

## Legal Problems in Determining Factual Actions as Dispute Object of the State Administrative Court in Indonesia

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### Abstract

*This study's aim is to analyze how the concept development of State Administrative Decision (KTUN) in Indonesia. It is also to analyze the legal problems of determining factual actions as the dispute object in the Administrative Court because, after the promulgation of Law Number 30 of 2014 concerning Government Administration, there are some legal effects, especially after the emergence of factual action term as renewal. This study is normative research on the rules or the Law itself and the principle of positive Law by making legal materials the object of study. The approach used in the study is the approach of legislation and conceptual approach. The research data needed in this study is through the method of literature or documents and analyzed in a descriptive-qualitative way. The results showed that the KTUN before the Law Number 30 of 2014 is a written determination issued by a state administrative body or official containing administrative legal acts based on applicable laws and regulations, which are concrete, individual and final, giving rise to legal consequences for a person or civil legal entity. While the KTUN after the renewal is a written determination that includes factual actions, decisions of bodies and/or state administration officials in the executive, legislative, judicial, and other state administrations, based on the provisions of legislation and the General Principles of Good Government (AUPB), and final in a broader sense give decisions could have the potential to cause legal consequences, and/or could apply to citizens. The renewal is to cause problems such as chaos from the meaning of terminology, for example, the use of the term decision and or action. In addition, there is no specific explanation, so it is feared that legal norms are ambiguous, especially for judges in examining cases related to factual actions.*

**Keywords:** *Factual Action; Dispute Object; State Administrative Court.*

## Introduction

Indonesia is based on law country as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The consequence of the concept of a rule of law country certainly requires that all actions must be based on Law. The characteristics of the Indonesian rule of Law written by Philipus M. Hadjon in his book *Legal Protection for the People of Indonesia* are the existence of a relationship between the Government and the people based on the principle of harmony, functional and proportional relationship between state power, and dispute resolution through deliberation. The judiciary is the last resort to resolve conflicts within the state and requires a good balance between rights and obligations.<sup>1</sup>

Based on the country's goals, it can be seen that the function of the state is to organize general welfare in a country.<sup>2</sup> It implies that prosperity and justice must be created in the conception of the rule of Law. In line with the characteristics of the rule of law state requires the existence of an independent judiciary to carry out judicial power. Article 24, paragraph (1) of the 1945 Constitution states, "Judicial power is an independent power to administer justice in order to uphold law and justice".

Furthermore, Article 24 paragraph (2) of the 1945 Constitution also states, "Judicial power is exercised by a Supreme Court and judicial bodies under it within the judicial environment under it in the protection of the general court, the religious court environment, the military court, state administrative court environment, and by a Constitutional Court."<sup>3</sup> Thus, the judiciary is needed to resolve problems that occur based on the conception of the rule of Law for the welfare of society.

The existence of the State Administrative Court is also based on Article 10 paragraph (1) of Law Number 4 of 2004 concerning Judicial Power, which states that "Judicial power is exercised by a Supreme Court and judicial bodies under it, and by a Constitutional Court". The important role of administrative justice is due to the need to legally supervise government actions carried out in accordance with its objectives to realize the welfare of the people as widely as possible. It is, of course, in line with the concept of a rule of law state that a rule of law state must make a rule of Law as the highest norm in a state which is a derivative of the sense of justice felt by society.<sup>4</sup>

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<sup>1</sup> Philipus M. Hadjon, *Perlindungan Hukum bagi Rakyat di Indonesia*, (Surabaya : Peradaban, 2007), p. 85.

<sup>2</sup> Utrecht, *Pengantar Hukum Tata Usaba Negara Indonesia*, (Jakarta : Penerbitan dan Balai Buku Indonesia, 1957), p. 19.

<sup>3</sup> Pasal 24 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945

<sup>4</sup> Riawan Tjiandra, *Teori dan Praktik Peradilan Tata Usaba Negara*, (Yogyakarta : Kelompok Penerbit Universitas Atma Jaya, 2015), p. 2.

The existence of the Administrative Court (PTUN) is an effort by the Government to protect the rights of citizens from the power possessed by the state so that there is no abuse of authority by the authorities because the Government in a state has enormous power. As quoted from the book *Case and Materials on Constitutional and Administrative Law* which states, "governments wield considerable power."<sup>5</sup> It means that the Government in a state has enormous power, so a State Administrative Court is intended to limit abuses in government affairs.

