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LEGAL REVIEW ON DEADLINE FOR FILING A LAWSUIT BY THIRD PARTIES AT INDONESIAN STATE ADMINISTRATIVE COURT (PTUN)

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Abstract: The time limit for filing a lawsuit in the State Administrative Court is an important part to pay attention to for parties who feel their interests have been harmed by the Decision of a State Administrative Body or Official. Not only for plaintiffs who need to consider the time limit as regulated in Article 55 of the Administrative Law, for third parties those whose interests are not addressed by the State Administration decision but whose interests are harmed also need to consider the grace period. Referring to SEMA No. 2 of 1991, a third party who feels their interests have been harmed must have a cumulative casuistry period calculated from the time the third party concerned feels their interests have been harmed and is aware of the existence of the State Administrative Decree. This research uses normative research methods so that the main study carried out by researchers is the statutory regulations relating to the research object.

Keywords: Deadlines, lawsuits, PTUN

INTRODUCTION

Knowing the deadline for filing a lawsuit is very important when filing a lawsuit at the State Administrative Court (PTUN). This aims to ensure that efforts to seek justice do not disappear or stop just because the time limit has passed. Based on Article 55 of Law no. 5 of 1986 concerning the State Administrative Court (UU Peratun) states that "A lawsuit can only be filed within a grace period of ninety days from the time the Decision of the State Administrative Body or Official is received or announced." The word "lawsuit" is used to refer to the provisions of Article 53 paragraph (1) of the Regulations Law which states, "Persons or civil legal entities who feel that their interests have been harmed by a State Administrative Decree may submit a written lawsuit to the competent court containing a demand that the Administrative Decree The disputed state is declared null and void, with or without demands for compensation and/or rehabilitation." The existence of a deadline for filing a lawsuit is conceptually aimed at ensuring legal certainty and government stability.

The 90 day grace period in Indonesia is relatively long compared to other countries. For example, the time period for filing a lawsuit in a general administrative law dispute in the Netherlands is six weeks, whereas in Germany the time limit is only one month. According to the drafters of the Peratun Law, the length of the grace period is up to 90 days based on the consideration that lawsuits against the authorities are not a legal remedy that is commonly carried out in Indonesia. Apart from that, there are problems with the PTUN infrastructure which makes it impossible to set a short

grace period. To date, there are only four State Administrative High Courts (PTTUN) and 28 State Administrative Courts (PTUN) throughout Indonesia. The plaintiff may live thousands of kilometers from a competent court so technically it takes longer to file a lawsuit at the PTUN. According to Bedner (2010: 115), this 90-day policy is a conscious choice for legislators to make PTUN an effective means for plaintiffs to obtain compensation from the government.

However, this 90 day grace period has created its own polemic. On the one hand, the time limit for filing a lawsuit is an effort to uphold legal certainty. However, on the other hand, it is felt that the existence of this time limit has violated human rights to defend their interests before the law. At least Article 55 of the Peratun Law has been requested for review four times and decided by the Constitutional Court, namely in cases Number 1/PUU-V/2007 dated March 12 2007, Number 57/PUU-XIII/2015 dated November 16 2015, Number 76/PUU-XIII /2015 dated 15 June 2015, and Number 22/PUU-XIV/2018 dated 22 November 2018. The Constitutional Court in these four cases declared Article 55 of the Peratun Law to be constitutional. The position of the Constitutional Court can be followed through the following considerations, namely:

Every law that concerns state administrative decisions/determinations (beschikking), always stipulates a time limit. This is precisely to provide legal certainty (rechtszekerheid) regarding the decision/determination until when the decision/determination (beschikking) can be challenged in court.

The Constitutional Court also opined: "The limitation on how long state administration decisions/determinations can be challenged in court as stipulated in Article 55 of the Peratun Law is an open legal policy option for law makers that applies to all Indonesian citizens, so it does not is discriminatory because the a quo article does not treat the same thing differently."

