

LAWSUIT IN ADMINISTRATIVE COURT AFTER ADMINISTRATIVE PROCEEDINGS BASED ON PERMA NO. 6 OF 2018

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Abstract

The enactment of Law No. 30 of 2014 concerning Government Administration very much changes the paradigm of the proceedings in the State Administrative Court. One of the fundamental things is about administrative proceedings as pre-litigation proceedings. Under Article 75 of Law No. 30 of 2014 concerning Government Administration, citizens who feel disadvantaged by a Government's Decision or Action can file an administrative proceedings, and then file a lawsuit in the Administrative Court. Regarding this regulation, two interpretations arise regarding the obligation of administrative proceedings as pre-litigation proceedings. One party argues that the administrative proceedings as pre-litigation proceedings must be carried out before filing a lawsuit in the Court, and the other argues this is not mandatory. For a period of four years, the interpretation of the obligation of administrative proceedings as a pre-litigation proceedings in Law No. 30 of 2014 concerning Government Administration is floating in the realm of discourse. It was only on December 4th, 2018 that the Supreme Court issued a Supreme Court Regulation (PERMA) No. 6 of 2018 concerning Guidelines for Resolving Disputes Regarding Government Administration After Administrative Proceedings, finally the Supreme Court dictates that administrative proceedings as a pre-litigation proceedings is a must. However, the PERMA does not regulate fundamental things regarding lawsuit after administrative proceedings, namely, who will be seated as the defendant, and what is the object of the lawsuit. In addition, there are also a number of things that needed to be reviewed regarding the arrangements in the PERMA, such as regarding the deadline for a lawsuit in the Court.

Keberlakuan Undang-Undang No. 30 Tahun 2014 Tentang Administrasi Pemerintahan sangat banyak mengubah paradigma beracara di Peradilan Tata Usaha Negara. Salah satu hal yang fundamental adalah mengenai upaya administratif sebagai upaya pra-litigasi. Berdasarkan Pasal 75 Undang-Undang No. 30 Tahun 2014 Tentang Administrasi Pemerintahan warga masyarakat yang merasa dirugikan dengan suatu Keputusan atau Tindakan Faktual Administrasi Pemerintahan dapat mengajukan upaya administratif, dan kemudian melakukan gugatan di Pengadilan TUN. Atas pengaturan ini kemudian timbul dua penafsiran mengenai kewajiban upaya administratif sebagai upaya pra-litigasi. Sebagian pihak yang berpendapat upaya administratif sebagai upaya pra-litigasi wajib dilakukan sebelum menggugat di Pengadilan, dan sebagian lagi berpendapat hal ini tidaklah wajib. Selama kurun waktu empat tahun, penafsiran atas kewajiban upaya administratif sebagai upaya pra-litigasi dalam Undang-Undang No. 30 Tahun 2014 Tentang Administrasi Pemerintahan ini mengambang dalam ranah wacana. Kemudian barulah pada tanggal 4 Desember 2018 lalu Mahkamah Agung mengeluarkan suatu Peraturan Mahkamah Agung (PERMA) No. 6 Tahun 2018 Tentang Pedoman Menyelesaikan Sengketa Administrasi Pemerintahan Setelah Menempuh Upaya Administratif. PERMA tersebut akhirnya mewajibkan upaya administratif sebagai upaya pra-litigasi. Akan tetapi PERMA tersebut tidak mengatur mengenai hal-hal fundamental dalam pengajuan gugatan di Pengadilan setelah menempuh upaya administratif, yakni seperti siapakah yang akan didudukkan sebagai tergugat, lalu apa objek gugatannya. Selain itu juga terdapat beberapa hal yang perlu dikaji ulang mengenai pengaturan dalam PERMA tersebut seperti mengenai tenggang waktu menggugat ke Pengadilan.

Keywords: Administrative Proceedings, Objection, Administrative Appeal, Lawsuit, PERMA No. 6 of 2018

Introduction

Article 75 to Article 78 of Law No. 30 of 2014 concerning Administration Government mandates that administrative disputes can be resolved through administrative effort procedures and litigation efforts at the State Administrative Court (PTUN). At first there were two opinions regarding the obligation of administrative efforts before filing a lawsuit to the PTUN based on Article 75 paragraph (1) of Law

no. 30 of 2014 namely opinions that states mandatory and states no.¹ Here are the two opinions:

- If using the grammatical interpretation of Article 75 there are no obligations listed anywhere in Law No. 30 of 2014.² Even Article 75 paragraph (1) clearly recommends administrative efforts without making it a requirement to file a lawsuit with PTUN;
- If using a systematic interpretation this obligation can be seen through the regulation of Article 48 paragraph (1) of the PERATUN Law as follows:³

In the event that a State Administration Agency or Officer is authorized by or based on legislation to administratively resolve certain State Administration disputes, the said State Administration dispute must be resolved through available administrative efforts.

