

Analysis of Law Evasion Effort to Avoid the 90 Days Time Requisite in Filing a Lawsuit to the State Administrative Court (Decision Number 51/G/2020/PTUN.PLG)

Adimas Gusti Darmansyah^{1,*} Rasji Rasji¹

¹Faculty of Law, Universitas Tarumanagara, Jakarta, Indonesia

*Corresponding author. Email: adimasd17@gmail.com

ABSTRACT

The case was the decision by the State Administrative Court on the lawsuit filed by a plaintiff on the location permit granted by the Office of National Land Agency to palm oil plantation firm in Banyuasin Regency, Analysis on the Administrative Court's decision amar revealed that the plaintiff had one various legal ways and loopholes as law evasion effort to win the case. Though the panel of judges dismissed the lawsuit, but it was based only on legal standing and ignored the decision by the court No.51/G/2020/PTUN.PLG on 90 days requisite in filling a lawsuit. This showed that the panel of judges was being unrigorous in handling the case.

Keywords: State Administrative Law, Law Evasion, Filing a Lawsuit, Unrigorous panel of judges

1. INTRODUCTION

The Republic of Indonesia is a legal state which means that all aspects of life in this country are regulated based on the rule of law, for the sake of an effort to realize an enforcement in Indonesia, therefore a legal product is needed to make it happen and this is a law that is used as legal protection. against human rights, especially in the protection of citizens from arbitrary actions of the authorities that are not in accordance with the law. In practice, there is always a relationship between government officials and the community which is usually caused by decisions from the government made by state officials with the aim of prospering the community. In the decision issued, it is very unfortunate that there is often a mismatch between the government and the people who are affected by it, because the decision issued by the state official may harm the community which then the incompatibility continues to become a State Administrative dispute. [1]

Basically, a State Administrative dispute occurs because of a person or a Civil Legal Entity who feels that his interests have been harmed by a State Administrative decision issued by a local official which contains State Administrative legal actions that are concrete, individual, final, and can lead to a legal consequence for a person or civil legal entity.[2] This legal action is the beginning of the birth of legal relations, namely interactions between legal subjects that have legal relevance or have legal consequences.[3]

However, in the process, in filing a lawsuit, there are several parties who carry out legal smuggling and one of the methods used by the Plaintiff is to first submit a letter of application to the State Administration Agency/Official that issued the product. For example, one example is by sending an application letter asking for information to the National Land Agency (BPN), namely the Agency where the State Administrative Product is issued in the form of a certificate, which from the period since the Plaintiff filed an application requesting information on the State Administrative Product from the date of issuance. the response from the State Administration Official regarding the application letter asking for information that has been sent, becomes the benchmark for starting the count of the 90 day period, where it is as if on that date the Plaintiff just found out that the Product from the State Administration Agency/Officer that was detrimental to the Plaintiff had been published.

In addition to the legal smuggling efforts made by the Plaintiff in order to hide the truth, another thing that needs to be highlighted is the Panel of Judges' inattention in accepting or not accepting a lawsuit, because if the Panel of Judges only looks at Article 53 of the Administrative Court Law regarding Legal Standing and ignores Article 55 of the Administrative Court Law. , it is possible that the Plaintiff who smuggled the law related to this time period could take proceedings and the attempt to conceal the facts and circumstances was successful only by fulfilling Article 53 of the Administrative Court Law, because the Panel of Judges

did not decide based on Article 55 of the Administrative Court Law regarding the 90-day period.

Whereas furthermore in this writing, the author will highlight one of the mandatory requirements that must be fulfilled by the parties who will have a case in the State Administrative Court, namely related to the problem of the period of time as stated in Article 55 of Law Number 5 of 1986 jo. Law No. 9 of 2004 jo. Law Number 51 of 2009 concerning the State Administrative Court.

Article 55 itself reads:

“A lawsuit can be filed only within a grace period of 90 (ninety) days from the time of receipt or announcement of the Decision of the State Administration Agency or Official.”

The State Administrative Court is an institution within the State Administrative Court where this institution has a position in the Regency or City Capital. As the First Level Court, the State Administrative Court has a function, namely to examine, decide, and resolve matters that are included in the realm of State Administrative disputes which are state administrations that carry out the function to administer government both at the center and at the regions. Based on the State Administrative Court Law, the State Administrative Court has the authority to regulate and manage actions taken by government officials such as resolving, examining and deciding State Administrative disputes. The State Administrative Court is established through a Presidential Decree with jurisdiction covering the city or regency area, where the composition of the State Administrative Court consists of the Chairperson, Member Judges, Registrar, and Secretary.

