁹ See SEMA No. SK No. 2 of 1991.

interests. SEMA No. 2 of 1991 personal interest. SEMA No. 2 of 1991, as amended by SEMA No. 3/2015. The cases requested by the party but not responded to by KTUN but believed by KTUN to harm its interests decided are:

The grace period of 90 (ninety) days to file a lawsuit for a third party that is not addressed by the state administrative decision as referred to in Article 55 of Law Number 5 of 1986 concerning the State Administrative Court, which was originally calculated "since the person concerned feels his interests are harmed by the state administrative decision and has been aware of the state administrative decision" is changed to be calculated "since the person concerned first became aware of the decision state administration that harms its interests.

SEMA Regulation No. 3 of 2015 amends Regulation No. 2 of 1991, specifying that the deadline for filing a case against an entity failing to respond to KTUN is set at 90 days from the initial discovery of KTUN's actions considered detrimental to the claimant's interests. This amendment introduces a crucial fifth variable, incorporated into Law Number 30 of 2014, which outlines provisions for calculating the grace period for case submissions to the PTUN, specifically in cases involving a "*fictitious front*" KTUN.²⁰

A comprehensive request is deemed an approval application, as outlined in Article 53, paragraphs 2 and 3 of Law Number 30 of 2014. The introduction of a "*fictitious front*" KTUN permits the plaintiff to present a case to the PTUN, seeking a valid decision from KTUN. Applications are acquired using this "*fictitious front*." The deadline for filing a case against PTUN stands at 90 days after the conclusive 10 working days, in accordance with Article 53, paragraph 3 of Law No. 30 of 2014.

²⁰ I. Gede, AA Sagung Laksmi Dewi Buonsu, and Luh Putu Suryani. "Keputusan Fiktif Sebagai Dasar Pengajuan Gugatan Sengketa Tata Usaha Negara." *Jurnal Preferensi Hukum* 2, no. 1 (2021): 68-72.

If the provisions of laws and regulations do not specify the time limit for obligations as referred to in paragraph (1), the Agency and/or Government Official shall determine and/or carry out Decisions and/or Actions within a maximum of 10 (ten) working days after the application is received in full by the Agency and/or Government Officials. (3) If within the time limit referred to in sub-article (2), the Agency and/or Government Officer does not determine and/or carry out a Decision and/or Action, then the application shall be deemed to be granted in full.

The issuance of a "mere front" KTUN empowers the plaintiff to initiate a case with the State Administrative Court, seeking a decision on the acknowledgment of the KTUN's actions. The application is facilitated through a "fictitious front." The timeframe for submitting such a case to the PTUN is 90 days following the conclusion of the specified 10 working days, as stipulated in Article 53, paragraph 3 of Law No. 30 of 2014.

Gustav Radbruch's Legal Perspectives: Navigating the Justice in the Process of Submitting Cases to PTUN

ADMINISTRATIVE PROSECUTIONS frequently encounter a dilemma akin to that confronted by judges in such instances. The correlation between the legal objectives directed at securing constitutional provisions, maintaining constitutional balance, or safeguarding constitutional interests remains a dynamic and dialectical subject of ongoing debate. Nevertheless, post-World War II, Radbruch eventually revised his theory, prioritizing justice above all. It holds true that balance stands as the core function of the law, constituting the

essence and substance of legal principles.²¹ Laws are crafted with the objective of establishing peace through well-balanced regulation.²²

Justice cannot truly flourish without the ideal of equilibrium being grounded in tangible substance. The authentic value of justice emerges when purpose underpins it. Certainty is indispensable for refining balance and ensuring longevity. However, tensions may arise between justice and legal certainty. The imperative for legal certainty, which necessitates equality before the law, calls for a reliance on more static laws. The constitution, reflecting the realities of societal phenomena, is compelled to consider the dynamic elements of the people it governs, given the absence of a fully dynamic judicial system.²³

Public sentiment commonly asserts that the constitution should embody a sense of balance. In public discourse, justice is envisioned as an order that safeguards the rights of both the vulnerable and the powerful, with a resolute commitment to penalize actions that harm the interests of the strong. The constitution serves as a pivotal element of the state, tasked with embodying the norms of justice within the populace. Balance, crucial for upholding order in a civilized society, imposes an obligation on all members of society and state administrators to foster social cohesion and undertake necessary measures to achieve the shared goal of coexistence. Conversely, actions that undermine this equitable order must be addressed to uphold justice and restore order in public life, with violations being met with appropriate consequences.