In the State Administrative Court (PTUN), there is an dispute object: a state administrative decision is meant here. The relationship between the existence of decisions and the Administrative Court is very close. It happens because decisions are key in resolving administrative disputes in the State Administrative Court. The details of State Administrative decisions, which can be categorized as legal actions according to civil Law include State Administrative Decisions, which in this case include rejections which include civil Law. An example is a TUN decision in which the decision gives permission or refuses to sell an official residence to an employee. At the same time, the second is a decision that is united in a civil law action.<sup>6</sup>

In carrying out governmental tasks, the state uses Law Number 5 of 1986 concerning the State Administrative Court as a reference in running the Government. However, because it was felt that this Law was no longer relevant, a new regulation was issued, namely Law Number 30 of 2014, concerning Government Administration. This renewal is, of course, intended to provide new guidelines more in line with community developments.<sup>7</sup>

Based on Law Number 5 of 1986 concerning State Administrative Courts concerning State Administrative Courts, State Administrative Decisions are "a written determination issued by a State Administrative Agency or Official which contains State Administrative legal actions which are based on applicable laws and regulations, are concrete, individual, and final, which give rise to legal consequences for a person or civil legal entity."<sup>8</sup> If seen, of course, there are differences with Law Number 30 of 2014 concerning Government Administration. In Law Number 30 of 2014 concerning Government Administration, there is an expansion of absolute

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<sup>5</sup> Michael Allen and Brian Thompson, *Case and Materials on Constitutional and Administrative Law*, (New York : Oxford University Press, 2002), p. 14.

<sup>6</sup> Indroharto, *Usaha Memahami Undang-Undang Tentang Peradilan Tata Usaha Negara : Buku I Beberapa Pengertian Dasar Hukum Tata Usaha Negara*, (Jakarta : Pustaka Sinar Harapan, 1994), p. 118.

<sup>7</sup> Ridwan, dkk, *Perluasan Kewenangan Absolut PTUN*, (Yogyakarta: Kreasi Total Media, 2018), p. 98.

<sup>8</sup> Pasal 1 angka 3 Undang-Undang Nomor 5 tahun 1986 tentang Peradilan Tata Usaha Negara.

authority. Absolute competence is the authority of a judicial body to examine certain types of cases that cannot be examined by other courts, whether in the same court (District Court, High Court, or other judicial environments (District Court, Religious Court)).<sup>9</sup>

Based on Law Number 30 of 2014 concerning Government Administration, a difference can be seen regarding the meaning of State Administrative Decisions. It can be based on the provisions of Article 1 point 7 of Law Number 30 of 2014 concerning Government Administration which states that State Administration Decisions are "Written decisions issued by Government Agencies and/or Officials in administering government".

In Law Number 30 of 2014, there is an expansion of the absolute competency of PTUN for the State Administrative Decisions criteria, including factual actions. It implies that government administration is not meant only as a decision as stipulated in the Administrative Court Law, but also that determining the object of the dispute is factual action.

Thus, the Government Administration Law harmonizes or equates the term's decisions with actions. If we look at it, factual action is actually a term that is not yet known from the previous Law. Thus, the State Administrative Court handles the object of a dispute through government administrative actions originally tested by courts in the general court environment through acts against the Law by officials based on Article 1365 of the Civil Code. Not only that, in Article 85 of the Government Administration Law, which has been registered with the general court but has not yet been examined, with the enactment of Law Number 30 of 2014 concerning Government Administration, this Law is transferred and must be resolved by the PTUN.<sup>10</sup>

If we look back, administrative decisions have a very important function, namely those intended as government juridical instruments used by State Administrative Agencies or Officials in carrying out their duties and obligations in the field of government affairs.<sup>11</sup> Based on the change in the meaning of the State Administrative Decree from Article 87 letter a regarding a written determination which also includes factual actions, then *feitelijik handeling* or ordinary actions which were originally absolute competence by the general court are now due to changes in Law Number 30 of 2014 to become competence absolute Administrative Court.

In this case, if one looks at it in detail, positioning factual actions to be

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<sup>9</sup> Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, (Yogyakarta: Liberty, 1998), p.57.

<sup>10</sup> Ridwan, dkk, *Perluasan Kewenangan Absolut PTUN*, *Op. Cit.*, p. 94.

<sup>11</sup> Y. Sri Pudyatmoko dan Riawan Tjandra, *Peradilan Tata Usaba sebagai Salah Satu Fungsi Kontrol Pemerintah*, (Yogyakarta : Penerbitan Universitas Atma Jaya Yogyakarta, 1996), p. 38.

part of the absolute competence of the Administrative Court will certainly cause some confusion. First, when viewed from the definition of factual actions, which are actions aimed at a legal consequence, but can also cause legal problems, even more so if the factual action harms a person or civil entity.<sup>12</sup>

Based on the problems that occurred regarding the expansion of the authority of the State Administrative Court, namely in Article 87 letter a of Law Number 30 of 2014 concerning Government Administration that one of the criteria for State Administrative Court Decisions concerns written determinations which also include factual actions which confuse the public and are also feared to cause misinterpretation by Judges of the State Administrative Court. Because if there is confusion and legal problems, of course, it will have an impact on the decision issued by the Judge of the State Administrative Court

Based on the problems above, there are some questions in this study. First, how is the State Administrative Decisions (KTUN) concept before and after the promulgation of Law Number 30 of 2014 concerning Government Administration? Second, how is the legal problem of determining factual action as an dispute object at the State Administrative Court?