State Administrative Decisions based on Article 1 point 9 of Law 51 of 2009, the definition of State Administrative Decisions is a decision in the form of a written determination issued by a State Administration agency or official containing legal actions for State Administration based on the prevailing laws and regulations. applies, which is concrete, individual, and final, which has legal consequences for a person or civil legal entity.

Several formulations of State Administrative Decisions according to Article 1 point 9 of Law 51/2009 contain the following elements:

- Written determination;
- State Administration Agency or Official;
- State Administrative Legal Actions;
- Applicable laws and regulations

In addition to administrative efforts, the aggrieved party and wishing to settle a State Administrative dispute can make efforts through a lawsuit. In carrying out efforts to defend the rights of the aggrieved party, a settlement of State Administrative disputes through administrative efforts is relatively less, when compared to the settlement of State Administrative disputes through lawsuits, because if through administrative efforts it is only limited to certain "State

Administrative disputes. With the provisions regarding the settlement of State Administrative disputes through administrative measures as referred to in Article 48 paragraphs (1) and (2) of Law Number 5 of 1986, it can be seen that State Administrative disputes that are resolved through lawsuits are as follows:

- State Administrative Disputes for which administrative measures are not available for settlement, which are the laws and regulations that form the basis for the issuance of State Administrative Decisions that result in State Administrative disputes, there are no provisions regarding administrative measures that must be passed.

- State Administrative Dispute whose resolution has been through available administrative efforts and has received a decision from the State Administration or State Administration Officer who issued the State Administrative Decree, however, against the decision, a person or civil legal entity who feels aggrieved by the issuance of the Administrative Decree State Enterprises still can't accept it.

Deadline for filing a lawsuit, a lawsuit can be filed within 90 days, in accordance with Article 55 of the 1986 State Administrative Court Law, the 90 day grace period for filing a lawsuit is from the date the decision of the Agency or Government Official is issued or announced and here the party filing the lawsuit is called the First Party. or the party directly addressed to the decision, whereas according to SEMA No. 2 of 1991 which has been changed to No. 3 of 2015 in Part E Number 1 states that the calculation of the period of 90 days is from the time the person concerned or the party who is harmed by the decision of the State Administrative Official or State Administration Agency finds out even though the time has passed. 90 days by submitting a letter of objection or requesting information to the State Administration Agency that issued the State Administration Product which is considered detrimental and here the party filing the lawsuit is called the Third Party or the Party who is indirectly addressed for the decision.

The Judge's Inaccuracy, In the decision that the author analyzes, what is highly highlighted is the lack of foresight of the panel of judges on the smuggling carried out by the Plaintiff, because if the Plaintiff is a legitimate person to file a lawsuit in terms of fulfilling the Legal Standing, then the smuggling carried out by the Plaintiff can be successful without any legal consequences. The period of time is actually intended for the first party or the party who is directly addressed by the decision of the State Administration, while for third parties or parties who are not directly addressed there is a polemic in Article 55, but regarding this it can be found in SEMA No. 2 of 1991 which was changed to SEMA No. 3 of 2015 which reads:

"The grace period of 90 (ninety) days to file a lawsuit for a third party that is not addressed by the state administrative decision as referred to in Article 55 of Law Number 5 of 1986 concerning the State Administrative Court, which was

originally calculated from the time the person concerned feels that his interests have been harmed by a state administrative decision and already aware of the existence of the administrative decision, it is changed to be calculated from the time the person concerned first finds out about the state administrative decision that is detrimental to his interests.

This is what prompted the author to try to analyze legal smuggling efforts related to the 90-day period of filing a lawsuit with the State Administrative Court, considering that the concealment problem occurs quite often, but it is unfortunate that the Panel of Judges was not careful in seeing and considering it so that it could lead to concealment of facts. it runs without any legal consequences. In the decision that will be analyzed by the author, the author analyzes the Decision No.51/G/2020/PTUN.PLG. Where the disputing parties include Sudirman as the Plaintiff, the Head of the Land Office of Musi Banyuasin Regency as the Defendant, and PT Guthrie Peconina Indonesia as the Defendant II Intervention. While the object of the dispute is the Decree of the Head of the Land Office of the Musi Banyuasin Regency No.17/SK-IL/MUBA/1997 concerning Location Permits for the purposes of developing an oil palm plantation belonging to the Intervention Defendant I.