With this systematic interpretation, now all Decisions or Factual Acts of TUN have become “State Administration Agency (or) authorized by or based on legislation to administratively resolve certain State Administration dispute” since the provision in Article 75 paragraph (1) of Law no. 30 of 2014. Because according to Article 75 of the Government Administration Act on TUN Factual Decisions or Actions, administrative efforts can be submitted in the form of administrative objections or appeals. So at this time all KTUN or “compulsory” Factual Actions are submitted by administrative efforts before filing a lawsuit to PTUN because now all are considered to have administrative efforts.

As a result of this confusion and disagreement, PERMA No. was issued. 6 of 2018 which bridges between Article 48 of the Law on PERATUN and Article 75 of Law No. 30 of 2014 with a systematic

¹ Tri Cahya Indra Permana, *Catatan Kritis Terhadap Perluasan Kewenangan Mengadili Peradilan Tata Usaha Negara* (Yogyakarta: Genta Press, 2016), p. 12.

² Grammatical interpretation means interpretation by capturing the meaning of a text according to the sound of its own words linguistically. See, Sudikno Mertokusumo and A. Pitlo, *Bab-Bab Tentang Penemuan Hukum* (Bandung: Citra Aditya Bakti, 1993), p. 59.

³ Systematic interpretation (*systematiche interpretatie*) means interpretation by capturing the meaning of a text according to the relationship of a norm with other norms. See, Sudikno Mertokusumo and A. Pitlo, *Bab-Bab Tentang...*, p. 60.

interpretation that requires administrative efforts before filing a lawsuit to the PTUN (vide Article 2 paragraph (1) PERMA No. 6 of 2018).

The definition of Administrative Efforts is regulated in Article 1 number 16 of Law No. 30 of 2014 concerning Government Administration as follows:

Administrative Efforts are dispute resolution processes carried out within the Government Administration environment as a result of the issuance of adverse Decisions and/or Actions.

Provisions regarding the existence of administrative efforts for all TUN Decisions or Factual Acts are regulated in Article 75 paragraph (1) of Law no. 30 of 2014 concerning Government Administration as follows:

Citizens who are harmed by the Decision and/or Actions can submit Administrative Efforts to Government Officials or Official Bosses who determine and/or make Decisions and/or Actions.

Then Articles 77 and 78 explain that the intended administrative measures (i.e. objections and appeals) namely:

- Objections shall be submitted to the Officials/Government Agencies that issue the original Decision or Factual Actions;
- Administrative Appeals shall be submitted to the superior body/official of the official/governing body that issues the original factual decision or action.

From this arises a debate on the following matters:

1. What is the concept of administrative effort according to the Government Administrative Law and how is it different from the concept of administrative effort under the State Administrative Court Law?
2. What is the object of the lawsuit at PTUN, and who is sitting as a defendant in an administrative dispute after taking administrative efforts based on the provisions in PERMA No. 6 of 2018 Jo. Government Administration Act?
3. Which court has the authority to adjudicate administrative disputes in the case of Administrative Appeals filed not to the superior Board/Officer of the Officer/Government Agency that issues the original Decision or Actual Actions?

On December 4, 2018 the Supreme Court issued Supreme Court Regulation No. 6 of 2018 concerning Guidelines for Resolving Government Administrative Disputes After Taking Administrative Efforts (hereinafter referred to as PERMA No. 6 of 2018) which more or less tried to answer some of the questions above. This paper tries to answer the questions above in accordance with the regulations in PERMA No. 6 of 2018 Jo. Government Administration Act Jo. UU PERATUN.

Formulation of the problem:

1. What is the concept of administrative effort according to the Government Administrative Law and how is it different from the concept of administrative effort under the State Administrative Court Law?
2. What is the object of the lawsuit at PTUN, and who is sitting as a defendant in an administrative dispute after taking administrative efforts based on the provisions in PERMA No. 6 of 2018 Jo. Government Administration Act?
3. Based on PERMA No. 6 of 2018 Jo. Government Administrative Law, which court has the authority to adjudicate administrative disputes in the case of an Administrative Appeal that is not submitted to a superior Board/Officer of the Officer/Government Agency that issues the original Decision or Actual Actions?

The Concept of Administrative Efforts

The definition of administrative effort is the process of dispute resolution carried out within the Government Administration environment as a result of the issuance of Decisions and/or Adverse Actions (vide Article 1 number 16 of Law No. 30 of 2014 concerning Government Administration). Administrative measures are a means of internal protection from government for citizens as well as internal control of administrative institutions. What is meant by internal control is supervision carried out by positions in the government itself, not by officials outside the government. In general, this administrative effort can be taken by the community members either to positions or

superiors, or to a special Agency/Officer formed to resolve administrative disputes within the government. The form of this administrative effort is twofold, namely Objection (*Bezwaarschrift*) and Administrative Appeal (*Administratieve beroep*).