Furthermore, writing about the legal problems of determining factual action as the object of a dispute at the State Administrative Court after the author traces has not shown any similarities. Writing with related themes has indeed been done, but there are differences. First, which was written by Ridwan with the title Examination of Factual Actions and Unlawful Acts by the Government in the State Administrative Justice System, this research was conducted to analyze the basis for testing factual actions and unlawful acts by the Government in the PTUN system and to investigate the determination of compensation in cases of factual actions and illegal acts by the Government in the PTUN system.<sup>13</sup>

Second, research on Factual Action Dispute Resolution by Dede Anastasha Anggraini titled "State Administrative Court (Study of Decision Number 22/G/TF/2020/PTUN.BJM)." This study studied the decisions of the Banjarmasin State Administrative Court (PTUN), which rejected a lawsuit from the private sector against the Tanah Laut Regency government (TALA). The case is the TALA Regency Civil Service Police and Fire Department (Satpol-PP) temporarily stopped the construction of Pelaihari City Mall on

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<sup>12</sup> Ridwan, *Urgensi Upaya Administratif di Indonesia*, (Yogyakarta : FH UII Press, 2019), p.65.

<sup>13</sup> Ridwan. (2022) Pengujian Tindakan Faktual dan Perbuatan Melanggar Hukum oleh Pemerintah dalam Sistem Peradilan Tata Usaha Negara. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, [S.l.], v. 11, (1) 89-108, <https://ojs.unud.ac.id/index.php/jmhu/article/view/77264> p. 97.

June 19, 2020. The construction implementers did not accept the actions of the District Government TALA and then filed a lawsuit with the Banjarmasin State Administrative Court on October 15, 2020. In addition, this research was also intended to determine the legal basis of the decision made by the panel of judges.<sup>14</sup>

Third is a study conducted by Aju Putrijanti titled "Authorities and Objects of Disputes in the State Administrative Court After UU No. 30/2014 concerning Government Administration". This study examines the authority of the State Administrative Court and, second, the expansion of disputed objects that the State Administrative Court can try after the issuance of Law No. 30 of 2014 concerning Government Administration.<sup>15</sup>

Fourth, research conducted by Sudarsono with the title, "State Administrative Disputes After Law Number 30 of 2014 came into force". This research was conducted to find out how state administration disputes after the issuance of Law Number 30 of 2014 with a statutory and conceptual approach, which is intended to create harmonization and synchronization between the two laws and regulations so that legal protection will be realized for the people through handling disputes in a better State Administrative Court.<sup>16</sup>

Fifth, article by Sudiarawan, et.al., entitled Discourses on Citizen Lawsuit as Administrative Dispute Object: Government Administration Law vs. Administrative Court Law. This study slightly touches on the problems following the enactment of Law Number 30 of 2014 concerning Government Administration but focuses more on the discourse on citizen lawsuits.<sup>17</sup>

Research that analyzes the concept of State Administrative Decisions (KTUN) before and after the promulgation of Law Number 30 of 2014 concerning Government Administration and legal problems in determining factual actions as objects of dispute at the State Administrative Court has never been carried out, so this research is very important to do.

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<sup>14</sup> Dede Anastasha Anggraini. 2022. Penyelesaian Sengketa Tindakan Faktual oleh Pengadilan Tata Usaha Negara (Studi Putusan Nomor 22/G/TF/2020/PTUN.BJM). Skripsi, Jurusan Hukum Tata Negara, Fakultas Syariah UIN Antasari Banjarmasin.

<sup>15</sup> Aju Putrijanti, Kewenangan Serta Obyek Sengketa di Peradilan Tata Usaha Negara Setelah Ada UU No. 30 / 2014 Tentang Administrasi Pemerintahan, Jurnal MMH, Jilid 44 No. 4, Oktober 2015, p. 425.

<sup>16</sup> Sudarsono, (2017) Sengketa Tata Usaha Negara Pasca Berlakunya Undang-Undang Nomor 30 Tahun 2014, *Jurnal Tanjungpura Law Journal*, 1 (2), 159 - 176 <https://jurnal.untan.ac.id/index.php/tlj/article/view/24248>

<sup>17</sup> Sudiarawan, K. A., Karunian, A. Y., Mangku, D. G. S., & Hermanto, B. (2022). Discourses on Citizen Lawsuit as Administrative Dispute Object: Government Administration Law vs. Administrative Court Law. *Journal of Indonesian Legal Studies*, 7(2), 499-486. <https://doi.org/10.15294/jils.v7i2.60166>



This writing is normative legal research that uses library materials or secondary legal sources.<sup>18</sup> Secondary legal sources are legislation, namely the 1945 Constitution of the Republic of Indonesia, Law Number 5 of 1986 in conjunction with Law Number 5 of 2009 concerning the State Administrative Court, Law Number 30 of 2014 concerning Government Administration, and books related to State Administrative Law.

This paper uses a statutory, conceptual, and comparative approach. The source of research data needed in this research is literature or documents. Meanwhile, analyzing the data in this study uses a descriptive-qualitative method with a deductive method, namely, an understanding of the Law that starts with general matters.

