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Interpretation of the Expansion of the Application of the Authority of the State Administrative Court in Adjudicating Factual Legal Actions of the Government

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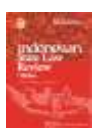
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Abstract

The evolution of the State Administrative Court's authority in adjudicating factual legal actions involving government entities represents a dynamic facet of administrative law. This paper aims to explore and interpret the nuanced expansion of the State Administrative Court's jurisdiction in handling cases related to factual legal actions initiated by the government. Through an in-depth analysis of legal precedents, legislative developments, and judicial interpretations, the study navigates the evolving landscape of administrative law. The paper delineates the historical context and legal frameworks that have shaped the State Administrative Court's jurisdiction, emphasizing its pivotal role in ensuring governmental accountability. It investigates the implications of the broadened scope of authority on the court's adjudicative processes and the overall legal landscape. Furthermore, the research scrutinizes key cases to illustrate how the court's expanded jurisdiction impacts the resolution of factual legal actions involving government entities. By examining the interplay between legislative intent, judicial reasoning, and practical implications, the paper provides insights into the complexities and challenges associated with this expanded mandate. The findings underscore the significance of a judicious balance between the State Administrative Court's authority and the imperative to maintain government efficacy. Additionally, the paper contributes to the ongoing discourse on



administrative law by offering a comprehensive interpretation of the expanding role of the State Administrative Court in the adjudication of factual legal actions initiated by the government. In conclusion, this paper enhances our understanding of the evolving dynamics within administrative law, shedding light on the implications and intricacies surrounding the State Administrative Court's extended authority in addressing factual legal actions involving government entities.

Keywords

Government Factual Action, State Administrative Court, Government Administration

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Introduction

Indonesia upholds the principle of being a constitutional state, where the governance of the nation by the government is mandated by laws and fundamental principles of good governance. As a vital component of the state apparatus, the government is empowered to execute actions that serve the interests of the nation, manifesting in various forms of administrative actions. However, the implementation of such government actions may not always find immediate acceptance from the concerned legal subjects, such as individuals or civil entities.¹

¹ Sayid Anshar, "Konsep Negara Hukum dalam Perspektif Hukum Islam." *Soumatara Law Review* 2, no. 2 (2019): 235-245. See also Simon Butt, and Tim Lindsey. *Indonesian Law*. (Oxford: Oxford University Press, 2018); Shelawati Emilia, Mutia Andini, and Masduki Asbari. "Pancasila as a Paradigm of Legal Development in Indonesia." *Journal of Information Systems and Management (JISMA)* 1, no. 2 (2022): 22-27; Nindya Putri Edytya, and Reyhan Satya Prawira. "The Reality of Law Enforcement in Indonesia in the Perspective of Law and Development: Should the Law be obeyed or feared?." *Lex Scientia Law Review* 3, no. 2 (2019):

This discrepancy can lead to legal disputes concerning state administrative matters, necessitating a mechanism for resolution. In such instances, the appropriate adjudicating authority is the State Administrative Court. The Court plays a pivotal role in ensuring a fair and lawful examination of cases involving conflicts between the government's actions and the legal rights or interests of individuals or entities. By doing so, the State Administrative Court contributes to upholding the principles of a state of law in Indonesia, fostering legal accountability and safeguarding the rights of citizens in the face of government administrative actions.²

The jurisdiction of the State Administrative Court (PTUN), initially outlined in the Law on State Administration (Law Number 5 of 1986), was previously confined to addressing state administrative disputes, specifically those arising from the issuance of a state administrative decision (KTUN) by authorities at central or regional levels to individuals or civil law entities. Article 47 of the Law on Administrative Affairs elucidates this scope.³

Furthermore, employment disputes fall within the purview of administrative disputes, as explicitly defined in Article 1, numbers 3 and 4, of the Law on Peratun. Over time, the jurisdiction of PTUN has undergone expansion, notably with the enactment of the Law on Government Administration (UUAP) under Law Number 30 of 2014. This expansion is

177-190; Arifin, Ridwan. "Legal Development and Globalization: Some Contemporary Issues in Indonesia and Global Context." *Journal of Law and Legal Reform* 1, no. 3 (2020): i-iv.

² Agus Nardi Nasution, "Perkembangan Kompetensi Absolut PTUN Beserta Problematikanya: Analisis Menurut UU PTUN dan UU No. 30 Tahun 2014 tentang Administrasi Pemerintahan." *Judex Laguens* 1, no. 1 (2023): 81-106. See also Adriaan Bedner, *Administrative Courts in Indonesia: A Socio-Legal Study*. (Leiden: Martinus Nijhoff Publishers, 2001).

