

DISMISSAL PROCESS IN THE STATE ADMINISTRATIVE COURT

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Abstract

Indonesia is a rule of law country. The rule of law in its development demands the development of administrative justice so that Indonesia forms the State Administrative Court (PTUN). PTUN is now implemented based on Law Number 51 of 2009 concerning PTUN. In the procedural law of the PTUN, there is a dismissal determination by the Chief Justice which aims to determine the Absolute Competency of the PTUN. The problems discussed are 1). What are the current regulations regarding dismissal poses in the State Administrative Court? and 2). What legal remedies can be taken against the dismissal process? The research method used is normative juridical, referring to legal norms contained in statutory regulations and court decisions as well as legal norms that exist in society. Research results 1). The dismissal process is based on Article 62 of the PTUN Law which has implications for screening claims, whether they can proceed to the preparatory examination stage or whether they are rejected. 2). Regarding the dismissal process, the plaintiff still has a legal opportunity, namely in accordance with Article 62 paragraph (3) letter a of the PTUN Law, which explains that the plaintiff can submit legal action in the form of opposition to the court within a period of 14 (fourteen) days after the dismissal decision is pronounced.

Keywords: *Dismissal Process, Resistance, State Administrative Court.*

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A. INTRODUCTION

The State of Indonesia is a state of law which has been agreed and formulated in Article 1 paragraph (3) of the Constitution of the Republic of Indonesia of 1945 (Constitution of the Republic of Indonesia 1945).¹ Human thought or conception of the state of law is born and develops in situations and historic.² Therefore, although the concept of the state of law is considered a universal concept, at the implementation level, it turns out to have diverse characteristics. This is due to the influence of the historical situation, in addition to the influence of the nation's philosophy, state ideology and others.¹

¹ Ridwan HR, *Hukum Administrasi Negara*, (Jakarta: PT. Raja Grafindo, 2016), hlm. 1.

The concept of *rechstaat* (continental europe) by Friedrich Julius Stahl was conceived by the thought of Immanuel Kant. According to Stahl, the elements of the state of law (*rechstaat*) are as follows :²

- a. Protection of human rights;”
- b. Separation or division of powers to guarantee those rights;”
- c. Government based on laws and regulations; and”
- d. Administrative justice in disputes.

Judicial power is regulated in Article 24 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which explains that as follows "Judicial power is exercised by a Supreme Court and judicial bodies under it in the general judicial environment, religious justice environment, military justice environment, State Administrative Justice environment, and by a Constitutional Court."

The State Administrative Court is one of the elements in the state of law, this is because in the state of law must ensure the equality of the position of citizens and individual rights in accordance with the outlook on life and personality of the state and nation based on Pancasila so that harmony, balance, and harmony between individual interests and public interests are achieved and harmony between the apparatus in the field of State Administration (government) and The Citizens of the Community.³ The State Administrative Court as one of the holders of judicial power in Indonesia was formed with the sole purpose of creating a clean, authoritative government that is free from Corruption, Collusion and Nepotism, as well as to control arbitrary actions carried out by the Government under the pretext of public interest for the people.⁴ One of the characteristics of the implementation of this court compared to other courts is the examination of each lawsuit by the Chief Justice before the case is forwarded to the Panel of Judges⁵.

The State Administrative Court has been regulated by Law Number 5 of 1986 concerning the State Administrative Court which has been amended by Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning the State Administrative Court, and then amended again by Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning the State Administrative Court (PTUN Law).

The State Administrative Court has duties and functions as contained in Article 47 of the State Administrative Law, namely that "The Court is tasked and authorized to examine, decide and resolve State Administrative disputes. Article 1 number 4 of the State Administrative Law emphasizes that "State Administrative Disputes are disputes that arise in the field of State Administration between a person or civil legal entity and a State Administrative Agency or Official, both at the central and regional levels, as a result of

²Dikutip dari Miriam Budiarjo, *Dasar-Dasar Ilmu Politik*, (Jakarta: Gramedia, 1982), hlm.57-58, Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat di Indoenesia*, (Surabaya: Bina Ilmu, 1987), hlm.76-82.

³ Yuslim, *Hukum Acara Peradilan Tata Usaha Negara*, (Jakarta: Sinar Grafika, 2015), hlm.18.

⁴ Edi Pranoto, Asas keaktifan hakim (Litis Domini) Dalam Pemeriksaan Sengketa Tata Usaha Negara, *Jurnal Spektrum Hukum*, Vol 16 No. 2 tahun 2019. hlm. 90-101.