- Objection (*bezwaarschrift*) is an administrative effort aimed at a Government Agency/Official who issues an original or original Factual Decision or Action;
- Administrative appeals (*administratieve beroep*) are administrative efforts aimed at a superior body/Officer position (*beroep op de administratieve organen*) or other Agency/Officer of a Government Agency/Officer who issues original or original Factual Acts or Acts.⁴

Administratively, the position of this administrative effort is an effort to internal control of the government and at the same time a means for citizens to seek justice through efforts in the internal government,⁵ as the privilege *de la decision excecutoir*.⁶ However, in terms of the judiciary, the administrative effort process is a pre-litigation remedy that is mandatory if available (vide Article 48 of Law No. 5 of 1986).⁷

For administrative efforts in the form of administrative appeals this can indeed be submitted to the supervisor of the office that issued the KTUN or Factual Actions, or to the Agency/Special Officer provided if any. In the past before the birth of the TUN Judiciary, there were very many Special Bodies/Officers acting as quasi judiciaries (*quasi rechtspraak*) to resolve administrative disputes other than appeals to superiors (*beroep op de administratieve organen*) including:⁸

- *De Raad van Beroep voor Belastingzaken* (Court of Appeals for Taxation Affairs) regulated in Stb. 1927 No. 29 which later

⁴ W. F. Prins, *Inleiding in het Administratieve Recht van Indonesie* (Djakarta-Groningen: JB Wolters, 1954), p. 105.

⁵ W. F. Prins, *Inleiding in het...*, p. 95.

⁶ Indroharto, *Usaha Memahami Undang-Undang Tentang Peradilan Tata Usaha Negara: Buku I Beberapa Pengertian Dasar Hukum Tata Usaha Negara* (Jakarta: Pustaka Sinar Harapan, 2004), p. 178.

⁷ Enrico Simanjuntak, *Hukum Acara Peradilan Tata Usaha Negara: Transformasi dan Refleksi* (Jakarta: Sinar Grafika, 2018), p. 203.

⁸ W. F. Prins, *Inleiding in het...*, p. 95-102.

turned into the Tax Advisory Council. At present for tax matters there is already a Tax Court (vide Law No. 14 of 2002);

- Octrooi Raad (Patent Court) which is regulated in *Octrooi wet* (Patent Law) and *Octrooi Reglement* which is currently the authority of the Commercial Court.

Both of them according to Prins' position are like administrative justice (there are procedural laws such as justice).⁹ Then there are also agencies/officials in the form of commissions, namely:

- *Ingeneurscommissies* (Engineer Commission) regulated in Article 4 *Veligheidsreglement*, Article 12 *Stoomordonnantie* Article 182 *Mijnordonnantie*;
- *De Tabaksaccijnscommissie* (Tobacco Excise Commission) regulated in Article 38 *Tabaksaccijnsordonnantie* (Tobacco Excise Ordinance);
- *De Filmcommissie* (Film Censorship Commission) regulated in Article 5 *Filmordonnantie* 1940;
- *Heurkeuringraden* (Re-Examination Board) for the Military regulated in Article 13 *Dienstplichtbesluit* (Military Service Decree);
- *Douane-Commissies* (Customs Commission) regulated in Stb. 1935 No. 136 (*Reglement A*) Jo. Article 7 *Statistiekreglement I*, and;
- *Taxatiecommissies* (Appraisal/ Appraisal/ Appraisal Commission) in the case of the taking of rights by the State, provided for in Article 24 *Onteigeningsordonnantie*.

The main characteristics of administrative efforts as a mechanism for resolving administrative disputes are as follows:¹⁰

- First, the settlement is carried out by the office that made the KTUN or Factual Action (objection), then if not satisfied can be continued (administrative appeal) to the supervisor of the position that made the KTUN or Factual Action. Or administrative appeals can be submitted to an Agency/Official made specifically as an administrative effort agency;

⁹ “*Colleges belast met administratieve rechtspraak.*” See, W. F. Prins, *Inleiding in het...*, p. 95.

¹⁰ Enrico Simanjuntak, *Hukum Acara...*, p. 210.

- Research/testing of KTUN or Factual Actions are carried out in a *doelmatigheid* (looking at the goal) and/or *rechtsmatigheid* (seeing it legally);
- Completion of administrative efforts can proceed to the Court.

According to Sjachran Basah as quoted by Irfan Fachrudin, the Decree of the results of administrative efforts (in this case an administrative appeal) can pay attention to changes in circumstances from the moment the decision was taken so that the test is done *ex-nunc* or prospectively.¹¹

At present several specialized bodies to handle, administrative efforts include the BAPEK (Personnel Advisory Agency) which was formed based on Government Regulation No. 53 of 2010 concerning the Discipline of Civil Servants. Based on Law No. 5 of 2014 BAPEK should have been replaced by BPASN (State Civil Apparatus Advisory Agency).