Based on the description of the background above, the panel of judges should be able to carry out their decision based on Article 55 of the Administrative Court Law regarding the filing of a lawsuit for a State Administration decision, but in this case the panel of judges did not heed these provisions with appropriate regulations related to the time period, therefore the authors are interested to raise this discussion into writing a thesis with the title "ANALYSIS OF LAW EVASION EFFORT TO AVOID THE 90 DAYS TIME REQUISITE IN FILING A LAWSUIT TO THE STATE ADMINISTRATIVE COURT (DECISION NUMBER 51/G/2020/PTUN.PLG)

2. METHOD

The data analysis technique used by the author is the Deductive Method. The use of the deductive method is derived from the submission of the major premise, then the minor premise is proposed so that from the two premises a conclusion can be drawn. Understanding Legal Material Processing Deductively is to explain something from things that are general in nature, then conclude it into a conclusion from things that are more specific in nature.

In this study, the data obtained by the author is to carry out an inventory of research studies of literature, laws and regulations and documents that aim to help interpret these norms in collecting data, then the results obtained are studied and analyzed to examine the problems faced Thus at the final stage, the author can draw conclusions from the interpreted data.

3. DISCUSSION

3.1 Law Evasion

In filing a lawsuit to the State Administrative Court, the time period is one of the mandatory requirements that must be met by the party who wants to file a lawsuit, because if the specified time (90 days) has passed, then the party who wants to file the lawsuit has lost his rights.[4] The establishment of the State Administrative Court in Indonesia is a tangible manifestation that aims to protect the rights of everyone from decisions that harm them. [5]

There are four variables for the person or party who is entitled to become a Plaintiff, one of these variables is related to the status of the Plaintiff in the decision analyzed by the author, namely that in Chapter V number 3 of SEMA No. 2 of 1991, dated July 3, 1991 (SEMA No. 2 of 1991), which reads as follows:

"For those who are not addressed by a State Administrative Decree but who feel that their interests have been harmed, the grace period as referred to in Article 55 is calculated on a case-by-case basis from the moment they feel that their interests have been harmed by the State Administrative Decree and become aware of the existence of the Decree."

Based on the explanation and description of SEMA No. 2 of 1991 above, it can be stated that the elements of the period that must be met by parties who are not directly addressed or third parties in a State Administrative Decree issued by the Government, namely the calculation of the time period for filing a lawsuit is calculated as ninety days on a case-by-case basis, also counted from the time he feels his interests have been harmed by and becomes aware of the decision. In the decision, it has been proven that the Plaintiff, Sudirman, made an attempt to smuggle the law on the pretext that he only knew about it since the Sekayu District Court Decision on July 14, 2020 and therefore to avoid the fulfillment of the period which had exceeded 90 days, Sudirman made efforts in the form of legal smuggling, and it is proven that Sudirman's efforts have been running smoothly, considering that the Panel of Judges did not consider the time period that had been violated by the Plaintiff, even though the decision was not accepted by the panel of judges because it was related to Legal Standing, but just suppose if the plaintiff is a people who fulfill Article 53 of the Administrative Court Law and the panel of judges do not see other articles, especially those related to Article 55 of the Administrative Court Law, then the legal smuggling efforts can run smoothly and successfully without causing legal consequences.

That the panel of judges was not observant in making legal considerations and proceeding to decide the case, resulted in the legal smuggling attempts attempted by the Plaintiff in filing a lawsuit in the State Administrative Court which was proven to have passed the time period specified by Article 55 of the Administrative Court Law which could run smoothly

without an obstacle, the panel of judges was seen in Case No. 51/G/2020/PTUN.PLG in making their legal considerations, where the Panel of Judges did not pay attention to and or raised the issue of the time period in their legal considerations, while the long-term problem was very clear. the time in filing a lawsuit in the State Administrative Court is a very important part as one of the conditions for the acceptance of the Plaintiff's claim in the State Administrative Court.

The purpose of the establishment and position of a state administrative court in a country is related to the philosophy of the state it adheres to. The Unitary State of the Republic of Indonesia is a legal state that was established based on Pancasila and the 1945 Constitution, therefore the rights and interests of individuals are upheld in addition to the rights of the people. Individual interests are balanced with the interests of society or the public interest. In addition, the purpose of establishing a state administrative court is to develop and maintain proper state administration according to law or according to law, as well as to provide legal justice and legal certainty, not only for the people but also for government institutions in the sense of maintaining and maintain the welfare of the public interest with the right to its interests. [6]