⁵ Sabila Febriani, Eksistensi Dalam Mengoptimalkan Pelaksanaan Proses Dismissal Dan Pemeriksaan Persiapan Di Pengadilan Tata Usaha Negara, *Jurnal Penelitian Multi Disiplin*, Vol.2 No. 1 Februari 2023, hlm. 124-127

the issuance of a State Administrative Decree, including personnel disputes based on applicable laws and regulations."

Article 62 paragraph (1) of the PTUN Law stipulates that at a deliberative meeting, the Chief Justice has the authority to determine with a determination that is complemented by considerations that the lawsuit filed is declared unacceptable or unfounded in the following cases: (1) The subject matter of the lawsuit is clearly not included in the court's jurisdiction; (2) The conditions of the lawsuit as intended in Article 56 are not fulfilled by the plaintiff even though he has been notified and warned; (3) The lawsuit is not based on valid reasons; (4) What is demanded in the lawsuit has actually been fulfilled by the State Administrative Decree that is being sued; and (5) Lawsuits filed prematurely or have expired.

An example of a case regarding the dismissal process at the State Administrative Court has been experienced by the Central Java Provincial Government. In 2016 when the excitement of the establishment of the Indonesian Cement Factory in Rembang Regency was incorrect, it turned out that the trial process was wrong in 2017 there was a Dismissal Determination of PTUN Semarang No: 039/PEN-DIS/2017/PTUN.Smg. The essence of the legal development of the Chairman of the Semarang State Administrative Court is based on Article 2 letter e of the PTUN Law where the object of the lawsuit is the Decree of Revocation and Cancellation Number 660.1/4 of 2017 resulting in the issuance of the Decree of the Governor of Central Java Number: 660.1/6 of 2017 concerning environmental permits for mining activities. PT. Semen Indonesia is not a category of State Administrative Decree, so based on its authority in Article 62 of the PTUN Law, the Chairman of the Semarang State Administrative Court at that time rejected the Lawsuit filed with the Semarang State Administrative Court..⁶

B. RESEARCH METHODS

Research methods are a way to solve problems or how to develop science using scientific methods.⁷ The research method used is normative juridical refers to the legal norms contained in laws and regulations and court decisions as well as legal norms in society.⁸

C. RESULTS OF RESEARCH AND DISCUSSION

The State Administrative Court is one of the courts in Indonesia that is authorized to handle State Administrative disputes.⁹ One of the typical stages in the procedural law of

⁶ Ichsán Muhájir dan Nabitatus Sa'adah, Pertimbangan Hukum Hakim Dalam Penetapan Dismissal Terhadap Keputusan Tata Usaha Negara Yang Berasal Dari Badan Perdilan, *Jurnal Law Reform*, Vol. 15 Nomor 2 Tahun 2019. hlm. 290-302

⁷ Jonaedi Efendi & Jhonny Ibrahim, *Metode Penelitian Hukum Normatif Dan Empiris*, (Depok: Prenadamedia, Cetakan 2, 2018), hlm.3.

⁸ Zainuddin Ali, *Metode Penelitian Hukum*, (Jakarta: Sinar Grafika, 2019), hlm.105.

⁹ Dezonda. R. Pattipawae, Fungsi Pemeriksaan Dismissal Dalam Peradilan Tata Usaha Negara, *Jurnal Sasi*, Vol 20 No 1 Tahun 2015, hlm. 37-55.

PERATUN is the existence of a dismissal procedure. Until now, there are still many people who interpret the definition of the dismissal process as limited to a "deliberative meeting". The dismissal process is basically a juridical research procedure conducted by the chief justice of a registered lawsuit to consider whether it can be accepted and further processed or otherwise declared unacceptable due to the non-fulfillment of some of the specified preconditions.¹⁰

Normatively, the examination of the trial at the State Administrative Court is carried out by ordinary proceedings (Article 68 of Law of the Republic of Indonesia Number 5 of 1986) and fast proceedings in accordance with Articles 98 and 99 of the Law of the Republic of Indonesia Number 5 of 1986 concerning the State Administrative Court. The period between the summons of the day of the trial shall not be less than six days, except in the case of the dispute which must be examined by expeditious proceedings.