## Discussion

### **The concept of State Administrative Decisions (KTUN) before and after the promulgation of Law Number 30 of 2014 concerning Government Administration**

The administrative court is essential to resolve disputes between the Government and citizens or civil legal entities due to government actions in the public sector which are outlined in the form of decisions that harm civil legal entities. In its existence, the administrative court functions as an institution that has the authority to examine and evaluate government actions in the public sector through assessment.<sup>19</sup>

Talking about Administrative Justice, of course, cannot be separated from administrative Law itself, which is a law regarding the powers and procedures of administrative bodies, which includes those that regulate the examination of administrative actions. "*Administrative law is the law concerning the powers and procedures of administrative agencies, including especially the law governing judicial review of administrative action*".<sup>20</sup> As it is known that one of the most important functions of administrative Law is to create guarantees for citizens against the policies of administrative agencies.

In addition, administrative bodies have the power to protect public interests that affect the rights and interests of citizens, as the author quotes that "*Een van de belangrijkste functions van het bestuursrecht is het scheppen van waarborgen voor de burgers met betrekking tot het handelen van bestuursorganen. Bestuursorganen hebben ter behartiging van het algemeen belang bevoegdheden die de rechten*

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<sup>18</sup> Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif : Suatu Tinjauan Singkat*, (Jakarta :Raja Grafindo Persada, 2003), p. 13.

<sup>19</sup> *Ibid*, p. 65

<sup>20</sup> Kennet Culp Davis, *Administrative Law Text*, ( Third Edition, ST. Paul, Minn., West Publishing Co., 1972.p. 1.

*en belangen van burgers kunnen aantasten*".<sup>21</sup> In administering the state, administrative law relates to the system of rules in which the exercise of government power must be controlled. This is in line with the legality principle that must have clear rules for every government action.

The author quotes the opinion of H.D. Van Wijk who stated that "Om het overheidsoptreden in te perken, en voorspelbaar en vrij van willekeur te maken, werd nu vereist dat de macht van de vorst aan vaste rechtsregels zou worden gebonden". According to the author, this means that rules are needed to limit government actions so that they can be free from arbitrariness in their actions.<sup>22</sup> Therefore, in the running, the Government must apply the principle of legality because the Government has enormous power; as quoted from the book *Case and Materials on Constitutional and Administrative Law*, "Governments wield considerable power."<sup>23</sup>

Thus it is necessary to apply the rule of Law in the system of government administration. The rule of Law implies that everything must be done according to Law. Applied to government power, this implies that any government authority that performs some actions must justify its actions by what is legal.<sup>24</sup> Legal protection for the people from government legal actions is a juridical means in the rule of Law to prevent or recover losses suffered by the people as a result of government legal actions which cause losses to the people based on the provisions of Article 1365 of the Civil Code.<sup>25</sup>

With the expansion of the meaning of State Administrative Decisions, of course, all provisions of the articles in the Law on State Administrative Courts, which in this case use the phrase State Administrative Decisions (KTUN), must be interpreted more broadly based on Article 87 of the Law on Government Administration. Thus, there is an expansion of the authority possessed by the State Administrative Court after Law Number 30 of 2014 concerning Government Administration.

In order to carry out its duties as a public servant, the state administration apparatus can issue various decisions or decrees. Based on Law Number 5 of 1986, the absolute authority possessed by the State Administrative Court is State Administrative disputes. In Article 1 point 4 it states that disputes arising in the field of State Administration between

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<sup>21</sup> P.M.B. Schrijvers and H.C.M. Smeets, *Staats-en bestuursrecht*, (Netherlands : Woltes Noordhoff, 2003), p. 441

<sup>22</sup> H. D. Van Wijk, *Hoofdstukken Van Administratief Recht*, (Vuga, s'Gravenhage, 1995), p. 2.

<sup>23</sup> Michael Allen and Brian Thompson, *Case and Materials on Constitutional and Administrative Law*, (New York : Oxford University Press, 2002), p. 14.

<sup>24</sup> Sir William Wade and Christopher Forsyth, p. 20

<sup>25</sup> Riawan Tjandra, *Hukum Admitrasi Negara*, (Jakarta, Sinar Grafika, 2018), p. 207.



individuals or Civil legal entities and State Administrative Agencies or Officials, both at the centre and in the regions, as a result of the issuance of a State Administration Decree, which includes personnel disputes are regulated based on Applicable Laws and Regulations.