Undoubtedly, justice remains an abstract concept, encompassing the protection of interests, the equilibrium and function within the legal system, and the alignment with both the inherent and institutional intents of the

²¹ See Brian H. Bix, "Robert Alexy, Radbruch's Formula, and the Nature of Legal Theory." *Rechtstheorie* 37 (2006): 139-149; Brian H. Bix, "Radbruch's Formula, Conceptual Analysis, and the Rule of Law." In *Law, Liberty, and the Rule of Law*. (Dordrecht: Springer Netherlands, 2013), pp. 65-75; Anton-Hermann Chroust, "The philosophy of law of Gustav Radbruch." *The Philosophical Review* 53, no. 1 (1944): 23-45; Torben Spaak, "Meta-ethics and legal theory: The case of Gustav Radbruch." *Law and Philosophy* 28, no. 3 (2009): 261-290.

²² Shahrizal, *Hukum Administrasi Negara dan Pengadilan Tata Usaha Negara*.

²³ Shahrizal, p. 41

involved parties. The essence of justice is not only rooted in rationality but is also shaped by the social atmosphere, influenced by prevailing norms. Thus, equilibrium is a dynamic concept, occasionally overlooked by a positive constitution.²⁴

At the core of the constitution lies the fundamental concept of balance; without it, the law cannot rightfully claim to embody justice. The social reality of the constitution at times diverges from its aspirational ideals, distancing the law further from its essence. Justice, as a technical term, often fails to activate all facets of the constitution.²⁵ The pivotal issues of balance, stability, and the supremacy of the constitution play a crucial role in its enforcement. This matter of urgency becomes a focal point in legal practice, where lawmakers grapple with the dilemma of choosing between balance, permanence, and tranquility. The complexity of this decision-making process is compounded by the potential consequences of sacrificing constitutional ideals. When judges prioritize constitutional provisions, legal dreams, balance, and propriety come to the forefront of their decisions.²⁶

As emphasized by Gustav Rabruch, there is frequently a conflict involving constitutional provisions, balance, and propriety as integral components of criminal prosecution carried out by law enforcement entities, including judges. However, the predominant emphasis in criminal prosecution within Indonesia remains on establishing legal certainty. The primary objective here is not necessarily to embody justice or legal interests, as the paramount importance is placed on the value of legal certainty. The crucial consideration lies in whether

²⁴ David Daiches Raphael, *Concepts of Justice*. (Oxford: Clarendon Press, 2001); Campbell, Tom, and Tom Campbell. *What Justice is About*. (London: Macmillan Education UK, 1988).

²⁵ Jonathan Allen, "Balancing Justice and Social Unity: Political Theory and the Idea of a Truth and Reconciliation Commission." *The University of Toronto Law Journal* 49, no. 3 (1999): 315-353; Ridwan Arifin, "Translating the Meaning of Justice and Legal Protection: What exactly is justice?." *Journal of Indonesian Legal Studies* 7, no. 1 (2022): i-iv.

²⁶ Rodiyah Rodiyah, Siti Hafsyah Idris, and Robert Brian Smith. "Mainstreaming Justice in the Establishment of Laws and Regulations Process: Comparing Case in Indonesia, Malaysia, and Australia." *Journal of Indonesian Legal Studies* 8, no. 1 (2023): 333-378.

the law, while prioritizing legal certainty, effectively responds to the principles of justice.²⁷

Similarly, fixation serves as a value bridging the realms of legal certainty and justice, contingent upon the law's utility to society. The exclusive emphasis on justice values underwent a transformation, incorporating the significance of certainty and aligning with Gustav Radbruch's ideas, notably expounded in his theory titled "*The Beginning of Suspense*," as put forth by the Federal Court in SEMA No. 1 of 2017.²⁸ The role assigned to regional administrative courts involves reconciling the primary objective of material truth. The Federal Court (BGH) asserts that formal law, or procedural law, functions to preserve and prepare substantive legal principles, avoiding impediments to the realization of justice. Judges are encouraged to apply Gustav Radbruch's theory of tension (normal ranking). Additionally, BGH underscores that Radbruch's theory of tension (priority for default) aligns with a singular legal principle, compelling judges to adopt a direction more favorable from a legal standpoint.

