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FACTUAL ACTION AS ADMINISTRATIVE DISPUTES (PROHIBITION OF MISLEADING LAWSUIT BETWEEN THE ADMINISTRATIVE DECISION AND THE FACTUAL ACTION)

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Abstract

This article attempts to comprehend the ideal concept of factual action and analyzes factual action as an object of dispute in the Administrative Court ("Peratun") in relation to the prohibition of misleading the administrative decision ("KTUN") and the factual action. The research method uses normative research with conceptual, statutory, and case approaches. The results show the complexity of factual action related to examine the factual action and also the double-checking system of administrative tort. First, by classifying an object as the factual action or KTUN, and second, by examining factual actions as the administrative tort by government agencies/officials which are clashing/not clashing to the statutory regulations nor general principles of good governance. Furthermore, the misleading lawsuit can occur when the lawsuit disrupes/reverses the definition of each object, both KTUN and factual actions. The cumulation of objects among KTUN with factual actions is possible as long as there are interrelated legal character (innerlijke samenhang) of objects, prioritize the speedy trial, simple, and low-cost principle, and the principle of utility (bring justice closer to the people).

Keywords: ***Factual Action, Administrative Decision, Misleading Lawsuit, Cumulation of Lawsuit.***

Introduction

The objects of disputes in the Administrative Court ("Peratun") encounter the expansion object after the promulgation of Law Number 30 of 2014 about Government Administration ("Government Administration Law"). The presence of the Government Administration Law has paradigmatically resulted the dynamics of administrative decision ("KTUN") regulation which expands the absolute competence of Peratun.[1] In other words, the Government Administration Law deconstructs the legal criteria of object disputes in Peratun so that previously excluded as the object of administrative dispute ("TUN") is now possible to become the object of dispute in Peratun.[2]

The legal basis of Peratun to adjudicate the administrative action is regulated in Supreme Court Regulation Number 2 of 2019 about Guidelines for Resolving Disputes of Government Actions and the Authority to Adjudicate Administrative Tort by Government Agencies and/or Officials/*Onrechtmatige Overheidsdaad* ("Perma Number 2 of 2019"). This provision inflicts the transition of absolute competence in adjudicating cases of administrative tort by government bodies and/or officials from the Ordinary Court to the Administrative Court ("PTUN").[3] One of the first cases which had adjudicated the expansion of the object dispute in the form of administrative action was case number

[1] Dian Agung Wicaksono, et al. (2020). "Diskursus Kompetensi Absolut Pengadilan Tata Usaha Negara dalam Mengadili Perbuatan Pemerintah dalam Pengadaan Barang/Jasa", *Jurnal Rechtsvinding*, 9 (3), 367-386, p. 371. http://dx.doi.org/10.33331/rechtsvinding.v9i3.512. Lihat juga dalam Francisca Romana Harjiyatni dan Suswoto, dkk. (2017). "Implikasi Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan terhadap Fungsi Peradilan Tata Usaha Negara", *Jurnal Ius Quia Iustum*, 24(4), 601-624. DOI: 10.20885/iustum.vol24.iss4.art5, p. 602.

[2] Enrico Simanjuntak. (2018). "Perkara Advokasi Publik Pasca Berlakunya Undang-Undang Administrasi Pemerintahan (UUAP)", *Jurnal IUS Kajian Hukum dan Keadilan*, VI (1), 16-33. https://doi.org/10.29303/ius.v6i1.535, p. 16.

[3] Mahkamah Agung, Peraturan Mahkamah Agung Nomor 2 Tahun 2019 tentang Pedoman Penyelesaian Sengketa Tindakan Pemerintahan dan Kewenangan Mengadili Perbuatan Melanggar Hukum oleh Badan dan/atau Pejabat Pemerintahan (*Onrechtmatige Overheidsdaad*), Berita Negara No. 940. Article 11 *jo*. Article 1 number 9. See also Yodi Martono Wahyunadi. (2016). "Kompetensi Absolut Pengadilan Tata Usaha Negara dalam Konteks Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan", *Jurnal Hukum dan Peradilan*, 5(1), 135 - 154, p. 141.