³ Dian Agung Wicaksono, Bimo Fajar Hantoro, and Dedy Kurniawan. "Quo Vadis Pengaturan Kewenangan Pengadilan Tata Usaha Negara Dalam Penerimaan Permohonan Fiktif Positif Pasca Penataan Regulasi dalam Undang-Undang Cipta Kerja." *Jurnal Rechtsvinding* 10, no. 2 (2021): 323-337; Anita Marlin Restu Prahastapa, Lapon Tukan Leonard, and Ayu Putriyanti. "Friksi Kewenangan PTUN dalam Berlakunya Undang-Undang Nomor 30 Tahun 2014 dan Undang-Undang Nomor 5 Tahun 1986 Berkaitan dengan Objek Sengketa Tata Usaha Negara (TUN)." *Diponegoro Law Journal* 6, no. 2 (2017): 1-18.

evident in the substantial additions to UUAP articles that delineate and regulate the authority of PTUN.⁴

The UUAP represents a contemporary legal framework in the realm of state administrative law, functioning as a substantive law governing government administration. The proliferation of articles within UUAP addressing PTUN's authority signifies a deliberate effort to adapt and refine the legal landscape, ensuring the effectiveness and relevance of PTUN in adjudicating an increasingly diverse array of administrative disputes.⁵

The examination of factual actions (*feitelijk handelingen*) by the State Administrative Court (PTUN) represents a tangible manifestation of the extended jurisdiction, a facet previously absent in the Law on Regulations. This specific assessment frequently pertains to potential abuses of authority. The explicit inclusion of this dimension is discernible in Article 87 of the Law on Government Administration (UUAP), where the evaluation of government's factual actions aligns with the principles governing state administrative decisions (KTUN).

Article 87 of UUAP carries the significance of not only incorporating the PTUN Law but also amending Law Number 9 of 2004 and Law Number 51

⁴ 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; Francisca Romana, and Suswoto Suswoto. "Implikasi Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan terhadap Fungsi Peradilan Tata Usaha Negara." *Jurnal Hukum Ius Quia Iustum* 24, no. 4 (2017): 601-624; Tri Cahya Indra Permana, "Peradilan Tata Usaha Negara Pasca Undang-Undang Administrasi Pemerintahan Ditinjau dari Segi Access to Justice." *Jurnal Hukum dan Peradilan* 4, no. 3 (2015): 419-442.

⁵ Yogo Pamungkas, "Pergeseran Kompetensi Peradilan Tata Usaha Negara." *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan* 3.2 (2020): 339-359; Iskatrinah Iskatrinah. "Pergeseran Kompetensi Peradilan Tata Usaha Negara Pasca Diundangkan Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan." *Jurnal Media Komunikasi Pendidikan Pancasila dan Kewarganegaraan* 2, no. 1 (2020): 200-207; Devi Melissa Silalahi, "Kompetensi Peradilan Tata Usaha Negara Terhadap Pengawasan Penyelenggaraan Pemerintahan Ditinjau dari Perluasan Asas-Asas Umum Pemerintahan Yang Baik Pasca Berlakunya Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan." *Jurnal Komunikasi Hukum (JKH)* 6, no. 1 (2020): 50-63; Barhamudin Barhamudin, and A. Bustomi. "Perluasan Kompetensi Peradilan Tata Usaha dalam Undang-Undang Administrasi Pemerintahan." *Solusi* 20, no. 1 (2022): 1-16.

of 2009. This consolidation acknowledges the inclusion of written decisions, encompassing factual actions within the purview of PTUN's authority. It is noteworthy that, preceding the enactment of UUAP, factual actions were categorized as unlawful acts and fell under the jurisdiction of general courts as stipulated in Article 1365 of the Civil Code. Consequently, this evolution introduces a novel discourse within PTUN proceedings, marking a departure from prior legal frameworks and necessitating a fresh examination in the adjudicative processes.⁶

The term "*factual action*" denotes the conduct of a State Administrative Agency or official, recognized as a legal subject within the domain of state administration. Initially, factual actions were characterized by being unrelated to legal considerations, signifying actions devoid of legal consequences. This interpretation evolved in tandem with the enactment of the Law on Government Administration (UUAP), particularly through the expansion of legal objects in the realm of state administration. Notably, this expansion encompasses factual actions, thereby incorporating them into the legal framework of administrative law, especially under the category of state administrative decisions (KTUN).⁷

Factual actions themselves can be described as the tangible execution or abstention from specific actions by government officials, essentially acting as organizers of the state. These actions represent concrete and physical manifestations of the government's role. While factual actions may not always

⁶ Syaifullahil Maslul, "Pengujian Penyalahgunaan Wewenang dalam Tindakan Faktual di PTUN (Studi Putusan PTUN Nomor 2/P/PW/2017/PTUN. JBI)." *SENTRI: Jurnal Riset Ilmiah* 1.3 (2022): 632-641.