Meanwhile, the State Administrative Decree is listed in Article 1 point (3) of Law Number 5 of 1986, which states that a State Administrative Decision is a written decision issued by a State Administrative Agency or Official which contains a State Administrative legal action based on applicable laws and regulations, which are concrete, individual and final in nature which give rise to legal consequences for a person or civil legal entity. The State Administrative Court in Indonesia is not competent to adjudicate disputes between one State Administrative Body and another State Administrative Agency. According to the Government, disputes between State Administrative Bodies can be resolved within the Government itself.<sup>26</sup>

State Administrative Decree according to Law Number 5 of 1986 Article 1 point 3 in conjunction with number 9 Law Number 51 of 2009, namely, "A written determination issued by a state Administrative Agency or Official, which contains state administrative legal actions, based on the applicable laws and regulations, which are concrete, individual and final in nature, which give rise to legal consequences for a person or a Civil Law Entity." Furthermore, according to the provisions of Article 1 point 9 of Law Number 51 of 2009, it can be referred to as a State Administrative Decree, the elements contained in the definition cumulatively must be fulfilled. Thus, if one of the elements is not fulfilled, it cannot be referred to as a State Administrative Decision according to the provisions contained in Article 1 number 9 Law Number 51 of 2009, so the State Administrative Court does not have the authority to adjudicate it.<sup>27</sup>

First, a written determination is issued by a State Administrative Agency or Official. A written determination is a benchmark used as the basis for disputes in administrative justice or is an absolute competence of administrative justice or a horizontal benchmark of the National Administrative Court. The intended written determination is not aimed at the formal form of the decree but refers to its contents. It causes a memo or note to be used as a decision by a state administrative body/official, which can also be used as the dispute object. Then, suppose it is connected with the written element. In that case, it can be correlated with Article 3 of Law Number 5 of 1986 that the state administration body or official does not issue a decision being applied for while this is their obligation. Then this is

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<sup>26</sup> SF. Marbun dan Moh. Mahfud MD, *Pokok-Pokok Hukum Administrasi Negara*, (Yogyakarta : Liberty, 2006), p. 19.

<sup>27</sup> S.F. Marbun, *Hukum Administrasi Negara 1*, (Yogyakarta : FH UII Press, 2018), p. 304.

equated with a KTUN.

Second, issued by State Administrative Agencies or Officials, namely those who carry out executive government affairs, both at the centre and in the regions. Third, it contains state administrative legal actions, namely government actions that give rise to certain legal consequences for those affected by these actions and legal actions are divided into two, namely private and public legal actions. Fourth, based on the applicable laws and regulations, namely in accordance with the principle of the rule of Law or the principle of legality, where every action taken by the state administration must be based on regulations which include the authority to take action, Fifth, it is concrete, individual and final. Concrete means that the object decided in the state administrative decisions is not abstract but tangible, certain, or can be determined.

Furthermore, in what case to whom the KTUN was issued must be clearly stated in the decision. The object and subject of the dispute must be stated explicitly and clearly in the decision. Furthermore, the individual, namely KTUN is not intended for the public but is certain of the address and the thing to be addressed. While final means that the decision is already definitive, so it only has certain legal consequences. Finally, it creates legal consequences for a person or civil law entity: legal subjects are humans (person) and legal entities (*rechtsperson*). The emergence of a legal entity as a legal object is due to demands to fulfill legal needs.<sup>28</sup>

Legal subjects in this administrative Law are human beings, legal entities, and their positions that can take action in the Administration of government affairs.<sup>29</sup> P. Nicolai, L.J.A. Damen said that, "Een natuurlijke person of een rechtsperson is normadressaat van een ambtshalve door een bestuurorgaan genomen besluit" which means an individual or legal entity.<sup>30</sup> In administering the state, the Government takes government action, namely both real action (*feitelijkhandelingen*) and legal action (*rechtshandelingen*). Factual action is irrelevant to the Law, so it does not give rise to legal consequences. Meanwhile, legal actions are actions that give rise to certain legal consequences by their nature.<sup>31</sup>

Law Number 30 of 2014, concerning Government Administration, has become a new paradigm in the proceedings at the State Administrative Court. The changes in the articles contained in Law Number 30 of 2014 concerning Administration, for example, can be seen from the regulation of administrative efforts, discretion and also the expansion of objects of State

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<sup>28</sup> S.F. Marbun, *Peradilan Administrasi Negara dan Upaya Administratif di Indonesia*, (Jogjakarta: UII Press, 2003), p. 109-120

<sup>29</sup> Ridwan, *Hukum Administrasi di Daerah*, (Yogyakarta : FH UII Press, 2009), p. 80

<sup>30</sup> P. Nicolai, *Bestuursrecht*, (Amsterdam, 1994), p. 98

<sup>31</sup> Ridwan, *Hukum Administrasi Negara*, (Jakarta : Raja Grafindo Persada, 2007), p. 113.

Administrative Decisions that can be challenged in the State Administrative Court where this can be seen in the provisions of Article 87 of Law Number 30 of 2014 concerning Government Administration.<sup>32</sup>

Thus it can be observed that the Administrative Court (PTUN) is an effort by the Government to protect the rights of citizens from the power possessed by the state so that there is no abuse of authority by the authorities. In carrying out governmental tasks, the state uses Law Number 5 of 1986 concerning the State Administrative Court as a reference in running the Government. However, because it was felt that this Law was no longer relevant, a new regulation was issued, namely Law Number 30 of 2014, concerning Government Administration. This renewal is, intended to provide new guidelines more in line with community developments.<sup>33</sup>