The next problem is related to the starting point for determining the 90 day time limit for third parties who are not addressed by state administrative decisions but whose interests are harmed. Neither Article 55 nor the Explanation regulates when this time limit applies. To cover this legal vacuum, the Supreme Court issued SEMA Number 2 of 1991 which advised PTUN judges to determine the time limit for third parties on a "case by case" basis when the third party knows that their interests have been harmed and make this the starting point for calculating the time limit for filing a lawsuit. However, on another occasion, Indroharto - who participated in drafting SEMA Number 2 of 1991 - reminded PTUN judges not to be lax in determining the expiration date for filing a lawsuit for a third party. In fact, he suggests that third parties should not be treated differently from parties directly addressed by state administrative decisions (2003: 64-65).

MAIN PROBLEM

1. How is the deadline for filing a lawsuit for third parties who are not addressed by state administrative decisions?
2. What is the practice of state administrative courts in applying the deadline for filing lawsuits by third parties?.

METHOD OF RESEARCH

Research methods are an inseparable part of scientific research, therefore every research carried out must use research methods in order to obtain research results that are valid and accountable and based on authentic and systematic steps so that their scientific nature can be recognized (wetenschappelijk menstruation) .

This research is a type of normative (doctrinal) research which is a scientific procedure for determining truths that are based on the truth of legal logic from a normative perspective. Apart from that, it refers to the opinion expressed by Soerjono Soekanto, that one type of normative legal research is legal research as a norm.

Therefore, this research uses a normative approach, namely Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning State Administrative Justice and Law Number 30 of 2014 concerning Government Administration and Law Number 51 of 2009 concerning Amendments Second, Law Number 5 of 1986 concerning State Administrative Courts which is used as a basis for analyzing the study objects in this research.

RESEARCH RESULT AND DISCUSSION

A. Setting the Deadline for Filing a Lawsuit for Third Parties Who Are Not Addressed by the State Administrative Decree

As was pointed out in the introduction, Article 55 of the Peratun Law does not regulate in a limited way the method for calculating the grace period for third parties who are not addressed directly or are not the address addressed by the KTUN. To overcome this problem, the Supreme Court issued Supreme Court Circular Letter (SEMA) Number 2 of 1991 concerning Guidelines for the Implementation of Several Provisions in Law Number 5 of 1986 concerning State Administrative Courts, which in Chapter V states:

"For those who are not targeted by a state administrative decision but who feel their interests have been harmed, the time as intended in Article 55 is calculated casuistically from the time they feel their interests have been harmed by the State Administrative Decree and become aware of the existence of the State Administrative Decree."

Based on the legal construction of SEMA Number 2 of 1991 above, this means that the 90 day grace period for a third party to file a lawsuit must be calculated cumulatively from the time the third party concerned feels that their interests have been harmed and is aware of the existence of the KTUN. Regarding a State Administration Decree, a third party can find out either directly from the official who issued the KTUN, an announcement, through a request to the State Administration

party/official who issued the KTUN, or from other related parties.

In its development, the Supreme Court then issued SEMA Number 3 of 2015 concerning the Implementation of the Formulation of the Results of the 2015 Supreme Court Chamber Plenary Meeting as Guidelines for the Implementation of Duties for the Court. Letter E. The Legal Formulation of the State Administrative Chamber states that it principally changes or replaces the provisions relating to the method of calculating the grace period for third parties who are not addressed by the KTUN as the object of the dispute. This provision changes the calculation of the grace period for third parties from "from the time the person concerned feels that their interests have been harmed by a state administration decision and is already aware of the existence of the state administration decision" to being calculated "from the time the person concerned first becomes aware of a state administration decision that is detrimental to their interests." This SEMA does not substantially change the provisions of SEMA Number 2 of 1991. According to the author, this change is only an editorial modification of the sentence at the grammatical level only.