Through the Law on State Administrative Courts, any person who feels that his interests have been harmed by a government product in the form of a decision issued by an official or government can file an effort to resolve the dispute between that person and the State Administrative official who issued the decision through a lawsuit. . After the person who feels that his interests have been harmed, according to the basic regulations, there is no administrative action that must be taken first or the administrative effort has been taken but the results are still not satisfactory for him, then the person can file a lawsuit to the State Administrative Court within 90 days as stipulated in Article 55 of the State Administrative Court Law.[7]

Through the Circular Letter of the Supreme Court No.1 of 2017 concerning the Implementation of the Formulation of the Results of the Rpat Leno Chamber of the Supreme Court in 2017 as a Guide to the Implementation of Duties for the E. Legal Formulation of the State Administrative Chamber (SEMA No.1/2017), it was emphasized that the main objective of a PTUN's procedural law, namely in harmonizing the framework of harmonization for the purpose of material truth, in accordance with the standard priority theory of Gustav Radbruch, which essentially enforces/maintains material/substantive legal rules and not vice versa which only elevates matters related to procedural law formalities. to refuse to examine cases and find justice.The application of the grace period in filing a lawsuit to the court is important to provide legal certainty for a litigation process. The grace period for filing a lawsuit provides a time limit for a person or civil legal entity who feels that their interests have been harmed to defend and

fight for their legal rights and interests by filing a lawsuit to the State Administrative Court, which can be known as *bezwaartermijn*. In accordance with the related article, the calculation of the time period in filing a lawsuit to the Administrative Court is regulated in Article 55 of the Administrative Court Law which states that:

"A lawsuit can be filed only within a grace period of ninety days from the time of receipt or announcement of the Decision of the Agency or State Administrative Officer".

As for the ninety days calculated from the calendar calculation and not from working days, then both holidays and red dates are still counted

3.2 The Judge's Unrigorous

Whereas according to the decision, the Panel of Judges finally stated that they did not accept the lawsuit submitted by the Plaintiff, namely Sudirman, but in the final decision the panel of judges only saw and decided based on Article 53 of the Administrative Court Law on Legal Standing, and did not at all lift and or ignore Article 55 of the Law. Administrative Court regarding the period of time in filing a lawsuit. Although in the exception filed by the defendants, the defendants have tried to prove through written evidence that the Plaintiff, namely Sudirman, had already filed a lawsuit to the District Court in 2017 and at that time his claim was not accepted on the grounds of Legal Standing, and then this plaintiff filed a lawsuit. again in 2020, namely Decision No. 51/G/2020/PTUN.PLG and again it was not accepted but only related to Legal Standing, while the terms of the filing period that had passed 90 days were not heeded by the panel of judges. A panel of judges, in making a decision, must be based on clear and sufficient considerations.

As the author has described and discussed in the previous chapter, the determination of the terms of the time period in filing a lawsuit at the State Administrative Court is nothing but the application of the grace period in filing a lawsuit to the court to provide legal certainty for a legal process. With the grace period in filing a lawsuit at the State Administrative Court, therefore, it gives a time limit for a person or civil legal entity who feels that their interests have been harmed to defend and defend their legal rights and interests by making an attempt at a lawsuit to the State Administrative Court, which can be known as *bezwaartemijn* term, Considering that government stability is more important than individual personal interests, even though Article 24 of the 1945 Constitution of the Republic of Indonesia emphasizes that judicial power has a purpose to uphold law and justice. Therefore, the procedural law that regulates matters related to formal matters, including the period of filing a lawsuit to the Administrative Court must be seen in the context of realizing justice for all parties who feel aggrieved, not merely limiting the public in filing their lawsuits to the court. State Administrative Court.

Furthermore, the author will describe ways or efforts to avoid the terms and conditions of the period of Article 55 of the Administrative Court Law, where these methods are usually very understanding and aware of the Plaintiff's Attorney, Where is the way for case No. 51/G/2020/PTUN.PLG, The author sees the legal smuggling efforts made by the Plaintiff to avoid the fulfillment of Article 55 of the Administrative Court Law concerning the Time Period in filing a lawsuit to the State Administrative Court, in the form of efforts in the form of: really understand (of course the attorney) that if the Plaintiff directly files a lawsuit to the State Administrative Court over the object of the dispute in the form of a Location Permit that has been issued by the National Land Agency of Musi Banyuasin Regency, which is proven to have been published on October 14, 1997, surely the Plaintiff's lawsuit will be immediately declared not accepted by the Palembang Administrative Court, because it was proven that the object of the dispute being sued by the Plaintiff was in the form of a Location Permit which was proven to have been issued from 1997, so it has definitely passed the terms of the period to file a lawsuit at the State Administrative Court as regulated in Article 55 of the Law PTUN.