Summons against the party concerned is considered valid, if each has received a summons letter sent with a registered letter. The summons letter to the defendant is accompanied by a copy of the lawsuit with a notice that the lawsuit can be answered in writing. The judge has the authority to order both parties to the dispute to appear in person, even if they have been represented by a power of attorney.

In determining the date of the hearing, the Judge must consider the proximity of the residence of both parties to the place of trial. In the ordinary course of examination, the Court examines and decides State Administrative disputes with three Judges, while in a quick event with a Single Judge. The court convenes on the day specified in the summons. The examination of the State Administrative dispute in the trial was led by the Presiding Judge of the Session. The Chief Judge of the Trial is obliged to maintain that the rules of order in the trial are obeyed by everyone and all orders are carried out properly. For the purpose of examination, the Chief Judge opened the session and stated that it was open to the public.

Based on Article 62 of the Law of the Republic of Indonesia Number 5 of 1986, before the examination stage with ordinary events or quick events, all State Administrative dispute

¹⁰ Jenifer Claudia Rengkung, Peranan Penggugat Dan Tergugat Pada Pemeriksaan Dismissal Dalam Hukum Acara Di PTUN., Jurnal Lex Administratum, Vol. IX No. 8 Tahun 2021. hlm. 36-45.

lawsuits must be included in a preliminary meeting with the application of dismissal process which has the function of specifically examining whether the State Administrative dispute lawsuit filed by a person or civil legal entity can be accepted or not due to not being qualified, The term of the dismissal process is not known, but the substance of the meaning is regulated in Article 62 of the PERATUN Law. The reasons that can be used to dismiss the lawsuit are determined limitatively in Article 62 paragraph (1) letters a to e of Law Number 5 of 1986, namely:

- a. The subject matter of the lawsuit is clearly not included in the authority of the Court. What is meant by the "subject matter of the lawsuit", according to his explanation is the facts that are used as the basis of the lawsuit. On the basis of these facts, the Plaintiff postulates the existence of a certain legal relationship, and therefore files a lawsuit;
- b. The conditions of the lawsuit as referred to in Article 56 were not fulfilled by the Plaintiff even though he had been notified and warned;
- c. The lawsuit is not based on valid reasons;
- d. What is demanded in the lawsuit has actually been fulfilled by the TUN Decision that is being sued;
- e. The lawsuit is filed prematurely, or has expired;

The technical regulations governing the dismissal of the process/consultative meeting are regulated in SEMA Number 2 of 1991 concerning Guidelines for the Implementation of Several Provisions in the Law of the Republic of Indonesia Number 5 of 1986 which governs as follows:

1. The dismissal procedure is carried out by the Chairman and can also appoint a judge as a reporter.
2. The examination is carried out in a deliberative meeting (in the Chairman's chambers) or carried out briefly.
3. The Chief Justice is authorized to call and listen to the testimony of the parties before determining the Dismissal Determination if deemed necessary.
4. The Determination of Dismissal contains a lawsuit that is declared unacceptable or unfounded, and the Determination is signed by the Chairman and the Chief

Registrar/Deputy Registrar. The Deputy Chief Justice can also sign the Dismissal Determination in the event that the Chief Justice is unable to.

5. The dismissal determination is pronounced in a deliberative meeting before the day of the trial is determined, by calling both sides to listen.
6. In the event that there is a lawsuit petition that is clearly not granted, it is possible to determine the dismissal of the part of the lawsuit petition (partial dismissal).
7. In the event that a partial dismissal is determined, the provisions of resistance to the Determination of Dismissal also apply in this case.
8. In "dismissing the lawsuit", the Chief Justice should not be too easy to use Article 62, except regarding Article 62 paragraph (1) points a and e.

As SEMA Number 2 of 1991 states, the author can be informed that the dismissal process or consultative meeting is a process of screening lawsuits that enter the State Administrative Court. In the deliberative meeting or dismissal examination, it is carried out in deliberation whether the case is accepted or not.¹¹

If a lawsuit passes dismissal, then the Chief Justice forwards the lawsuit to be examined in court. In the context of the examination at the trial, the Chief Justice determines the appointment of the composition of the Panel of Judges, which is then given the authority under Article 63 of the Peratun Law to carry out the examination agenda.

Based on the provisions of Article 63 of the Criminal Law, the preparatory examination was carried out in order to complete the Plaintiff's lawsuit which was unclear and was carried out behind closed doors. In this case, only the Plaintiff, the Panel of Judges and also the Defendant are requested to be present with the aim of requesting data or explanations in order to improve the Plaintiff's lawsuit. Under certain conditions, the Panel of Judges can ask for information from anyone, other than the relevant State Administrative Agency/Officer to obtain the data or information necessary to finalize the lawsuit.