The issue of the deadline for filing a lawsuit is also related to the administrative efforts against the KTUN in question. Administrative courts only have the authority to examine, decide and resolve state administrative disputes if all administrative efforts have been exhausted. The Peratun Law determines that there are two forms of administrative efforts, namely administrative appeals and objections. Administrative appeals are resolved by

superiors or agencies other than those that issued the KTUN. Meanwhile, objection efforts are resolved themselves by the TUN Agency or Official who issued the KTUN. If the parties are not satisfied with the results of the administrative decision, a dispute can be submitted to the administrative court. In the context of the Peratun Law, the State Administrative High Court (PTUN) has absolute competence to examine, decide and resolve at the first level disputes regarding decisions resulting from administrative efforts. In this case, the formulation of Article 55 of the Peratun Law jo. SEMA Number 2 of 1991 regarding the 90 day grace period for filing a lawsuit by a third party is calculated from the first time they become aware of the decision resulting from administrative efforts that are detrimental to their interests. However, it must be noted that administrative efforts and mechanisms for filing lawsuits against the results of administrative efforts in the Regulations Law are only limited if the agency or official issuing the KTUN is authorized by the law which is the basis for the KTUN to be issued to complete administrative efforts. When the Peratun Law was passed, examples of disputes that accommodated administrative agencies included tax cases, civil servant discipline disputes, and labor disputes regarding Termination of Employment Relations (PHK). The deadline for submitting Ptun administrative efforts is not uniform. Each of them is regulated in the law which is the basis for the issuance of the KTUN in question. Efforts to unify administrative efforts emerged after the enactment of Law Number 30 of 2014 concerning

Government Administration (hereinafter referred to as the AP Law). There are at least three main things regarding administrative efforts regulated in the AP Law, namely: (i) the form and mechanism of administrative efforts, (ii) the deadline for submitting administrative efforts, and (iii) the absolute competence of the PTUN. First, the same as in the Regulations Law as described above, the form of administrative efforts in the AP Law consists of objections and appeals. An objection request is submitted to the agency or official that issued the KTUN, while an appeal request is submitted to the superior of the agency or official that issued the KTUN. Different from the Peratun Law, the administrative mechanism in the AP Law must be carried out in stages. The administrative appeal room can only be used if there are parties who are dissatisfied with the issuance of a decision resulting from an appeal. After that, the lawsuit to the administrative court can only be used after taking administrative objections and appeals. Second, the deadline for an objection request to be submitted is a maximum of 21 working days after the KTUN is announced. Meanwhile, the deadline for an appeal to be submitted is a maximum of 10 working days from the receipt of the decision resulting from the objection. Third, the court that has absolute competence to examine and decide cases at the first level after administrative measures have been taken is the State Administrative Court (PTUN). Therefore, The provisions for requests for administrative measures above do not only apply to parties addressed directly by the KTUN, but also to third parties who are not addressed directly. Article 75 paragraph (1) UUPA states:

"Community citizens who are disadvantaged by decisions and/or actions can submit administrative measures to government officials or superiors of officials who determine and/or carry out decisions and/or actions."

The phrase "community members" in the norms of Article 75 paragraph (1) of the AP Law opens up opportunities for third parties who are not directly addressed by the KTUN in question as long as the element of loss can be proven.

Regarding the legal standing of third parties, it is further regulated in Supreme Court Regulation Number 6 of 2018 concerning Guidelines for Resolving Government Administrative Disputes After Taking Administrative Efforts. Chapter IV specifically regulates the position of this third party. Article 4 paragraph (1) reads: "Interested third parties who are harmed by decisions on administrative efforts can file a lawsuit against the decisions resulting from the follow-up to these administrative efforts."

Then the deadline for filing a lawsuit is regulated in Article 5 paragraph (1) which reads:

"The time limit for filing a lawsuit in court is calculated as 90 (ninety) days from the time the decision on the administrative effort is received by the community member or announced by the government agency and/or administrative official who handles the resolution of the administrative effort."

Furthermore, Article 5 paragraph (2) states:

"Third parties who are not addressed by decisions resulting from follow-up administrative efforts, the time limit for

filing a lawsuit in court is calculated from the time the person concerned first becomes aware of a state administration decision that is detrimental to their interests."

The editorial formulation of Article 5 paragraph (2) of Perma Number 6 of 2018 identically adopts the same formulation in SEMA Number 3 of 2015 by determining the starting point for calculating the 90-day grace period for filing a lawsuit from when the person concerned first becomes aware of a state administration decision that is detrimental to their interests. Interestingly, the regulation of the third party formulation in Article 4 paragraph (1) and Article 5 paragraph (2) of Perma Number 6 of 2018 means that it opens up the possibility of the emergence of new third parties in disputes.