20/G/2017/PTUN.Mdo.[4] The object of dispute in this case is the factual action is installation of signpost by the North Sulawesi Provincial Government.[5]

The transition of absolute competence above and the complexity of government actions that can be used as objects of dispute in Peratun are issues in this article so that require the particular assessment because it is not easy to implementation. Furthermore, the complexity of government action can be seen through the intersection between legal action and factual action which is the legal action is not always found in written form but also unwritten form (*ongeschreven publiekrechtelijke rechtshandelingen*).[6]

Rene Seerden and F.A.M. Stroink state the factual action is not always the physical form but also the factual action can be in the written form (*explanatory acts*).[7] Therefore, the author is interested to observe it through this article. The author expects reader can understand the factual action from this article as the extension of the dispute object in Peratun and its implementation which is linked to the provisions of prohibiting the misleading lawsuit among KTUN and factual action as regulated in Surat Edaran Mahkamah Agung Number 3 of 2023 about the Implementation of the Formulation Results of Supreme Court Chamber Plenary Meeting in 2023 as a Guide to the Implementation of Court Duties ("SEMA Number 3 of 2023").

This article has two main issues which consist of how the ideal concept of factual action as the extension of the dispute object in Peratun and how the analysis of factual action as an dispute object in Peratun which linked to the prohibition of misleading among KTUN an factual action as intended in SEMA Number 3 of 2023.

Research Method

Legal research is divided into normative legal research and empirical legal research according to the type, characteristic and purpose of research.[8] Through these types of legal research, the author uses normative legal research. Definition of normative legal research according to Peter Mahmud Marzuki[9] is: "*The process of finding legal rules, legal principles and legal doctrines to solve the legal problems. Normative legal research is carried out to develop new arguments, theories or concepts as prescriptions for solving the problems*".

Normative legal research focuses on the scope of legal conceptions, legal principles and legal rules. Normative legal research in this article centralize its analysis on applicable regulations which is relevant to the legal issues in this article[10] particularly about the ideal concept of factual action as the extension of the dispute object in Peratun and the prohibition of misleading lawsuits among KTUN and factual action.

The object of legal research with normative legal research is the legal norms which included to primary rules and secondary rules.[11] It is compatible to the normative legal theory paradigm as elaborated by I Made Pasek Diantha[12] who said that normative legal theory is the theory about norm problems in dogmatic legal science particularly on describing, formulating (making statutory regulations), and enforcing legal norms (judicial practice). This article focuses on analyzing and describing about legal norm formulation of factual actions as the extension of dispute object in Peratun, judicial practices related to the prohibition of mixing lawsuits and the cumulation of KTUN and factual actions particularly to resolve the Peratun disputes.

The approach used in this article is an analytical and conceptual statutory and case approaches[13]with the aim of obtaining information from various aspects regarding the issue in this article about the ideal concept of factual

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[4] Devi Asimah, et al., (2020). "Implementasi Perluasan Kompetensi PTUN dalam Mengadili Tindakan Faktual (*Onrechtmatige Overheidsdaad*/OOD)", *Jurnal Ilmu Hukum Kenotariatan Fakultas Hukum UNPAD, 4 (1), 152-170. https://doi.org/10.23920/acta.v4i1.531,* p. 166.

[5] Administrative Court of Manado, *Sistem Informasi Penelusuran Perkara PTUN Manado,* https://sipp.ptun-manado.go.id , accessed on February 16, 2025.

[6] Dewi Asimah, et al, "Implementasi Perluasan Kompetensi PTUN dalam Mengadili Tindakan Faktual (*Onrechtmatige Overheidsdaad*/OOD)", *op.cit*., p. 158.

[7] *Ibid*.