¹¹ Lisatul Chumairoh, Analisis Pasal 62 Undang-Undang Republik Indonesia Nomor 5 Tahun 1986 Mengenai Fungsi Dismissal Proses Dalam Persidangan Pengadilan Tata Usaha Negara, *Jurnal Unes Law Review*, Vol, 5 No 2 Tahun 2022, hlm. 339-352.

1. Legal Remedies That Can Be Taken Against Dismissal Process

As previously explained, dismissal is a legal procedure in which the chief justice reviews a lawsuit to determine whether the lawsuit is admissible and further processed, or inadmissible because it does not meet some applicable provisions. Therefore, the term "pre-litigation procedure" refers to the dismissal process. On the other hand, there is resistance to the determination of dismissal as explained in Article 62 paragraph (3) of the Peratun Law to paragraph (4) of the Peratun Law. As stated as follows: Article 63 paragraph (3) of the Peratun Law states that:

- a. Within 14 days from the issuance of the decision, an appeal may be filed with the court against the decision mentioned in paragraph (1).
- b. An appeal must be submitted in accordance with the guidelines outlined in Article 56 of the PTUN Law.

Based on Article 62 paragraph (4) of the Peratun Law, the Court will examine and decide on the objection application as intended in paragraph (3) quickly. The purpose of using this quick procedure is to:

- a. It is important to deal effectively with any difficulties that may arise to guarantee a speedy resolution of administrative conflicts.
- b. In the State Administrative Court, cases that do not actually qualify as lawsuits are handled quickly and simply.

Meanwhile, the decision referred to in paragraph (1) becomes invalid if the objection is accepted by the Court, in accordance with Article 63 paragraph (5) of the PTUN Law. The main litigation process will then proceed as usual to be processed, decided, and resolved. According to the PTUN Law Article 63 paragraph 6, there are no other legal remedies that can be taken to challenge the decision of resistance. In essence, the opposing party stated that Article 62 paragraph (1) letters a to e of the PTUN Law was not violated and the Plaintiff's lawsuit was complete and appropriate in accordance with the facts submitted.¹²

¹² Christine S.T. Kansil, Gracia Suha Ma'rifa, Efektifitas Pemeriksaan Dismissal Proses, Jurnal Pendidikan Sejarah Dan Riset Sosial Humaniora, Vol 4 No 2 Tahun 2024, hlm. 163-169.

An example of a case of resistance to the determination of the dismissal process is an attempt to resist Case Number 10/PLW/2018/PTUN. The DPS filed by the opponent on behalf of Hari Boedi Hartono began by filing a lawsuit with the Denpasar State Administrative Court on April 27, 2018 with Case No. 10/G/2018/PTUN. DPS fought against the Head of the Badung Regency Land Office but then the Chairman of the Denpasar State Administrative Court rejected the case with the considerations outlined in the dismissal determination with Case Number: 10/PEN. DIS/2018/PTUN. DPS dated May 23, 2018, Certificate of Ownership No. 3023/Jimbaran Village.¹³

D. SIMPULAN

As a state of law, the existence of the State Administrative Court is a form of fulfillment. In the process of procedural proceedings in court, there is a peculiarity in the procedural law of the state administrative court, namely the dismissal process which is based on Article 62 of the PTUN Law which has implications for the screening of lawsuits, whether it can be continued to the preparatory examination stage or rejected.

Regarding the dismissal process, the plaintiff still has a legal opportunity, namely in accordance with Article 62 paragraph (3) letter a of the PTUN Law, explaining that the plaintiff can file a legal remedy in the form of resistance to the court within a period of 14 (fourteen) days after the dismissal determination is pronounced. Furthermore, it is determined in Article 62 paragraph (4) that the resistance in question is examined and decided by a brief examination event.

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¹³ Anak Agung Tias Sandya Dianti, Anak Agung Laksmi Dewi, dan I Nyoman Sugiarta, Upaya Perlawanan Sebagai Akibat Pernyataan Dismissal Oleh Ketua Pengadilan Tata Usaha Negara (Studi Kasus Di Pengadilan Tata Usaha Negara Denpasar), Jurnal Konstruksi Hukum, Vol, 1 N o. 2 Tahun 2020, hlm. 260-265

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