Apart from that, it is also necessary to pay attention to the judge's opinion in considering the court's decision in appeal case number 124/B/2020/PT.TUN.JKT, which was then confirmed by the Supreme Court through cassation decision number 505 K/TUN/2020 – case decision. Aquo's cassation is a cassation decision on appeal case number 124/B/2020/PT.TUN.JKT, in the phrase:

"Within a maximum period of 21 (twenty one) working days" in the provisions of Article 77 paragraph (1) of Law Number 30 of 2014 concerning Government Administration indicates an absolute time limitation which means that the use of administrative objection measures can only be carried out within the time limit which has been determined, cannot be done before the time (predini) and cannot be done after the time has passed (expired). "That when the deadline for

administrative measures is not implemented or has been exceeded (expired), then the use of judicial administrative dispute resolution efforts cannot be carried out, this is in accordance with the principle of *post est occasio calva* (those who do not use the opportunity given are considered to have expired and their rights are lost)."

That because the administrative efforts have expired, if in the future the Plaintiff makes administrative efforts in the form of an objection from the Plaintiff, then in accordance with the principle of *post est occasio calva* (those who do not use the opportunity given are deemed to have expired and their rights have been lost) the lawsuit must be declared inadmissible.

2. State Administrative Court Practices in Applying Deadlines for Filing Lawsuits by Third Parties

The grace period is very important in PTUN practice, because having a grace period will basically provide legal certainty regarding the decisions of state administrative officials, however, the provisions for filing deadlines are not only viewed from 90 days after the TUN official's decision, but need to be looked at. from a casuistic perspective, especially for third parties who are not addressed directly (addressat). The following are several TUN decisions relating to the deadline for filing lawsuits for third parties.

a. Decision Number 38/G/2021/PTUN.SMG

This case is a dispute between Agil Trimulyo and the Head of Godo Village regarding the appointment of David Silvianto as Secretary of Godo Village, Winong District, Pati Regency based

on the object of the dispute in the Decree of the Head of Godo Village Number 141.32/15 of 2020 dated 17 December 2020. In this case, the plaintiff is the named Agil Trimulyo has legal standing as a third party who is not directly addressed by KTUN but whose interests are harmed.

The decision of the Semarang State Administrative Court Number: 38/G/2021/PTUN.SMG provides a very interesting picture of the problem of the deadline for filing a lawsuit by a third party in a state administrative case, this can be seen from the basic considerations of the panel of judges in granting legal considerations regarding the issue of time limits, where the panel of judges did not only use the provisions in Article 55 of the Regulations Law which clearly states that "a lawsuit can only be filed within a grace period of ninety days from the time the decision of the State Administrative body or official is received or announced" apart from that, it also pays attention to the administrative efforts regulated in Articles 75 to s.d. 78 UU AP jo. Supreme Court Regulation Number 6 of 2018 concerning Guidelines for Resolving Government Administrative Disputes After Taking Administrative Efforts.

b. Decision Number 99 PK/TUN/2016

This case is a dispute between Joko Prianto, et al. and WALHI against the Governor of Central Java regarding the object of the dispute in the Decree of the Governor of Central Java Number 660.1/17 of 2012 dated 7 June 2012 concerning Environmental Permits for Mining Activities by PT. Semen Gresik (Persero) Tbk. in Rembang Regency. Feeling aggrieved by the publication of the disputed object, six residents of Rembang

Regency who work as farmers and the Indonesian Forum for the Environment (WALHI) sued the environmental permit decision given by the Governor of Central Java to PT. Semen Gresik Tbk. (now PT. Semen Indonesia Tbk.). The Plaintiffs argued that the existence of mining and cement production activities in the North Kendeng Mountains area, Rembang Regency, has the potential to pollute and/or damage the environment and eliminate the community's livelihood as farmers. What is interesting is the legal standing of the Plaintiffs, both community members and WALHI, who are qualified as third parties who are not directly targeted by the object of the dispute.