[8] Aris Prio Agus Santoso, et al. (2022). *Pengantar Metodologi Penelitian Hukum*. Yogyakarta: Pustaka Baru Press, p. 20.

[9] Peter Mahmud Marzuki. (2005). *Penelitian Hukum: Edisi Revisi*. Jakarta: Kencana Prenada Media Group, p. 47.

[10] Article "Tiga Jenis Metodologi untuk Penelitian Skripsi Jurusan Hukum" https://www.hukumonline.com/berita/a/tiga-jenis-metodologi-untuk-penelitian-skripsi-jurusan-hukum-lt6458efc23524f/, accessed on February 15, 2024.

[11] I Made Pasek Diantha. (2017). *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*. Jakarta: Kecana, p. 4.

[12] *Ibid*. p. 84.

[13] Peter Mahmud Marzuki. *Penelitian Hukum*, *op.cit*., p. 133-177.

action as the extension of dispute object and the prohibition of misleading lawsuit and the cumulation of lawsuits among KTUN and factual actions in Peratun.

The statute approach in this paper is related to the legislation and regulation of the material and formal law of the Indonesian administrative judiciary. In the context of the case approach, the author tries to analyze Peratun decisions that accommodate the cumulation of KTUN objects and factual actions. In the analytical and conceptual approach, the author tries to analyze the concept of factual action as an expansion of the object of dispute in Peratun and the concept of prohibition of mixing lawsuits between KTUN and factual actions.

The author has summarized the sources and types of legal materials in this article:

a. The primary legal materials used in this research are the 1945 Constitution of the Republic of Indonesia, Law regulation Number 5 of 1986 as the latest amendment to Law regulation Number 51 of 2009 about Peratun, Law regulation Number 30 of 2014 about Government Administration *jo* Law regulation Number 6 of 2023 about Government Regulations in Lieu of Law regulation Number 2 of 2022 about Job Creation Law, Peraturan Mahkamah Agung Number 2 of 2019, Surat Edaran Mahkamah Agung Number 7 of 2012, Surat Edaran Mahkamah Agung Number 3 of 2023, Surat Edaran Mahkamah Agung Number 2 of 2024, Judge's decision, etc. This legal material has authority for itself.[14]
b. The secondary legal materials used in this article are administrative law/government administration book, procedural law of Peratun books, journals and scientific articles that review material law and formal law in Peratun and data about factual action cases from 2020 to 2024 through Sistem Informasi Penelusuran Perkara ("SIPP") in Administrative Court of Medan and Administrative Court of Bandung which explains further the primary legal material. Comprehensively, this legal material is intended to provide clarity on primary legal material.
c. The tertiary legal material in this article is the Big Indonesian Dictionary. This legal material is intended to provide guidance and clarity on primary legal materials and secondary legal materials.

Furthermore, the search for legal materials was used the literature study approach. Bibliography study is the study of written information about law that comes from various sources and widely published and needed in normative legal research.[15] Various sources of information written in this article are:

a. Legislation relating to material law and formal law of Peratun,
b. Judge's decision accommodating the cumulation of objects between KTUN and factual action to solve TUN disputes in Peratun,
c. Literature relating to administrative law both substantive law or administrative procedural law.

The legal material analysis technique used in this article is qualitative analysis with prescriptive characteristics[16]. Qualitative analysis is a method that attempts to present data with complete, detail, clear and systematic analysis. In connection with this article, a qualitative analysis of legal materials is used because this article uses an analysis of the ideal concept of factual action as the extension of the dispute object in Peratun and the analysis of the prohibition of misleading lawsuit between KTUN and factual action.

Results and Discussion

1. Factual Actions as the Expansion of the Object of Administrative Dispute

Conceptually, government action (*bestuur handelingen*) can be divided into 2 (two), namely as follows:[17]

1) Material action, ordinary action, real action, concrete action (*factual actions*/*feitelijke handelingen)*;
2) Legal action (*rechtshandelingen*).