Administrative Efforts of the Law Regime PERATUN

Previously in Article 48 of Law No. 5 of 1986 (UU PERATUN), all TUN disputes whose basic regulations require administrative efforts are first, so they are required to make administrative efforts before filing a lawsuit. Based on Article 51 paragraph (3) of Law No. 5 of 1986, the Absolute Competence of a lawsuit after the submission of administrative efforts required by this basic regulation is the State Administrative High Court (PITUN as a court of first instance). Then in SEMA No. 2 of 1991 it was explained that the Defendants in this lawsuit were not the Official who issued the original KTUN which was the object of the dispute but the Official who decided on his administrative efforts.

In SEMA No. 2 of 1991 it is explained that what is meant by administrative efforts in Article 48 of the PERATUN Law is as follows:

What is meant by administrative efforts are:

- Submission of objection letter (*bezwaarschrift*) addressed to the State Administration Agency/Officer who issued the initial decision (stipulation/*beschikking*).

¹¹ Irfan Fachrudin, *Pengawasan Peradilan Administrasi Terhadap Tindakan Pemerintah* (Bandung: Penerbit Alumni, 2004), p. 18.

- Submission of administrative appeal letters (*administratieve beroep*) addressed to the superiors of officials or other Agency/Official of the State Administration Agency/Officer who issues the disputed State Administration decision.

This is also in line with the technical *quasi rechtspraak* for example with the regulation in PP No. 53 of 2010 concerning the Discipline of Civil Servants that the objection referred is to the Officials who imposed sanctions, and an appeal was submitted to BAPEK. This is because the administrative administration is considered a quasi *rechtspraak* that resolves TUN disputes between TUN Officials/Agencies that issue KTUNs with People or Civil Legal Entities so that the lawsuit against Administrative Appeals is a lawsuit at PTUN as a First Level Court. Therefore it can be concluded SEMA No. 2 of 1991 interprets the administrative effort referred to in Article 51 paragraph (3) is *administratieve beroep* AND/OR *bezwaarschrift*/objection, which if in its basic regulations only require only objections, then the dispute is still submitted to the PTUN. The object of the TUN Dispute over the Decree of Administrative Efforts is the Decree of Administrative Efforts, not the original Decision with the Defendant being the Official of Administrative Efforts issuing the Decree of Administrative Efforts, such as BAPEK. Then the lawsuit over BAPEK's Decree was submitted to PTUN Jakarta (BAPEK's position in Jakarta).

Administrative Efforts of the Government Administration Law Regime

With the enactment of Law No. 30 of 2014 concerning Government Administration (hereinafter referred to as “Government Administration Law” or “Law No. 30 of 2014” only), the provisions in Article 48 Jo. Article 51 Paragraph (3) of the PERATUN Law above is secretly amended. Starting from the definition of administrative efforts, legal remedies for administrative efforts, until the obligation to take administrative efforts also changed completely.

1. Subjects in the Administrative Efforts of the Government Administration Law Regime

- The Petitioners of Objection or Administrative Appeal are Citizens, i.e. persons or Civil Legal Entities;
 - TUN Officer/Agency in the Objection Request is a TUN Officer/Agency that issues a Decision or Factual Act that harms the community members;
 - TUN Officials/Bodies in Administrative Appeals are Officers or Superior Bodies of TUN Officials/Agencies that issue Factual Decisions or Actions that are detrimental to citizens (compare with Article 48 of the PERATUN Law Jo. SEMA No. 2 of 1991 regulating appeals that can be submitted to superiors officials or bodies that issue KTUN or to an Agency/Officer made specifically to handle administrative appeals);
 - Third Party is a party that is not involved in Administrative Efforts but is related to Administrative Efforts by Citizens who feel disadvantaged by the issuance of Factual Decisions or Actions.
2. Objects in the Administrative Efforts of the Government Administration Law Regime
- The object of the Objection legal remedy is a Decision or Factual Act that harms the community members (vide Article 77 paragraph (1) of Law No. 30 of 2014);
 - The object in the Administrative Appeal legal remedy is the Decision resulting from the Objection;
 - KTUN or Factual Action resulting from the follow-up to the Court's Decision cannot be submitted by administrative effort (vide Article 78 paragraph (1) of Law No. 30 of 2014).
3. Legal Remedies Procedure in the Government Administration Act
- Citizens who feel disadvantaged by the Decree and/or TUN Actions may submit administrative efforts (vide Article 75 paragraph (1) of Law No. 30 of 2014);
 - Administrative efforts are carried out in stages (vide Article 76 paragraph (2) of Law No. 30 of 2014), namely with objections to TUN officials/agencies that issue KTUN or Factual Actions that are felt to be detrimental to the community members first.