Previously, the case of Joko Prianto, et al. and WALHI against the Governor of Central Java have been examined and decided by the Semarang PTUN and Surabaya PTTUN and have permanent legal force. In the case registered under Number 064/G/2014/PTUN.SMG, the Semarang PTUN Panel of Judges granted Defendant II's exception to PTUN's intervention. Semen Indonesia Tbk. and stated that the lawsuit cannot be accepted (*niet ontvankelijk verklaard*) because the 90 day grace period for filing a lawsuit has exceeded or has expired. The Panel of Judges was of the opinion that Plaintiff I Joko Prianto was proven to have known about the decision on the object of the dispute since 22 June 2013 at the Rembang Deputy Regent's gathering at the Gunem District Hall which was also attended by Joko Prianto. This means that the Plaintiffs are considered to have known that their interests had been harmed as of June 22 2013, where the lawsuit registered on September 1

2014 had far exceeded the 90 day grace period as stipulated in Article 55 of the Peratun Law. Furthermore, in the appeal case registered under Number 135/B/2015/PT.TUN.SBY, the decision of the Surabaya PTTUN Appeals Panel of Judges upheld the Semarang PTUN Decision Number: 064/G/2014/PTUN.SMG.

Regarding the case which had permanent legal force, the Plaintiffs then submitted a request for extraordinary legal action for Judicial Review which was registered under Number 99 K/TUN/2016. The Plaintiffs submitted new evidence (*novum*) in the form of Garuda Indonesia flight tickets, boarding passes, flight statements, and emails from Garuda to Panin Tour, which showed that Joko Prianto on June 22 2013 flew from Pontianak to Cengkareng on a Garuda Indonesia flight number GA. 0507. Based on this *novum*, the Judicial Review Panel believes that Joko Prianto did not participate in the friendship between the Rembang Regency Government and PT. Semen Gresik Tbk. with residents of Gunem District on June 22 2013.

To assess when the potential for environmental damage and/or pollution due to the publication of the disputed object arose, the Judicial Review Panel was of the opinion that the Plaintiffs only knew for certain since a resident named Baskoro Budhi Darmawan provided information regarding the existence of the disputed object on June 18 2014. Thus, filing the lawsuit on September 1 2014 had not yet passed the 90 day period as stipulated in Article 55 of the Peratun Jo Law. Article 89 paragraph (1) Law Number 32 of 2009 concerning Environmental Protection

and Management (hereinafter referred to as UUPPLH).

The Panel of Judges for Judicial Review also believes that *judex factie* is only based on assumptions without sufficient evidence supporting that with socialization and publication through electronic and print mass media, the entire community in Rembang Regency is aware of the existence of the object of the dispute. However, objectively we must also consider the level of education and habits of the people, who are generally far from internet access or printed newspapers, so it cannot be generalized that all people in Rembang Regency are aware of the existence of the object of the dispute, let alone its consequences for the environment.

Based on these considerations, the Panel of Judges for Judicial Review decided to grant the petition from the Petitioner for Judicial Review and cancel the Surabaya PTTUN Decision which upheld the Semarang PTUN Decision and declared the decision letter which was the object of the dispute null and void.

This case shows the special characteristics of environmental state administration disputes that the factual element of environmental pollution and/or damage is not an absolute element. In other words, what is tested is the administrative aspect of the object of dispute. Therefore, the grace period for filing a lawsuit is calculated as 90 days from the time it becomes known that there is potential environmental damage and/or pollution (potential risk/potential loss) due to the publication of the disputed object. Moreover, the announcement of the object of dispute does not include potential damage and/or

pollution that might occur if the object of dispute is realized.

CONCLUSION

The conclusion obtained from this research is that the time limit for filing a lawsuit by a third party does not only refer to the provisions as regulated in Article 55 of the Regulations Law, but needs to consider and refer to other provisions relating to the time limit for filing. third party lawsuits such as Decision Number 41 K/TUN/1994 and SEMA Number 2 of 1991 concerning Guidelines for the Implementation of Several Provisions in Law Number 5 of 1986 concerning State Administrative Courts in Number V.

Therefore, third parties whose interests have been harmed can consider casuistry calculations since the third party feels that their interests have been harmed by the State Administrative Decree (KTUN). This needs to be paid attention to because the provisions as stipulated in Article 55 of the Regulations Law do not limitatively regulate how to calculate the grace period for third parties who are not addressed directly or are not addressed (addressat).

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