A panel of judges, in making a decision must be based on clear and sufficient considerations, a decision that does not meet the provisions can be categorized as a decision that is not sufficiently considered or on *voldoendegemotiveerd*, the reasons taken into consideration can be in the form of certain articles of legislation, customary law, jurisprudence or legal doctrine.[8] This is certainly not in accordance with the provisions where the panel of judges should in deciding a case examine all aspects of science and applicable provisions, where the panel of judges is obliged to decide a case using all related articles and regulations, therefore not only see only one chapter and ignore the other. Regarding the decision of a panel of judges who must decide cases by looking at all sides, this is emphasized in Article 178 paragraph (3) HIR/Article 189 paragraph (2) RGB and Article 50 RV, which states that the decision must be in total and order to examine and try every the lawsuit filed, may not only examine and decide in part and ignore other lawsuits, such a way of adjudicating is contrary to the principles outlined by the law.

Thus, the analysis that the author has carried out on the Decision on Case No. 51/G/2020/PTUN.PLG, can also be input for the Panel of Judges in deciding a case, so that with their knowledge they can always dig deeply in making considerations. the law, by using all the articles and related regulations, so that the legal smuggling efforts that the Plaintiffs are trying to avoid will not be missed.

That the judge's foresight in providing legal considerations on a case, of course, plays a big role, to prevent and hinder legal smuggling efforts which will certainly always be tried by the Plaintiff who will file a lawsuit to the State

Administrative Court, due to the terms and conditions of the period often becomes an obstacle for the Plaintiff in filing a lawsuit to the State Administrative Court, and ultimately makes the Plaintiff take steps that actually violate the law, in the form of legal smuggling efforts, as the author described above, which was taken by the Plaintiff (Sudirman) in case No. 51/G/2020/PTUN.PLG, but it was proven to run smoothly and smoothly, because of the lack of foresight of the Panel of Judges in seeing and providing legal considerations in this case, of course this condition could open up opportunities for other Plaintiffs to take methods and efforts. the same, that has been done by the Plaintiff (Sudirman) in an effort to avoid the terms of the period stipulated by Article 55 of the Administrative Court Law, which in the end will certainly create legal uncertainty in the future.

Thus, the analysis that the author has carried out on the Decision on Case No. 51/G/2020/PTUN.PLG, can also be input for the Panel of Judges in deciding a case, so that with their knowledge they can always dig deeply in making considerations. the law, by using all related articles and regulations, so that the legal smuggling efforts that the Plaintiffs are trying to avoid in avoiding the terms and conditions of the period as stipulated in Article 55 of the Administrative Court Law, with the Panel of Judges in making their legal considerations, do not only looking at one side of the article and ignoring other articles, even though the decision still states that it does not accept the plaintiff's claim, but with in-depth knowledge of the Panel of Judges, it can be the main filter so that similar smuggling attempts will never happen again.

4. CONCLUSION

That based on the data collected by the author, both written such as related articles and also field data, such as conducting interviews with legal counsel from the Defendant related to Decision No. 51/G/2020/TUN.PLG, therefore after the author of the analysis of this case, it is proven that in order to avoid the terms and conditions regarding the 90-day period as regulated in Article 55 of the Administrative Court Law, the Plaintiff has tried to find legal ways and loopholes to avoid the 90-day period, in the form and method of the Plaintiff. trying to obscure the issue of the terms and conditions of the 90-day period, by hiding the legal fact that the Plaintiff has known more than 90 days of the object of the dispute he is suing at the Palembang State Administrative Court, and it turns out that legal smuggling efforts to obscure the issue of the terms of the 90-day period can running smoothly, and nothing else could happen because of M .'s lack of vigilance the panel of judges in making and exploring this issue in depth in their legal considerations.

Suggestions from the author for the two formulations of the problem, namely, therefore the author hopes that with the

analysis that the author has carried out on the Decision of Case No. 51/G/2020/PTUN.PLG, as input for the panel of judges in deciding a case, so that with their knowledge they can always explore deeply in making legal considerations by using all the articles and related regulations, so that the efforts of legal smuggling that the Plaintiffs tried to evade the terms and conditions of the time period as specified in Article 55 of the Administrative Court Law, by not only looking at one article and ignoring other articles, even though the decision still states Not Accepting the Plaintiff's claim, but with a very deep knowledge of the Panel of Judges, it can be the main filter so that there will never again be attempts to smuggle law related to the terms and conditions of the Term as stipulated in Article 55 of this Administrative Court Law.

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