The time limit for filing an objection is 21 (twenty one) days from the date ANNOUNCEMENT. Past the grace period, objections expire and are not accepted (considered accepting KTUN or Factual Actions) and cannot submit further efforts (administrative appeals) (vide Articles 75, 76, and 77 of Law No. 30 of 2014);

- If the community members do not receive the results of the objection, then they can submit an Administrative Appeal to the Official or the Superior Board of the TUN official/agency who issued the KTUN or Factual Actions that are considered detrimental to the community members. The grace period for submitting Administrative Appeal is 10 (ten) days after the Decision on Objection Results is received. After the grace period, the administrative appeal expires and is not accepted (considered accepting the results of the objection) (vide Articles 75, 76 and 78 of Law No. 30 of 2014);
- If the community members do not receive the results of an administrative appeal, they can file a lawsuit with the Administrative Court (to be explained later) (vide Article 76 paragraph (3) of Law No. 30 of 2014).

Administrative Efforts of the Government Administrative Law and Laws to Court

1. Lawsuit After the Administrative Attempt in PERMA No. 6 of 2018

Actually, the provisions in PERMA No. 6 of 2018 needs further review because it has not answered the above questions explicitly. This PERMA does not regulate who the Defendants in the TUN trial submitted an administrative effort in advance, nor does it regulate what are the objects of dispute in their claims. Therefore, the author tries to provide an explanation by harmonizing the PERMA with the PERATUN Law and the Government Administration Law and other relevant laws and regulations.

a. Obligations of Administrative Efforts

Article 2 paragraph (1) PERMA No. 6 of 2018 requires administrative efforts before filing a lawsuit to the TUN court. The article clearly states that the court has the authority to

adjudicate administrative disputes after making administrative efforts. Therefore, administrative efforts are an obligation that must be taken before filing a claim in court. This is also based on the systematic interpretation of Article 75 of Law No. 30 of 2014 Jo. Article 48 paragraph (1) of the PERATUN Law as follows:¹²

In the event that a State Administration Agency or Officer is authorized by or based on legislation to administratively resolve certain State Administration disputes, the said State Administration dispute must be resolved through available administrative efforts.

With this systematic interpretation all TUN Factual Decisions or Actions now have, “The State Administration Agency (or) is authorized by or based on legislation to administratively resolve certain State Administration dispute”, since the provisions in Article 75 paragraph (1) of Law No. 30 of 2014. So that at this time all KTUN or “compulsory” Factual Actions are submitted by administrative efforts before filing a lawsuit to PTUN because now all are considered to have administrative efforts which are then reaffirmed in Article 2 paragraph (1) of PERMA No. 6 of 2018.

b. PTUN vs PTTUN Competencies

Clearly PERMA No. 6 of 2018 Jo. The Government Administration Act mandates that the authority to examine and decide government administrative disputes is the TUN Court including disputes submitted by administrative efforts first so that it overrides the provisions in Article 51 paragraph (3) of the PERATUN Law and PTTUN no longer has the authority to adjudicate TUN disputes at the first level except for Administrative appeals of dispute over Regional Election (Article 153 Jo. Article 154 of Law No. 10 of 2016 Jo. PERMA No. 11 of 2016) which mandates PTTUN as a court of first instance (or other disputes to be regulated in the law with PTTUN as court of first instance). In addition, for cases

¹² Systematic interpretation (*systematiche interpretatie*) means interpretation by capturing the meaning of a text according to the relationship of a norm with other norms. See, Sudikno Mertokusumo and A. Pilto, *Bab-Bab Tentang...*, p. 60.

submitted by administrative appeals to a Board/Officer who is not a superior officer/agency issuing KTUN or Factual Actions, the lawsuit is filed with PTTUN in accordance with Article 51 paragraph (3) of the PERATUN Law (to be explained later).

- c. Agency/Officials Tops vs Agency/Other officials as the Institute for Comparative Administrative Effort

Article 78 of the Government Administrative Law clearly stipulates that the administrative appeals are defined as efforts submitted to the superior Board/Officer (agency/official) of the Officer/Government Agency that issues the original Decision or Factual Action. Then what if the basic rules of the object of the dispute stipulate that administrative appeals are submitted to a special Agency/Officer who is not a superior body/official such as BAPEK? According to the opinion of the Author, this is not subject to the Government Administration Act but instead refers to the old regime regulated in Article 48 Jo. Article 51 paragraph (3) UU PERATUN Jo. SEMA No. 2 of 1991 which is still under the authority of PTTUN as a court of first instance.