⁷ Wahyu Purnomo, et al. "Analysis of Lawsuit Against the Factual Action which Conducted by Military after Law Number 30 Year 2014 Concerning Government Administration." *UNRAM Law Review* 4, no. 1 (2020): 17-25; Fellista Ersyta Aji, "The Meaning of the Expansion of Administrative Court that Covers Factual Actions." *Journal of Law and Legal Reform* 1, no. 1 (2020): 177-192; Fellista Ersyta Aji, and Laga Sugiarto. "Pemaknaan Perluasan Objek Sengketa Tata Usaha Negara Yang Meliputi Tindakan Faktual." *Jurnal Justiciabelen* 1, no. 1 (2018): 46-71; Weda Kupita, "Ordinary State Administrative Dispute and Positive-Fictitious decisions Dispute in Administrative Court (PTUN), In Relation to Administrative Appeal." *Jurnal Dinamika Hukum* 21, no. 1 (2021): 92-104.

be advantageous to citizens or civil law entities, they can also lead to adverse consequences. For instance, the forced eviction of land for toll road construction may result in perceived injustices, with some affected segments of society labeling such actions as "*onrechtmatig overheidsdaad*" (unlawful acts of the ruler).

Conceptually, however, these actions cannot be outright denied. Their validity is intricately tied to the public authority inherent in the position of a government official, and their authority is derived from established laws and regulations. This inherent truth underscores the complex interplay between the exercise of governmental power and the legal framework that grants legitimacy to these factual actions.⁸

The defining characteristics of governmental factual actions lie in their tangible nature, allowing direct observation through the five senses, particularly sight. This implies that government actions are perceptible and can be directly witnessed. For instance, it asserts that "*government actions are based on verifiable facts, independent of their authority, and unrelated to their jurisdiction.*" Factual actions are not confined solely to active engagements but also encompass passive manifestations, such as governmental silence on a matter. An illustrative example of passive action is the government's tacit approval, expressed through silence, leading to damage to public facilities. Typically, active factual actions with procedural implications are often preceded by written determinations, whereas passive actions typically lack such formal documentation.⁹ It is

⁸ Tedi Sudrajat, and Endra Wijaya. *Perlindungan Hukum Terhadap Tindakan Pemerintahan*. (Jakarta: Sinar Grafika, 2020).

⁹ Sonyendah Retnaningsih, et al. "Expansion of the Objects of State Administrative Disputes after the Enactment of Law Number 30 of 2014 Concerning Government Administration and Supreme Court Regulation Number 2 of 2019 Concerning Guidelines for the Resolution and Authority to Adjudicate Unlawful Conducts by Government Agencies or Officials (*Onrechtmatige Overheidsdaad/OOD*)."
International Journal of Multicultural and Multireligious Understanding 8, no. 1 (2021): 383-399; Ahmad Fauzi, "Penerapan Perluasan Keputusan Tata Usaha Negara Sebagai Upaya dalam Penegakan Hukum Administrasi dan Kaitannya dengan Prinsip-Prinsip Good Governance (Sebagaimana Diatur dalam Pasal 87 UU No. 30 Tahun 2014 tentang Administrasi Pemerintahan)."
Binamulia Hukum 9, no. 2 (2020): 171-182.

essential to highlight that factual actions often manifest a one-sided perspective, inherently being unilateral in nature. This characteristic emphasizes the authoritative and decisive nature of government actions, particularly in their immediate and observable manifestations.¹⁰

The broadening of authority sparks diverse perspectives concerning alterations in the realm of absolute competence. Some argue that civil judges may no longer possess the jurisdiction to adjudicate cases involving breaches of government law, given that such matters are now explicitly within the purview of the State Administrative Court (PTUN), as established in the Law on Government Administration (UUAP) and further reinforced by PERMA No. 2 of 2019.¹¹

Contrastingly, others contend that the enactment of UUAP does not automatically divest civil judges of their authority to hear cases related to unlawful acts. The discourse around the expanded jurisdiction prompts a nuanced debate regarding the concurrent roles of civil judges and PTUN in adjudicating legal matters, requiring careful consideration of legal provisions and precedents to delineate the extent of each court's authority.