The fundamental difference between the two actions above is factual action is not aimed to make the administrative legal implications but rather factual implications, whereas legal action is aimed to make the legal implications in the form of loss/gain of rights and/or obligations, transformation of legal status/relationships, and inflict sanctions.[18]

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[14] H. Zainuddin Ali. (2009). *Metode Penelitian Hukum*. Jakarta: Sinar Graphics, p. 47.

[15] H. Muhaimin. (2020). *Metode Penelitian Hukum*. Mataram: Mataram University Press, p. 65.

[16] Prescriptive research basically aims to provide an overview or formulate a problem according to existing circumstances or facts. See Suratman and H. Philips Dillah. (2018). *Metode Penelitian Hukum*. Bandung: Alphabeta, p. 46.

[17] Muhammad Adiguna Bimasakti. (2018). *Perbuatan Melawan Hukum (PMH) oleh Pemerintah/Onrechtmatige Overheidsdaad (OOD) dari Sudut Pandang Undang-Undang Administrasi Pemerintahan (Pergeseran Paradigma dan Kompetensi Absolut OOD, dan Hukum Acara OOD Pasca Undang-Undang Administrasi Pemerintahan*. Yogyakarta: Deepublish, p. 3.

[18] Zaka Firma Aditya, dkk. (2023). *Hukum Administrasi Negara Kontemporer: Konsep, Teori dan Penerapannya di*

Factual action is regulated in Article 1 number 8 *jo.* Article 87 of the Government Administration Law and Article 1 number 1 of Perma Number 2 of 2019, namely:

Article 1 number 8 of the Government Administration Law

"*Tindakan Administrasi Pemerintahan yang selanjutnya disebut Tindakan adalah perbuatan Pejabat Pemerintahan atau penyelenggara negara lainnya untuk melakukan dan/atau tidak melakukan perbuatan konkret dalam rangka penyelenggaraan pemerintahan*."[19]

Article 87 of the Government Administration Law

"*Dengan berlakunya Undang-Undang ini, Keputusan Tata Usaha Negara sebagaimana dimaksud dalam Undang- Undang Nomor 5 Tahun 1986 tentang Peradilan Tata Usaha Negara sebagaimana telah diubah dengan Undang- Undang Nomor 9 Tahun 2004 dan Undang-Undang Nomor 51 Tahun 2009 harus dimaknai sebagai:*

a. *penetapan tertulis yang juga mencakup tindakan faktual*;"[20]

Article 1 number 1 Perma Number 2 of 2019

"*Tindakan Pemerintahan adalah perbuatan Pejabat Pemerintahan atau penyelenggara negara lainnya untuk melakukan dan/atau tidak melakukan perbuatan konkret dalam rangka penyelenggaraan pemerintahan.*"[21]

Article 1 point 8 of the Government Administration Law uses the nomenclature "*tindakan administrasi pemerintahan*", while Article 87 letter a of the Government Administration Law uses the different phrase, namely "*tindakan faktual*". Furthermore, Perma Number 2 of 2019 uses the term "*tindakan pemerintahan*". Through systematic interpretation,[22] the phrase "*tindakan faktual*" must be interpreted similar to "*tindakan administrasi pemerintahan*" as in Article 1 point 8 of the Government Administration Law and the unified meaning to the Article 87 letter a of the Government Administration Law. Likewise "*tindakan pemerintahan*" in Perma Number 2 of 2019, this phrase is semantically similar to Article 1 number 8 of the Government Administration Law.

Theoretically, government administrative action (*bestuur handelingen*) is not only legal action (*rechtshandelingen*) but also factual action (*feitelijke handelingen*). The way to differentiate between legal action and factual action is legal action contains the probability of one side government public action (*eenzijdig*) and bilateral public-civilian government mixed actions (*tweezijdige*).