From the preceding explanation, it is evident that judges hold a significant responsibility in realizing the legal objectives associated with all state administrative law disputes presented before the State Administrative Court. This includes addressing formal matters concerning the duration of the trial process when filing complaints with the State Administrative Court. While the deadline for filing a lawsuit in the PTUN is concrete, governed by Article 55 of the PTUN Law, which is upheld by the Constitutional Court, judges wield

²⁷ Frederic R. Coudert, "Certainty and Justice." *The Yale Law Journal* 14, no. 7 (1905): 361-373; Isabel Lifante-Vidal, "Is legal certainty a formal value?." *Jurisprudence* 11, no. 3 (2020): 456-467; Braithwaite, John. "Rules and principles: A theory of legal certainty." *Australasian Journal of Legal Philosophy* 27, no. 2002 (2002): 47-82. See also Muhamad Romdoni, et al. "A critique and solution of justice, certainty, and usefulness in law enforcement in Indonesia." *Journal of Law Science* 5, no. 4 (2023): 174-181; Itok Dwi Kurniawan, "Correlation between Justice, Legal Certainty, and Benefit in Law Enforcement in Indonesia." *JIM: Jurnal Ilmiah Mahasiswa Pendidikan Sejarah* 8, no. 4 (2023): 3970-3977.

²⁸ SEMA No. 1 of 2017 concerning the Implementation of the Formulation of Plenary Results of the Supreme Court Chamber in 2017 as a Guideline for the Implementation of Duties for the Court

a distinct influence within the PTUN, contributing to the nuanced outcomes of the court.

The state administrative judge must navigate the path of justice in handling disputes related to state administrative law, even when the lawsuit under examination surpasses the deadline for filing a case in the state administrative court. A judge's competence lies in logically evaluating the disputes before them, drawing on a sense of justice that transcends mere reliance on statutes and reasoning. This sense of justice is shaped not solely by legal provisions but also by the prevailing social climate.²⁹

The Supreme Court is tasked with instructing Judges in the State Administrative Court to endorse Gustav Radbruch's fundamental principles, emphasizing the prioritization of constitutional balance over the expediency of the constitution or specific constitutional provisions. Additionally, the Supreme Court aims to ensure that PTUN judges comprehend the authority vested in the formal constitution. This highlights the crucial role judges play in comprehending the legal objectives of all pending administrative disputes in the PTUN, including those involving procedural matters related to the deadline for filing lawsuits with administrative rights.³⁰

The deadline for filing objections with the PTUN remains in effect, supported by the confirmation of the Constitutional Court; however, the PTUN, functioning as a judicial body, introduces variations. According to the directives issued by the Supreme Court in SEMA No. 1 of 2017 to all PTUN

²⁹ Silvia Fernández de Gurmendi, "Judges: Selection, Competence, Collegiality." *American Journal of International Law* 112 (2018): 163-167; Ralph Cavanagh, and Austin Sarat. "Thinking about Courts: Toward and Beyond a Jurisprudence of Judicial Competence." *Law and Society Review* (1980): 371-420. See also Despan Heryansyah, "Shifting the Absolute Competence of State Administrative Justice in the Indonesian Legal System." *International and Public Affairs* 4, no. 2 (2020): 28-34; Yustina Trihoni Nalest Dewi, W. Riawan Tjandra, and Grant R. Niemann. "Independence of Judicial Power as a Foundation of Human Rights Judicial Function in Indonesia." *International Journal of Social Science and Humanity* 6, no. 3 (2016): 239-242; Simon Butt, and Tim Lindsey. "Judicial mafia: The courts and state illegality in Indonesia." In *The State and Illegality in Indonesia*. (London: Brill, 2010), pp. 189-213.