2. Object of Lawsuit and Defendant to Court

When reading PERMA No. 6 of 2018 then there will be no regulation regarding matters concerning the object of the lawsuit to the Court after taking administrative efforts and who is the Defendant. Therefore, what can be done is to interpret. The interpretation method used can use two methods namely systematic interpretation and extensive interpretation. The judge can use one of these methods, or look for other rationalizations in determining the object of the dispute as long as it does not cause misguided thinking. Here is the explanation:

- a. Systematic Interpretation of Article 76 of the Government Administration Act

If you use the systematic logic of the provisions in Article 76 paragraphs (2) and (3) of the Government Administration Act, it will be seen that the object of the lawsuit is the result of an administrative appeal because:

- Administrative efforts are carried out in stages from the initial objections to the administrative appeals (vide Article 76 paragraph (2) of the Government Administration Act);
- Article 76 Paragraph (3) clearly states: “In the event that a Community Member does not accept an appeal settlement by the Official Officer, the Community Member may submit a claim to the Court.” Therefore, the object is the result of the decision on the settlement of administrative appeals not the original Decision or TUN Actions anymore.

Therefore, based on this interpretation, the Defendant in a government administration dispute at PTUN after taking administrative measures is the Administrative Appeal Agency/Officer.

- b. Extensive Interpretation of Article 2 paragraph (1) PERMA No. 6 of 2018 Jo. Article 1 number 10 UU PERATUN

Article 2 paragraph (1) PERMA No. 6 of 2018 states that the Court has the authority to adjudicate administrative disputes after administrative efforts have taken place, whereas the Government Administration Law does not explain what an Administrative Dispute or TUN Dispute is. Explanation of the definition of Administrative Dispute or TUN can be seen in Article 1 number 10 of Law No. 51 of 2009 (the second amendment to the PERATUN Law) as follows:

10. State Administrative Dispute is a dispute arising in the field of state administration between a civil person or legal entity and a state administrative body or official, both at the central and regional levels, as a result of the issuance of state administrative decisions, including employment disputes based on applicable laws and regulations.

Because at this time there has been an expansion of the object of dispute in the TUN Court, the phrase in “As a result of the issuance of state administrative decisions, including employment disputes based on applicable laws and regulations” was adjusted to the object of the current TUN Justice dispute,

which is not only decisions but also actions. Whereas in Article 1 number 5 PERMA No. 6 of 2018 the definition of administrative disputes is: “Disputes arising in the field of government administration between citizens and government bodies and/or officials as a result of the issuance of decisions and/or government actions based on public law.”

Extensive interpretation is interpretation that exceeds the limits set by grammatical interpretation (widespread).¹³ In this case the author extends the definition in Article 1 number 10 of Law No. 51 of 2009 Jo. Article 1 number 5 PERMA No. 6 of 2018, by giving two meanings, namely for TUN disputes which are submitted by administrative appeals to special bodies/officials made to settle TUN disputes, the object of the lawsuit is the Decree of the Administrative Appeal Agency/Special Officer such as Administrative Appeal Decree BAPEK can be sued (Vide Article 48 of Law No. 5 of 1986 Jo. SEMA No. 2 of 1991) as the object of the lawsuit and the court forum is the TUN High Court (PTTUN) in accordance with Article 51 paragraph (3) of the PERATUN Law. However, for other disputes aside from that, the object of the lawsuit is KTUN or the original Factual Act and the court forum is the TUN Court in accordance with Article 1 point 18 Jo. 76 paragraph (3) of the Government Administration Law. There are at least two reasons why using this method of extensive interpretation:

- If the object of the lawsuit is the Official Decree/Agency resulting from administrative efforts, the trial process will become too simple and inadequate to seek material truth. Because the real object of the dispute is the KTUN or Factual Actions being unfocused and the material truth may not be reached;
- It is likely that the Officer/Agency that issued the KTUN or the original Factual Act will be free from administrative law because the party in the lawsuit is his superior. Even though the PTUN decision was *erga omnes* (binding on all parties), the main target of the decision was the Defendant,

¹³ See, Sudikno Mertokusumo and A. Pilto, Bab-Bab Tentang..., p. 19.

that is, the Official/Administrative Appeal Agency. In addition, the execution process will also be more difficult because, for example, if subjected to *Dwangsom* or administrative sanctions, it is not possible for the Official/Agency issuing KTUN or the factual Actions to be subjected to *Dwangsom* (forced money) or administrative sanctions because he is not Defendant in a TUN dispute. So it would be fairer to seat the Official/Agency that issued the KTUN or original factual action.

Author also tends to use this interpretation because from the aspect of justice it gives more legal protection to citizens who seek justice.

3. Problems In Concerning Administrative Efforts of the Government Administration Law Regime

a. Daluwarsa Administrative Efforts and Lawsuit Expiry

With the administrative efforts required in PERMA No. 6 of 2018 then all TUN Decisions or Factual Acts cannot be submitted directly to the TUN Court but must first take administrative efforts. Then based on Article 76 paragraph (2) regulates that administrative efforts are carried out in stages. In addition, there are administrative efforts that have expired, which means that if they have passed the determined deadline, then administrative efforts cannot be taken. This expiration is regulated in Article 77 paragraph (1) and 78 paragraph (1) of the Government Administration Law:

- For objections, the expiry date is 21 (twenty one) working days since the announcement of the Decision or Factual Actions that are the object of the dispute;
- For administrative appeals, the expiry date is 10 (ten) working days from the receipt of the Decision on the result of objection by the Citizens.