The object of the dispute being tested in the State Administrative Court has expanded in the Government Administration Law Number 30 of 2014, which is limited to written decisions and factual actions. In this case, there has been a change in the criteria that are the dispute object in Article 87 letter a in Law Number 30 of 2014. It has caused many interpretations and also confusion for the public. However, some argue that Article 87 Letter a of the Government Administration Law Number 30 of 2014 does not provide the authority for the State Administrative Court to examine the factual actions of government agencies or officials but only examines decisions that are the scope of factual actions, for example, demolition warrants of building. By not being given the authority to examine the factual actions of Government Agencies or Officials, lawsuits against government factual actions are still under the jurisdiction of the general court based on Article 1365 of the Civil Code, namely concerning unlawful acts committed by the Government.<sup>34</sup>

Factual actions are actions taken by the Government to serve the people's factual or material needs and are not intended to cause legal consequences in this case. The promulgation of Law Number 30 of 2014 led to an expansion of the authority possessed by the State Administrative Court. A written determination is not only in the form of writing anymore but also a determination interpreted in the form of factual actions. The written determination in the State Administrative Court Law must fulfill the elements, namely the form of the determination must be written, issued by the TUN

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<sup>32</sup>Muhammad Amin Putra, *Keputusan Tata Usaha Negara yang Berpotensi Menimbulkan Akibat Hukum Sebagai Objek Sengketa di Pengadilan Tata Usaha Negara*, Jurnal Hukum PTUN Vol. 3 No. 1 Februari 2020, p. 2.

<sup>33</sup>Ridwan, dkk, *Perluasan Kewenangan Absolut PTUN*, (Yogyakarta: Kreasi Total Media, 2018), p. 98.

<sup>34</sup>Tri Cahya Indra Permana, *Catatan Kritis Terhadap Perluasan Kewenangan Mengadili Peradilan Tata Usaha Negara*, (Yogyakarta : Genta Press, 2016), p. 41.

Agency or Officer, contains TUN legal actions, based on applicable laws and regulations, is concrete, individual and final and has consequences law for a person or civil legal entity.<sup>35</sup>

Thus after the promulgation of Law Number 30 of 2014, it provides a different concept regarding State Administrative Decisions. Then further on the decision criteria discussed in Article 87 of Law Number 30 of 2014 concerning Government Administration that the TUN decision criteria are interpreted in several ways, namely

- a. A written determination that also includes factual actions.
- b. Decisions of State Administrative Agencies and/or Officials in the executive, legislative, judiciary, and other state administration.
- c. Based on statutory provisions and the General Principles of Good Government (AUPB).<sup>36</sup>
- d. It is final in a broader sense.
- e. Decisions that have the potential to cause legal consequences and/or
- f. Decisions that apply to citizens.<sup>37</sup>

Based on the differences in the concept of State Administrative Decisions before and after Law Number 30 of 2014 concerning Government Administration, it certainly gives rise to different concepts in the dispute resolution process at the State Administrative Court, especially in written decisions that include factual actions. It expands the authority given to the State Administrative Court from the previous Law. However, according to the writing, this difference certainly needs to be appreciated because this administrative law reform intends to adjust or harmonize with societal developments. However, if this is not explained again in concrete terms about how the mechanism of the scope of factual action, which is now the dispute object in the State Administrative Court, in this case, the State Administrative Decision, will certainly cause problems, starting from confusion in society, implementation in the settlement process disputes, and matters relating to dispute resolution at the State Administrative Court.

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<sup>35</sup> Indroharto, *Usaha Memahami Undang-Undang Tentang Peradilan Tata Usaha Negara*, (Jakarta: Pustaka Sinar Harapan, 1993), p.163

<sup>36</sup> According Law No. 30 of 2014 concerning Government Administration, The general principles of good governance (AUPB) consist of several principles that must be implemented in every public service: legal certainty, public interest, expediency, openness (transparency/accountability), impartiality/nondiscrimination, accuracy, not abusing authority, good service. It is adopted from United Nations Development Programme (UNDP) see Misbahul Mujib, M., Mustari Kurniawati Muchlas, (2023), Achievements and Challenges of Human Rights Protection Policy in Realizing Good Governance in Indonesia and China, *Journal of Human Rights, Culture and Legal System (JHCLS)* Vol 3, No 2 p. 328-360 <https://doi.org/10.53955/jhcls.v3i2.98>

<sup>37</sup> Pasal 87 Ketentuan Peralihan UU Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan.

## 2. Legal Problems in Determining Factual Actions as Objects of Disputes in State Administrative Courts

After the promulgation of Law Number 30 of 2014 concerning Government Administration, it provides an expansion of authority to the State Administrative Court to examine and assess disputes over government actions and or acts against the Law by government agencies or officials, causing legal problems due to the disproportionate use of legal terms. so often lead to misperceptions. Then if referring to Article 87 letter a of Law Number 30 of 2014 that if there is a factual action from the ruler or state administration agency or official which in this case is against the Law or perhaps detrimental to the interests of a person or civil legal entity, then it becomes the absolute competence of the Administrative Court State.<sup>38</sup>