Furthermore, the State Administrative Court plays a crucial role in adjudicating factual legal actions related to government decisions.¹² It is responsible for examining cases pertaining to state administrative decisions and ensuring that they are in accordance with the laws, regulations, and principles of good governance. This expansion of the authority of the State Administrative

¹⁰ Sudarsono Sudarsono. *Legal Issue Pada Peradilan Tata Usaha Negara Pasca-Reformasi*. (Jakarta: Prenadamedia Group, 2020).

¹¹ Muhammad Addi Fauzani, and Fandi Nur Rohman. "Problematik Penyelesaian Sengketa Perbuatan Melawan Hukum oleh Penguasa di Peradilan Administrasi Indonesia (Studi Kritis Terhadap Peraturan Mahkamah Agung Nomor 2 Tahun 2019)." *Widya Pranata Hukum: Jurnal Kajian dan Penelitian Hukum* 2, no. 1 (2020): 19-39; H. Maksu, "Batasan Kewenangan Mengadili Pengadilan Umum dan Pengadilan Tata Usaha Negara dalam Penyelesaian Sengketa Perbuatan Melawan Hukum yang Melibatkan Badan Negara atau Pejabat Pemerintah Ditinjau dari PERMA Nomor 2 Tahun 2019." *JURIDICA: Jurnal Fakultas Hukum Universitas Gunung Rinjani* 2, no. 1 (2020): 4-16.

¹² Weda Kupita, "State Administrative Court as a Means to Realize Justice." *SHS Web of Conferences*. Vol. 54. EDP Sciences, 2018.

Court reflects a growing recognition of the need for a specialized body to handle disputes arising from government decisions.

This expansion marks a crucial stride towards a more efficient and targeted adjudication process, fostering accountability for government actions while safeguarding the rights of individuals and organizations. By broadening its authority, the State Administrative Court can now offer a comprehensive and specialized approach to resolving disputes arising from government decisions. This augmentation not only fortifies the rule of law but also enhances transparency, accountability, and good governance within the government.

Furthermore, the extended jurisdiction of the State Administrative Court underscores the adaptability of the legal framework in response to shifts in politics, the economy, and society. Despite these advancements, the implementation of decisions in the State Administrative Court, as outlined in Article 116 of Law No. 51 of 2009, encounters certain impediments that impede its full realization. Addressing these challenges is imperative for the effective execution of the Court's decisions and the continued evolution of administrative law in the broader context.¹³

In light of the contextual background, this study is driven by the authors' interest in comprehensively understanding the implications of the expansion of the State Administrative Court's authority. The first focal point is the interpretation of government's factual legal actions, specifically those articulated in Article 87(a) of Law Number 30 of 2014 concerning Government Administration. Through a thorough exploration of legislative provisions and legal frameworks, the research seeks to unveil a nuanced understanding of this term and its broader significance within administrative law. The second dimension of inquiry revolves around the practical application

¹³ Ni Komang Ayu Arniti, Anak Agung Sagung Laksmi Dewi, and Luh Putu Suryani. "Penyelesaian Permohonan Fiktif Positif untuk Mendapatkan Keputusan di Pengadilan Tata Usaha Negara." *Jurnal Analogi Hukum* 1, no. 2 (2019): 265-270; Anggita Yulistia, Karina Luana Pramesti Widodo, and Imam Budi Santoso. "Penyelenggaraan E-Court dan E-Litigation Pada Pengadilan Tata Usaha Negara Berdasarkan Perma Nomor 1 Tahun 2019." *Jurnal Justitia: Jurnal Ilmu Hukum dan Humaniora* 8, no. 6 (2021): 1532-1539.

of the expanded authority of the State Administrative Court in adjudicating government's factual actions. This involves a meticulous examination of how the court applies its augmented jurisdiction, as outlined in the legal landscape, to navigate and resolve disputes arising from governmental decisions. The study aims to provide insights into the effectiveness, challenges, and implications of this expanded role in the context of contemporary administrative law.

Interpretation of Government Factual Legal Acts in Government Administration Law

THE ISSUANCE of a State Administrative Court Decree (KTUN) by the government, namely by TUN bodies or officials, imparts legal force that is binding upon individuals and civil law entities. Consequently, any violation of the stipulations within the KTUN subjects individuals or civil law entities to sanctions. It's noteworthy that if the issuance of the KTUN by the relevant TUN body or official leads to losses or maladministration, individuals or community members can utilize this as grounds for TUN disputes. This is possible because KTUN, being inherently one-sided in public law, creates unilateral legal relations—TUN bodies or officials issue KTUN without the prior consent of the involved party.¹⁴

The enactment of UUAP has significantly expanded the subject matter of State Administrative Court (TUN) disputes, as previously detailed in the background. This legislative development was prompted by several influential factors that shaped the formulation of this law.