In other words, legal action includes public law section (*publiekrechtelijke rechtshandelingen*) and also private law section (*privaatrechtelijke rechtshandelingen*).[23] Meanwhile, factual action contains government public actions, both real/actively physical action (commission) or passively action (omission).[24] The example of active real/physical action is the construction of government buildings meanwhile the example of passive action is the government's silence to neglect damaged roads.[25]

According to the regulative and theory approach above, there are semantic differences about government administrative action. Regulatorily, government administrative action is interpreted similar to factual action, whereas theoretically the factual actions is *species* from *genus* of government administrative action. Regarding this difference, in practice it still means factual action as in the existing regulations.

Nowadays, factual action is no longer unfamiliar matter. This is proven by the existence of factual action

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Indonesia. Depok: Rajawali Press, p. 152.

[19] Indonesia, *Law Number 30 of 2014 concerning Government Administration*, LN No. 292, TLN No. 5601, Article 1 number 8.

[20] *Ibid.,* Article 87 point a.

[21] Mahkamah Agung, Peraturan Mahkamah Agung Nomor 2 Tahun 2019 tentang Pedoman Penyelesaian Sengketa Tindakan Pemerintahan dan Kewenangan Mengadili Perbuatan Melanggar Hukum oleh Badan dan/atau Pejabat Pemerintahan (*Onrechtmatige Overheidsdaad*), Berita Negara No. 940, Article 1 number 1.

[22] Systematic interpretation is a method of legal discovery that views the occurrence of a law as always being related to other laws and regulations and no law can stand alone and is completely separate from all legislation. It can be said that interpreting the law must not deviate from the statutory system. Sudikno Mertokusumo and A. Pitlo. (2013). *Bab-Bab tentang Penemuan Hukum*. Bandung: PT Citra Aditya Bakti, p. 16-17.

[23] Muhammad Adiguna Bimasakti, (2022). "Penjelasan Hukum (*Restatement*) Konsep Tindakan Administrasi Pemerintahan Menurut Undang-Undang No. 30 Tahun 2014 Tentang Administrasi Pemerintahan". *Jurnal Hukum dan Peradilan. 11(1), 64-92. https://doi.org/10.25216/jhp.11.1.2022. 64-92*, p. 72-73. See also Bagus Oktafian Abrianto, et al, (2020). "Perkembangan Gugatan Perbuatan Melanggar Hukum oleh Pemerintah Pasca Undang-Undang Nomor 30 Tahun 2014". Jurnal Negara Hukum, 11(1), (43-62), p. 50. 10.22212/jnh.v11i1.1574

[24] Muhammad Adiguna Bimasakti, (2019). *Hukum Acara dan Wacana Citizen Law Suit di Indonesia Pasca Undang-Undang Administrasi Pemerintahan (Sebuah Sumbangan Pemikiran)*. Sleman: Deepublish Publisher, p. 86-87.

[25] Muhammad Adiguna Bimasakti, (2018). *"Onrechtmatig Overheidsdaad* oleh Pemerintah dari Sudut Pandang Undang-Undang Administrasi Pemerintahan". *Jurnal Hukum Peratun,* 1(2), 265 - 286, p. 270.

lawsuits from year to year. For example, Administrative Court of Medan and Administrative Court of Bandung have received lawsuits with factual actions as the dispute object starting from 2020 to 2024. Practically, factual action lawsuit is given the additional case code "TF".[26]

The author present the statistics of factual action cases based on search through the SIPP PTUN Medan and PTUN Bandung with the case code "TF".