³⁰ Farah Syah Rezah, *Hukum Acara Peradilan Tata Usaha Negara*. (Makassar: CV Social Politic Genius, 2018).

judges, they are expected to exercise flexibility and consider proceeding with administrative disputes even when the submission deadline has lapsed. Judges must possess the ability to individually assess the disputes before them, prioritizing the value of balance. This assessment goes beyond logical elements, incorporating considerations influenced by the social climate, including values and norms relevant to the community.

In fact, the Supreme Court publicly ordered the PTUN assembly to approve Gustav Radbruch's opinion that recommended legal justice above the meaning of the constitution and constitutional provisions. Furthermore, the Supreme Court ensures that the PTUN panel understands that the function of formal/procedural law is to uphold substantive principles and not to obstruct justice. In the implementation of Article 55 of the State Administrative Law, it is legally mandatory that judges may be delegated power to other matters, even if it is not suitable to deal with the administrative court in the event of success. to find and defend justice. A judge who examines and decides PTUN cases that cancel the KTUN because it clearly violates the law and/or AAUPB, even though the KTUN exceeds the appeal period, must be courageous. If the main purpose of solving cases in the PTUN is to seek justice, then the PTUN judge must have the courage to decide the case and the one that cannot be legalized (*niet ontvankelijk verklaard*).³¹

Administrative judges possess the authority to proactively pursue substantive justice. The principle of the main trial (*dominus litis*) is a constitutional principle in the PTUN procedure, empowering the judge to establish the burden of proof, enhance it, and weigh the evidence. The

³¹ A. Siti Soetami. *Hukum Acara Peradilan Tata Usaha Negara*. (Bandung: Refika Aditama, 2016). See also Sandy, Aditya, and Tuti Widyaningrum. "Analisis Putusan Perkara Nomor 29/G/2012/PTUN.JKT yang Didasarkan atas Daluwarsa." *Lex Certa* 5, no. 1 (2019): 113-125; Ratih Armianti, and Latifah Amir. "Analisis Yuridis Pertimbangan Hakim Atas Gugatan Lewat Waktu Dalam Putusan Hakim Pengadilan Tata Usaha Negara Jambi Nomor 5/G/2017/PTUN. JBI." *Mendapo: Journal of Administrative Law* 1, no. 1 (2020): 37-48; Denny Kristian, "Upaya Permohonan Putusan Fiktif Positif Terhadap Asas Kepastian Hukum dalam Lingkup Administrasi Pemerintahan." *Lex Administratum* 8, no. 1 (2020): 114-122.

requirement stipulates that there should be a minimum of two pieces of evidence to support the judge's decision. This provision is explicitly outlined in Supreme Court Decision No. 5 K/TUN/1992, permitting PTUN judges to modify the formal material presented by the involved parties in the pursuit of justice.

It is imperative to uphold administrative stability as enshrined in Article 55 of the PTUN Law, supported by four Constitutional Court rulings. Judges are duty-bound to apply the provisions of Section 55 in cases under consideration, but administrative judges possess the authority to exercise judgment with sensitivity, particularly when addressing collective rights of numerous civilians affected by the actions of KTUN. State administrative judges must adeptly administer justice, aligning with the core principle outlined in Article 24 of the 1945 Constitution of the Republic of Indonesia, which emphasizes the judiciary's role in fortifying the constitution and ensuring balance.³²

Conclusion

THIS STUDY finally highlighted and concluded that it is essential to preserve governmental stability, anchored in Article 55 of the PTUN Law and fortified by four Constitutional Court decisions. Judges are obligated to apply the principles outlined in Article 55 of the PTUN Law to the cases they examine, yet administrative judges possess the authority to judiciously evaluate its application, particularly when sensitivity is paramount. This collective pursuit of equilibrium is crucial for the numerous civilians affected by the actions of KTUN. State administrative judges must adeptly administer justice, reflecting the essence of Article 24 of the 1945 Constitution of the Republic of Indonesia,

³² Republic of Indonesia. *Indonesian Constitution of 1945 (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945)*.

which underscores that the judiciary's primary purpose is to uphold the law and maintain balance.

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