Firstly, the increasing complexity of contemporary government tasks underscored the need for a more robust legal framework to address the evolving challenges faced by state administrators. Secondly, the occurrence of disputes

¹⁴ Ridwan HR. *Hukum Administrasi Negara*. (Jakarta: Rajawali Pers, 2018). See also W. Riawan Tjandra, *Hukum Administrasi Negara*. (Jakarta: Sinar Grafika, 2021); Mhd Taufiqurrahman. *Hukum Administrasi Negara di Indonesia*. (Malang: Literasi Nusantara Abadi, 2022).

and the overlapping authority among state administrators revealed discrepancies in the execution of their duties, necessitating a comprehensive legal remedy to streamline administrative processes.

Thirdly, there was a recognized need to meticulously regulate the legal relationships between state administrators and the community. This served the purpose of clarifying the rights and obligations of each party due to the inherent interaction between them. The fourth factor was the imperative to establish clear boundaries that determine minimum service standards in government administration and provide legal protection to the community against potential maladministration.

Fifthly, the changing paradigms in the thinking and practices of state administrators, influenced by scientific and technological advancements both nationally and internationally, highlighted the importance of adapting legal frameworks to contemporary realities. Finally, the sixth factor was the essential need for legal certainty in the execution of duties by state administration administrators, providing a stable foundation for the implementation of government tasks. The comprehensive consideration of these factors underscores the multifaceted motivations behind the creation and implementation of UUAP.

Numerous amendments and modifications have been introduced to the law since the inception of UUAP, with significant changes evident in the provisions related to the object of State Administrative Court (TUN) disputes, particularly outlined in the elucidation of Article 87(a). This section stipulates that the object includes a "*written determination which also includes factual actions.*" Notably, the UUAP has expanded the KTUN element to incorporate factual government actions. While this expansion may seem novel, the inclusion of government's factual actions within the KTUN is not a recent or unprecedented discussion within the State Administrative Court.

In practice, government or TUN agencies/officials typically precede factual actions with the issuance of a written determination. If this written determination bears legal consequences, it unequivocally becomes subject to

the KTUN and subsequently falls within the purview of the TUN dispute. A prime example of this scenario is evident in actions involving evictions. In cases where a TUN agency and/or officials intend to carry out an eviction, and the community perceives losses associated with the KTUN (deemed inconsistent with prevailing laws), the written determination becomes the KTUN issued by TUN agencies and/or officials. The ensuing factual action takes the form of land evictions executed by the government. In essence, this underlines the symbiotic relationship between the written determination and the subsequent factual action within the framework of TUN disputes.¹⁵

The enactment of UUAP distinctly underscores the inclusion of factual actions within the KTUN element. Specifically, these factual actions are inherent components of the KTUN issued by the government. According to the explanation in Article 1, point (8) of the UUAP, government administration actions are defined as the activities of government officials functioning as state administrators, organizing the government by executing or abstaining from concrete actions within the context of governmental organization. It is crucial to address a common misinterpretation related to the government's factual actions, which are now expansively included in the object element of TUN disputes. Often misunderstood, some individuals mistakenly equate government's factual actions with unlawful acts (PMH) by state administrators (*onrechtmatige overheidsdaad*).

This misunderstanding can lead to cases involving government actions being erroneously treated as PMH, triggering the application of Article 1365 of the Civil Code and subsequently falling under the jurisdiction of the general court. However, since the enactment of UUAP, government's factual actions are clearly within the competence of the State Administrative Court, distinct from the general court. Addressing these misconceptions is essential to ensure

¹⁵ Enrico Simanjuntak. *Hukum Acara Peradilan Tata Usaha Negara: Transformasi dan Refleksi* (Jakarta: Sinar Grafika, 2018).

accurate legal categorization and prevent cases related to government actions from being misdirected to the wrong judicial jurisdiction.

Government actions can be broadly categorized into two domains: private law and public law. Contrary to the common assumption that government actions predominantly belong to the realm of public law, they also extend into private law. Traditionally, public law encompasses actions like issuing official decisions, formulating regulations, and undertaking material deeds. This conventional perception tends to limit the understanding of the diverse spectrum of government actions that can transgress the boundaries between both private and public law contexts.