Then the problem arises when it turns out that the administrative effort has expired does it mean that the community members cannot sue in the TUN Court? If this administrative effort is mandatory as in Article 2 paragraph (1)

PERMA No. 6 of 2018 then this administrative effort has expired as a reason for judges to reject a lawsuit in court.

b. Administrative Appeal on Presidential Decree

As explained earlier that:

- Administrative efforts must be taken before going to court (vide Article 2 paragraph (1) PERMA No. 6 of 2018);
- Administrative efforts are carried out in stages starting from objection to TUN Officials/Agencies that issue Decisions or Factual Actions deemed harmful, then if, if not satisfied with the result of the objection, then an appeal can be appealed to the supervisor from the TUN Officer/Agency who issues a Decision or Factual Act that is considered detrimental (vide Article 76 paragraph (2) of Law No. 30 of 2014);
- Attempts to file a lawsuit can only be made after an administrative appeal and the object of the lawsuit is the Decision on the result of an administrative appeal (vide Article 76 paragraph (3) of Law No. 30 of 2014).

Then the question arises, if the President who issues a Decision or Factual Action is the President, then can an administrative appeal be submitted? Then where is the administrative appeal filed? Does the president have a boss? Certainly not because the President is the highest holder of government/administrative power in the Republic of Indonesia (Vide Article 4 of the 1945 Constitution). Then is this the president's decisions that cannot be sued in the TUN Court? If administrative efforts are required (remember also that administrative efforts are carried out in stages and can only be filed with a lawsuit after a decision on the results of administrative appeals is appealed -vide Article 76 paragraph (3) of Law No. 30 of 2014) then a decision issued by the president cannot be sued equally once in court. The only effort that can be taken for a presidential decision is just an objection attempt. However, if you look at the context of the level of administrative effort, it can be interpreted that because the President is the highest Administrative Officer, administrative appeals are not

required and a lawsuit can be directly brought to court after an objection attempt has been taken.

- c. Decisions or Factual Actions that administrative efforts may submit are only “announced” Factual Actions or Actions

Article 77 paragraph (1) of Law No. 30 of 2014 clearly states: “Decisions can be appealed within 21 (twenty one) working days from the announcement of the Decree by the Government Agency and/or Officer.” Then what about the decree that was not announced but was only directly given to the intended party? Even if the interpretation of the word “announced” extensively becomes “known or accepted”, there will still be many Decisions or Actions that will experience problems that have expired administrative efforts. Then is this the KTUN that was not announced and could not be submitted for administrative efforts and could not be prosecuted mutually in court? According to the author, of course not. There are two possibilities namely; first, interpreting the word “announced” extensively including “known or accepted”, or; second, interpreting *argumentum a contrario* that if it is not announced, it means that there is no administrative effort required and can sue directly in court.¹⁴ The author tends to be the first to interpret the word “announced” extensively including “known or accepted”, because of the existence of Article 2 paragraph (1) PERMA No. 6 of 2018 clearly requires administrative efforts before filing a lawsuit in the TUN Court.

- d. Grace Period/Claimed *Bezwaar* Term in PERMA No. 6 of 2018

Then the grace period for filing a lawsuit/*bezwaar termijn* regulated in Article 5 of PERMA No. 6 of 2018 namely 90 working days (days are *vide* working days of Article 1 number 6 of PERMA No. 6 of 2018) from the receipt of the decision on administrative appeal results. Whereas for a third party that is not addressed by the decision of the administrative appeal, the

¹⁴ A *contrario argument* means an argument by looking at the opposite of a regulated norm, for example, if A is prohibited then B to Z may be done. See, Philipus M. Hadjon and Tatiek Sri Djatmiati, *Argumentasi Hukum* (Yogyakarta: Gadjah Mada University Press, 2017), p. 29.

grace period remains from the moment, he knows that there is an object of the TUN Decree which is detrimental, namely the decision of the administrative appeal. This is certainly not in line with Article 55 of the PERATUN Law which regulates a 90-day grace period for filing a lawsuit in CALENDAR instead of WORKING DAY. Therefore, the provisions in this PERMA concerning term administrative charges or the grace period to sue need to be adjusted to the provisions in Article 55 of the PERATUN Law.

Factual Action as Administrative Efforts

In theory, Government Actions (*Bestuurshandelingen*) can be divided into two, namely:¹⁵

- Feitelijk Handelingen (commonly called Material Actions,¹⁶ Ordinary Actions or Concrete Actions/Actions - Article 1 number 8 Jo. Article 87 of the Government Administration Act). Factual Action (Feitelijk Handelingen) will always be one-sided (eenzijdige) because it is one-sided, and;
- Rechtshandelingen (Legal Action). Legal Action (Rechtshandelingen). These legal actions (Rechtsandelingen) are one-sided (eenzijdige) because they are one-sided, and there are two sides (tweezijdige or meerzijdige).