The expansion of absolute authority regulated in Law Number 30 of 2014 concerning Government Administration which makes the object of State Administrative disputes, raises problems such as confusion of the terminology meaning, for example, the terms decisions and or actions are widely used. Therefore, with the expansion of authority, there are many criticisms from administrative law experts. The phrases of decisions and/or actions certainly give rise to ambiguous and confusing meanings that will make it difficult for State Administrative Court judges to try cases and open up opportunities for free interpretation that only follows certain groups' will. In addition, in Law Number 30 of 2014 concerning Government Administration in Article 87 letter a regarding the object of the dispute, namely factual actions are only regulated in transitional provisions, and there is no specific explanation, so this creates difficulties for judges of the State Administrative Court in examining cases of factual action.<sup>39</sup>

With regard to factual actions in the transitional provisions of Article 87 of Law Number 30 of 2014 concerning Government Administration, it is also in line with Article 85, which expands the authority of the State Administrative Court. Article 85 reads, "Submission of a government administration dispute lawsuit that has been registered with a general court but has not been examined, with the enactment of this law is transferred and

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<sup>38</sup> Ridwan, Ridwan. (2022) Pengujian Tindakan Faktual dan Perbuatan Melanggar Hukum oleh Pemerintah dalam Sistem Peradilan Tata Usaha Negara. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, [S.l.], v. 11, (1) 89-108, <https://ojs.unud.ac.id/index.php/jmhu/article/view/77264> p. 97.

<sup>39</sup> Despan, Heryansyah 2017. Pergeseran Kompetensi Absolut Peradilan Tata Usaha Negara, *Jurnal Hukum Novelty* 8 (1): 35-50. <http://dx.doi.org/10.26555/novelty.v8i1.a5525>. p. 40

resolved by the court".<sup>40</sup> Thus, the expansion of the State Administrative Court's authority is very clear with the promulgation of Law Number 30 of 2014 concerning Government Administration.

Factual action as government action cannot be separated from the principle of legitimacy in Government or *rechmatigheids van bestuur*, which is an alternative in controlling every government action. But not only that, this principle is also oriented towards providing guarantees regarding the certainty of legal protection aimed at government officials who are the administrators of Government. At the same time, the people are the object of administering Government in a country. Thus, every government action must be based on legitimacy in accordance with the authority, procedure, and substance based on the applicable laws and regulations and the General Principles of Good Governance.<sup>41</sup>

Factual actions which are currently used as criteria for objects of dispute in the State Administrative Court are emphasized by the issuance of Perma Number 2 of 2019 concerning Guidelines for Dispute Resolution of Government Actions and Authority to Tries Unlawful Acts by Government Bodies and/or Officials (*Onrechtmatige Overheidsdaad*).<sup>42</sup> Article 87 of Law Number 30 of 2014 has consequences that the process of filing a lawsuit against factual actions, which was originally the authority of the General Court through lawsuits against the Law, then Law Number 30 of 2014 states that it can be the object of a dispute that the State Administrative Court tries. Determination of factual actions as the dispute object at the State Administrative Court raises several legal issues because the change in authority to make factual actions the dispute object is only regulated in the transitional provisions, namely Article 87 of the Government Administration Law.

The determination of this factual action is a rule that is still unclear. It occurs because there is no further and specific explanation about how the concept of factual action is a change from Law Number 5 of 1986 concerning the State Administrative Court. Of course, this is also in line with what is known in the concept of administrative Law that there are two types of government action or *bestuurshandelingen*, namely legal action (*rechtshandelingen*)

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<sup>40</sup> Pasal 85 Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan.

<sup>41</sup> Indroharto, *Op. Cit.*, p. 85.

<sup>42</sup> Haq. M., M., & Ilyas, A. (2022). Decision Concepts State Administration Post Entry into Law Number 30 Of 2014 Concerning Government Administration. *Al-Risalah Jurnal Ilmu Syariah Dan Hukum*, 164-183. <https://doi.org/10.24252/al-risalah.vi.34008>. Look also Hidayat Pratama Putra, *Tantangan Dalam Penanganan Perkara Tindakan Administrasi Pemerintahan Di Peradilan Tata Usaha Negara*, Jurnal Hukum Peratun Vol. 5 No.1 Februari 2022, p.77.



and factual government action (*feitelijke handelingen*). Several administrative law experts stated that they did not focus enough on this factual action because it was unrelated to authority and did not cause legal consequences.<sup>43</sup>

It is feared that the existence of factual action as an dispute object in the State Administrative Court will lead to differences in the terms and concepts of factual action and the legal consequences of factual action. It is due to the absence of a specific assessment of the consequences of using government factual measures.<sup>44</sup> Thus, if one looks closely, in the author's opinion, the determination of factual action as the dispute object at the State Administrative Court, which is still confusing among the public and judges, will injure the purpose of the Law itself, namely to provide legal certainty. There should be no difference in legal norms in interpreting the scope of factual action.