In practice, the government not only engages in legal actions but also undertakes concrete or factual actions (*feitelijke handelingen*). Often, individuals perceive factual actions as unilateral acts by the government toward the community, seemingly devoid of legal consequences. However, it's crucial to recognize that these factual actions, while seemingly straightforward, must align with existing laws. Consequently, ensuring that factual actions adhere to established legal frameworks is essential to impart legal certainty, thereby categorizing them as lawful actions within the purview of the law.

The factual actions undertaken by the government extend beyond the fulfillment of basic duties. In instances where such actions are deemed to inflict harm upon individuals or civil law entities, legal accountability and potential sanctions come into play. This implies that government actions resulting in harm to the concerned party, whether executed in the course of official duties or otherwise, are subject to appropriate legal consequences. Moreover, if a government's factual action causes harm to the intended subject, legal recourse is available, and the matter can be brought to the State Administrative Court (TUN) for adjudication.

Since the enactment of UUAP, government's factual actions have been explicitly incorporated as elements of TUN disputes. However, it is crucial to emphasize that the regulation pertains to actions that are preceded by a written determination or what is known as KTUN. If a government's factual action

lacks prior documentation in the form of a written determination or KTUN, and a dispute arises, the authority to adjudicate the case remains within the jurisdiction of the General Court. Such cases would be litigated based on allegations of unlawful acts (PMH) by the authorities, emphasizing the importance of formal legal documentation in determining the appropriate legal forum for dispute resolution.¹⁶

Upon analysis, the distinction between the government's factual actions and unlawful acts (PMH) by the government, particularly as a state organizer, underscores a nuanced focus on the coercive nature of factual actions. Drawing from Dutch Law, the emphasis lies in defining factual actions as coercive endeavors undertaken by the government. This interpretation aligns with the Dutch legal perspective, wherein government coercion is expounded as a tangible act executed by or on behalf of a country, aimed at compelling, evacuating, obstructing, or reclaiming something in contradiction to obligations stipulated by prevailing laws and regulations. The crux of this distinction emphasizes the coercive aspect inherent in government's factual actions, elucidating the nature of these actions within the framework of legal obligations.¹⁷

¹⁶ Firna Novi Anggoro, "Penguji-an Unsur Penyalahgunaan Wewenang Terhadap Keputusan Dan/Atau Tindakan Pejabat Pemerintahan Oleh PTUN." *Fiat Justisia: Jurnal Ilmu Hukum* 10, no. 4 (2016): 647-670; Bibianus Hengky Widhi Antoro, "Penguji-an Penyalahgunaan Wewenang di PTUN." *Jurnal Yudisial* 13, no. 2 (2020): 207-224; Fauzi Syam, Sukanto Satoto, and Helmi Helmi. "Politik Hukum Pemberian Kompetensi Absolut Peradilan Tata Usaha Negara dalam Penguji-an Penyalahgunaan Wewenang." *Undang: Jurnal Hukum* 6, no. 1 (2023): 189-233; Mathilda Chrystina Katarina, et al. "Analisis Yuridis Atas Permohonan Ada Atau Tidaknya Penyalahgunaan Wewenang Berdasarkan Undang-Undang No. 30 Tahun 2014 Tentang Administrasi Pemerintahan Terhadap Proses Peradilan Pidana Korupsi." *USU Law Journal* 6, no. 5 (2018): 76-94.

¹⁷ Enrico Parulian Simanjuntak, "Restatement Tentang Yuridiksi Peradilan Mengadili Perbuatan Melawan Hukum Pemerintah (Restatement on Judicial Jurisdiction in Administrative Tort)." *Masalah-Masalah Hukum* 48, no. 1 (2019): 32-48; 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.

Coercive measures undertaken by the government, acting as the organizer of its functions, fall within the ambit of diverse sanctions outlined in the country's administrative law. The government holds the prerogative to wield its authority in imposing sanctions for both substantial and non-substantial violations. This stems from the imperative that any breach of established legal policies warrants the direct exercise of governmental authority, guided by the implementation of general principles of good governance. The utilization of such sanctions serves as a mechanism for upholding compliance and reinforcing the tenets of effective governance.