Factual Actions are actual or physical actions carried out by Government Administration. This action is not only limited to active actions but also passive actions. What is meant by a passive act in this case is *Pendiaman* will something. Examples of active actions from Factual Actions are the construction of government buildings or payment of civil servant salaries. Whereas the example of a *pendiaman*/passive act is to let the road be damaged which causes an accident of the community members so that the community can sue for damages before the court. For factual actions that are active it is usually always preceded by a written determination, whereas for passive actions

¹⁵ Safri Nugraha and Sri Mamudji, *Hukum Administrasi Negara* (Jakarta: Center for Law and Good Governance Studies, Universitas Indonesia, 2007), p. 85.

¹⁶ Safri Nugraha and Sri Mamudji, *Hukum Administrasi Negara...*, p. 85.

it certainly is not. This definition of factual action can be seen in Article 1 number 8 of the Government Administration Act:

Government Administration Act, hereinafter referred to as Act, is the act of a Government Official or other state administrator to DO AND/OR NOT CONDUCT CONCRETE in the framework of administering government.

Based on this, it is known that factual actions can be active (doing something) or passive actions (not doing something). For active factual actions, administrative efforts can be proposed first because the object is clearly an actual physical act. But what about passive action? Can it be placed as an object in administrative efforts? It would be very strange to make an objection to something “not done” by the Government. According to the opinion of the Author, for Factual Actions that are passive (not doing something) this should not be submitted administrative efforts but directly through a lawsuit to the Court. However, because this administrative effort is required as a pre-litigation effort before attempting a lawsuit so inevitably an administrative effort must first be submitted.

Conclusion

Administrative efforts according to Law No. 30 of 2014 is carried out in stages (vide Article 76 paragraph (2) of Law No. 30 of 2014), namely with objections to TUN officials/agencies that issue KTUN or Factual Actions which are felt to be detrimental to the community members first. The time limit for filing an objection is 21 (twenty one) days from the date announcement. Past the grace period, objections expire and are not accepted (considered accepting KTUN or Factual Actions) and cannot submit further efforts (administrative appeals) (vide Articles 75, 76, and 77 of Law No. 30 of 2014). If the community members do not receive the results of the objection, then they can submit an Administrative Appeal to the Official or the Superior Board of the TUN official/agency who issued the KTUN or Factual Actions that are considered detrimental to the community members. The grace period for submitting Administrative Appeal is 10 (ten) days after the Decision on Objection Results is received. Past the grace period, the administrative appeal expires and is not accepted (considered accepting the results of the objection) (vide Articles 75, 76, and 78 of Law No. 30 of 2014). If the community members do not receive the results of an

administrative appeal, they can file a lawsuit with the Administrative Court (to be explained later) (vide Article 76 paragraph (3) of Law No. 30 of 2014).

The object of Lawsuit in PTUN in administrative disputes after taking administrative efforts is the KTUN or original Factual Actions which are the subject of the problem and the Defendant is the TUN Agency/Officer who issues the KTUN or Factual Act if using extensive interpretation. Whereas if a systematic interpretation is used, the object of the lawsuit is the Decree resulting from administrative efforts and the Defendant is the Agency/Official superior of the TUN Agency/Officer who issues the KTUN or the original Factual Actions. The author tends to put the KTUN or original Factual Actions that are the subject of the problem and the Defendant is the TUN Agency/Officer who issues the KTUN or Factual Actions.

At present, there are two court competency regimes that adjudicate administrative disputes after making administrative efforts namely, PTTUN's authority as a court of first instance in the case of administrative appeals is settled by a Special Agency/Officer who is not the supervisor of the TUN Officer/Agency that issues the KTUN or Factual Actions, and the authority of the Administrative Court as a court of first instance in the case of administrative appeals is settled by the supervisor of the TUN Officer/Agency who issues the KTUN or Factual Actions.

Problems that arise in PERMA No. 6 of 2018 which deserves joint attention, among others, is related to the expiration of administrative efforts which are also related to the loss of the community's suing rights. Then related to administrative efforts towards the President's decision that does not go through the Administrative Appeal procedure but rather with an objection and can directly submit a lawsuit to the court. It is also related to the period of time for suing in Article 5 Jo. Article 1 number 6 PERMA No. 6 of 2018 which regulates that the deadline for a lawsuit is 90 (Ninety) working days whereas in the PERATUN Law the lawsuit period is 90 (Ninety) days (calendar) so it is worth reviewing the time limit of this claim.

Then regarding factual actions in a normative manner, administrative efforts can indeed be proposed. However, it is rather strange when placing factual actions that are passive in nature (not doing something) to be the object of administrative effort. However, because

to be able to file a lawsuit at PTUN must first take administrative efforts then inevitably administrative efforts must be taken before filing a lawsuit at PTUN.

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