As stated by Bagir Manan, the substance of legal certainty includes several things, namely the certainty of laws and regulations that will be used or applied, the certainty of authority, namely the certainty of officials to serve or determine or decide on a relationship of legal events, there is certainty time related to the completion of services and law enforcement, the certainty of a process that generalizes objects without discriminating between people, and the certainty of obligations, namely the burden that justice seekers must bear.<sup>45</sup>

However, even so, determining factual actions as the object of a state Administrative Court dispute can potentially cause problems in its implementation. It is mainly due to a lack of regulation and inadequate laws and regulations to explain more about the concept. It will later lead to misinterpretation of the concept of factual action. Not only that but perhaps the problem is if this factual action is included in an unlawful act. Of course, there will be questions and confusion that, basically, the unlawful act is positioned on the individual who commits the unlawful act or the position he has. Therefore, this creates confusion and uncertainty, greatly affecting the dispute resolution process at the State Administrative Court.

Determination of factual actions as the object of a dispute at the State Administrative Court also raises legal issues. Namely, it becomes a legal issue for judges to resolve disputes at the State Administrative Court. It can subsequently cause conflict due to variations in interpretation in the implementation stage based on Law Number 30 of 2014 concerning Government Administration. It is, of course, very potential to happen

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<sup>43</sup> S.F. Marbun dan Mahfud MD, *Op. Cit.*, p. 168.

<sup>44</sup> Arwanto, Bambang. 2016. "Perlindungan Hukum Bagi Rakyat Akibat Tindakan Faktual Pemerintah". *Yuridika* 31 (3):358-83. <https://doi.org/10.20473/ydk.v31i3.4857>, p. 363.

<sup>45</sup> Bagir Manan, *Sistem Peradilan Bermibawa*, (Jakarta : FH UI Press, 2005), p. 60.

because State Administrative Decisions are the legal basis for the Government to act within the state.

Thus it can be understood that when factual actions are left to their authority, if the trial lies with Administrative Court judges, then on the one hand, it is no longer relevant to be tested based on public Law. On the other hand, Administrative Court judges are not given the authority to apply civil law norms. Even though factual actions are not actions that give rise to legal consequences, in practice, they must be in harmony with the Law in the sense that if factual actions bring harm to certain parties, as happens in administrative actions, legal responsibility in the form of a compensation claim cannot be separated from the perpetrator of the factual action.<sup>46</sup> But again, the fundamental question that has not yet been regulated is whether this unlawful act is attached to the individual or his position. Not only that, the authors see other legal problems in determining factual actions as the dispute object in the State Administrative Court is the argument used in filing a lawsuit in the State Administrative Court because previously the factual action was sued with an unlawful act dispute which was initially submitted to the General Court, based on Article 1365 of the Civil Code which the author previously described. However, what will become a legal problem with the new provisions in Law Number 30 of 2014 is whether Article 1365 of the Civil Code can also be used as a legal basis in filing a lawsuit against the Law by the Government at the State Administrative Court.

Thus, after the issuance of Law Number 30 of 2014 concerning Government Administration, it created legal problems due to the expansion of the authority possessed by the State Administrative Court. It is very visible, for example, from the term factual action as the dispute object in the State Administrative Court after the enactment of Law Number 30 of 2014 concerning Government Administration; it is feared that it will lead to differences in how the terms and concepts of factual action and the legal consequences of these factual actions will impact on legal uncertainty that disrupts law enforcement.

## Conclusion

KTUN, according to Law Number 5 of 1986, is a written stipulation issued by a State Administrative Agency or Official containing a State Administrative legal action based on applicable laws and regulations, which is concrete, individual, and final, giving rise to legal consequences for a person or civil legal entity. Whereas State Administration Decrees based on Law

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<sup>46</sup> Asimah, D., Zainal Muttaqin, & Dewi Kania Sugiharti. (2021). Implementasi Perluasan Kompetensi PTUN dalam Mengadili Tindakan Faktual (Onrechtmatige Overheidsdaad/Ood). *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan*, 4(1), 152-170. <https://doi.org/10.23920/acta.v4i1.531>, p. 168.

Number 30 of 2014 concerning Government Administration are written stipulations which also include factual actions, decisions of State Administrative Agencies and/or Officials in the executive, legislative, judiciary, and other state administration based on statutory provisions invitations, and AUPB, are final in a broader sense, decisions that have the potential to cause legal consequences, and/or decisions that apply to members of the public.

The legal problems of determining factual actions as the dispute object at the State Administrative Court are. First, the expansion of absolute authority regulated in Law Number 30 of 2014 concerning Government Administration which makes the object of State Administrative disputes raises problems such as confusion about the meaning of terminology. For example, the term decision or action is widely used. Second, Law Number 30 of 2014 concerning Government Administration is only stated in Article 87 concerning the object of factual action disputes. Still, there is no specific explanation, so there is concern that legal norms will be blurring, especially for judges, when examining cases related to factual actions. Inadequate laws and regulations to explain a concept will later lead to misinterpretation of the concept of factual action. Third, factual actions encompass unlawful acts. It brings up questions and confusion that these unlawful acts are positioned on individuals who commit unlawful acts or the positions they hold. Confusion and uncertainty will greatly affect the dispute resolution process at the State Administrative Court.

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