TUN disputes necessitate a clear distinction between factual actions or actions resulting in unlawful acts (PMH) by the authorities, specifically the government. The realm of administrative justice primarily concerns government actions within the domain of public law. Violations committed by the government in the civil realm squarely fall under the jurisdiction of the general court for prosecution. The classification of PMH by rulers aligns with the principles of civil law rather than state administrative law. Despite the government's involvement as one of the parties, the focus cannot solely center on the government. Rather, the perspective must shift to the individual who initiates legal action, driven by a sense of rights or interests violation. This shift in perspective acknowledges the individual's viewpoint and recognizes the infringement of their rights or interests as the core consideration in such disputes.¹⁸

The above statement is further strengthened by Article 85 of the UUAP which states that:

¹⁸ Suanro Suanro, and Mizan Malik. "Makna Tindakan Administrasi Pemerintahan dalam Penafsiran Hukum." *Jurnal Ilmu Hukum Tambun Bungai* 6, no. 2 (2021): 170-89. *See also* Agus Budi Susilo, "Makna Perbuatan Hukum Publik Oleh Badan Atau Pejabat Administrasi Negara Yang Melanggar Hukum (Suatu Tinjauan Yuridif Menurut Hukum Administrasi Negara)." *Perspektif* 15, no. 4 (2010): 441-461; Putu Gede Arya Sumerta Yasa, Wita Setyaningrum, and Kadek Agus Sudiarawan. "Unlawful Administrative Act: Indonesian Administrative Law Perspective." *Varia Justicia* 17, no. 2 (2021): 160-170.

- 1) A claim against the Government Administration that has been filed and has been registered in the public court but has not been examined, will be transferred and will be resolved by the Court. under this Act
- 2) A lawsuit against a Government Administration dispute that has been filed and has been registered in the general court and has been examined, then the court in the general court will continue to settle and decide the case, with the enactment of this Law.
- 3) The decision of the court referred to in sub-article (2) shall be carried out by the general court that decides.

Furthermore, despite the broadening of authority within the realm of PTUN through the existence of Article 85, the detailed elucidation in Paragraphs 2 and 3 underscores that cases related to the government do not exclusively fall under the sole competence of the State Administrative Court. This court is mandated to examine, adjudicate, and decide cases stemming from government actions. Consequently, the author concludes that there will persistently be two competencies empowered to handle such cases. In essence, in disputes involving the government as one of the parties, it is not solely within the exclusive jurisdiction of PTUN; such cases can still be adjudicated in a general court.

Application of Expanded Authority in the State Administrative Court in Adjudicating Government Factual Actions

VIOLATIONS OF the law, leading to losses for involved parties due to the public actions or legal acts carried out by government officials acting as state administrators, manifest in diverse forms.

1. Unlawful acts, whether intentional or unintentional, are actions by the government as a state organizer that violate applicable laws, both material

and formal provisions. These breaches, committed by the government as a ruler, can harm the parties affected by such actions.

2. Misuse of authority involves acts or actions where a government administrator utilizes their authority to pursue interests other than the public interest mandated by law. This entails leveraging one's position for personal gain or objectives divergent from those outlined in legal statutes.
3. Arbitrary acts encompass actions or deeds carried out by the government outside the parameters set by prevailing laws and regulations. Lacking legal basis, arbitrary acts deviate from established norms, potentially leading to adverse consequences.

Distinguishing between these three actions is challenging, as they form a cohesive unit capable of inflicting harm on parties affected by these actions, whether individuals or civil law entities.¹⁹

Government factual actions typically pertain to the execution of public duties, such as government coercion and the provision and maintenance of public facilities. When applying legal enforcement based on deeds or unlawful acts (PMH) by the ruler, aligning with the concept of PMH in the civil field, a question arises: Is it suitable to scrutinize the substantive actions of the government based on PMH committed by the ruler, namely the government? In reality, when officials carry out public duties, the norms of public law and the corresponding sanctions are applicable to them. Thus, the examination of government actions, particularly in the context of PMH, necessitates a careful consideration of both public law principles and the unique responsibilities associated with the performance of public duties.²⁰

The authors posit that the assessment of the appropriateness of factual actions can be gauged based on whether or not they constitute unlawful acts

¹⁹ Titik Triwulan, and Ismu Gunadi Wibowo. *Hukum Tata Usaha Negara dan Hukum Acara Peradilan Tata Usaha Negara Indonesia*. (Jakarta: Prenada Media Group, 2011).

²⁰ Hidayat Pratama Putra, "Tantangan dalam Penanganan Perkara Tindakan Administrasi Pemerintahan di Peradilan Tata Usaha Negara (Challenges in the Examination of Government Administrative Action Cases in Administrative Court)." *Jurnal Hukum Peratun* 5, no. 1 (2022): 75-94.

(PMH) committed by the ruler. However, it is imperative to clarify that concrete actions must be distinguished from government coercion (*bestuurdwang*), which is established as a means to enforce administrative law. Paradoxically, both in the execution of factual actions by the government and government coercion, legal charges can be filed with the district court under Article 1365 of the Indonesian Civil Code.

Presently, many judges handling administrative cases often rely solely on the mindset embedded in laws and regulations. This inclination complicates the realization of justice, legal certainty, and efficiency in the enforcement of administrative law, leading to a state of confusion. Furthermore, the challenges stem from the mindset and perspective of PTUN judges, who sometimes struggle to discern the boundaries between matters falling within the realm of civil law and administrative law. As a consequence, there is a lack of meticulous attention to the intricate legal relationships between these two domains. It also triggers the emergence of contradictory dispute resolution regarding the competence of judicial institutions.²¹

To mitigate the community's losses in the event of a dispute arising from a State Administrative Court (PTUN) decree, it is advisable to initially file a lawsuit with the General Court, which handles civil disputes. The competencies of these courts (District Court and PTUN) possess distinctly different absolute authorities. While some disputes may involve intersections between civil and administrative aspects, such as in ordinary land cases, resolving the dispute first in the District Court before proceeding to the PTUN, especially in cases resulting from the actions of relevant administrative officials, is recommended. After obtaining a decision from the District Court, the case can then be brought before the PTUN. This approach allows the PTUN judge to readily consider the decision based on the content of the District Court's ruling.

²¹ Dewi, Zainal Muttaqin Asimah, and Dewi Kania Sugiharti. "Implementasi Perluasan Kompetensi PTUN dalam Mengadili Tindakan Faktual (Onrechtmatige Overheidsdaad/Ood)." *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 4.1 (2020): 152-170.

Despite being theoretically aligned with legal certainty, practical implementation is deemed challenging, given the time constraints associated with PTUN proceedings, often marked by stringent timelines.²²

An alternative approach involves concurrently filing a lawsuit with both courts possessing different absolute competencies. This method eliminates the need to wait for the judgment from one court before applying to the other court with distinct authority. This concurrent filing not only expedites the legal process but also aligns with the principle of justice. However, it is essential to note that, currently, there is no specific legal certainty that governs this simultaneous filing approach.

All segments of society should recognize the critical importance of legal certainty in ensuring effective law enforcement, a sentiment with which the author concurs. Furthermore, justice seekers perceive legal certainty as a crucial necessity. Legal certainty serves as the ultimate objective of all governing laws, and in framing regulations, the emphasis should be on crafting provisions that are clear, unambiguous, and devoid of double meanings or openings for alternate interpretations. In the context of law enforcement, the role of the court extends beyond being a legislative entity; it is equally integral as a body that adjudicates based on certainty, contributing significantly to the overall framework of legal certainty.

Conclusion

THIS STUDY finally concluded that the decision issued by the State Administrative Agency or official, representing the government, constitutes an object of State Administrative Court (TUN) disputes, a subject previously governed by Law Number 5 of 1986 (Law of Peratun) prior to the enactment of Law Number 30 of 2014 (UUAP). The UUAP, born out of an expansion of

²² Khalid Dahlan, and Anna Erliyana Chandra. "Kedudukan Peradilan Administrasi Negara Sebagai Upaya dalam Mendorong Terbentuknya Pemerintahan Yang Baik." *Jurnal Justisia: Jurnal Ilmu Hukum, Perundang-Undangan dan Pranata Sosial* 6, no. 1 (2021): 10-25.

transportation laws, explicitly underscores the inclusion of factual actions within the elements of State Administrative Court disputes, as articulated in Article 87(a), highlighting "*written determination which also includes factual actions.*" This unequivocal legal provision reinforces the recognition of factual actions as an integral component of State Administrative Court disputes, intricately intertwined with government-issued State Administrative Decisions (KTUN).

Moreover, the expansion of jurisdiction in the State Administrative Court (TUN) for adjudicating cases involving the "*government*" demands careful scrutiny. It introduces a nuanced consideration of two distinct disputes commonly debated, encompassing factual actions initiated by the government and the presence of unlawful acts (PMH) committed by the ruler, specifically the government/agency and/or State Administrative Court officials. When the case pertains to factual actions undertaken by the government, the State Administrative Court emerges as the competent authority for prosecution. Conversely, in instances where the case stems from the commission of unlawful acts by the ruler, the competent authority for adjudication is the General Court. This dynamic underscores the need for a meticulous and case-specific examination within the realm of State Administrative Court jurisdiction.

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