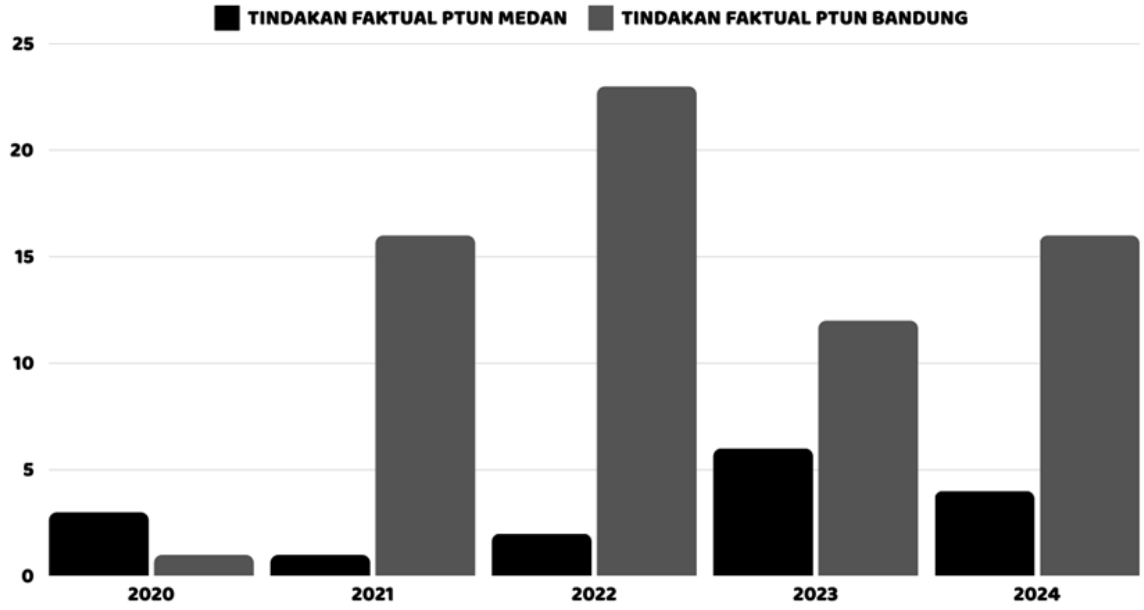

Figure 1. Statistics of Factual Action Matters Year 2020 s.d 2024

Administrative Court of Medan: 3 cases in 2020, 1 case in 2021, 2 cases in 2022, 6 cases in 2023, 4 cases in 2024[27]

Administrative Court of Bandung: 1 case in 2020, 16 cases in 2021, 23 cases in 2022, 12 cases in 2023, 16 cases in 2024[28]

The emergence of factual action as the extension of the object of TUN dispute is a response to the phenomenon of the legislative policy backflow in adjudicating administrative disputes.[29] By accommodating the factual actions in Government Administration Law, there is an opportunity for citizens to file lawsuits against to the actions of government bodies and/or officials in Peratun.[30] Sjahran Basah said the aim of the Peratun is providing legal protection and legal certainty, both for citizens and for state administration which can maintain the balancing of community and individual needs.[31]

[26] Mahkamah Agung, *Surat Keputusan Ketua Mahkamah Agung RI Nomor 359/KMA/SK/XII/2022 tentang Template dan Pedoman Penulisan Putusan/Penetapan Pengadilan Tingkat Pertama dan Tingkat Banding pada Empat Lingkungan Peradilan di Bawah Mahkamah Agung* and *Surat Keputusan Direktur Jenderal Badan Peradilan Militer dan Peradilan Tata Usaha Negara Nomor 248/DjMT/KEP/HK.00.6/IV/2022 tentang Pemberlakuan Pedoman Penyusunan Berita Acara Sidang Elektronik di Lingkungan Peradilan Tata Usaha Negara*.

[27] Administrative Court of Medan, *Sistem Informasi Penelusuran Perkara PTUN Medan*, https://sipp.ptun-medan.go.id/, accessed on February 15, 2025.

[28] Administrative Court of Bandung, *Sistem Informasi Penelusuran Perkara PTUN Bandung*, https://sipp.ptun-bandung.go.id/, accessed on February 15, 2025.

[29] Dewi Asimah, et al, "Implementasi Perluasan Kompetensi PTUN dalam Mengadili Tindakan Faktual (Onrechtmatige Overheidsdaad/OOD)", *op.cit.*, p. 154.

[30] Indonesia, *Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan… op.cit*., Penjelasan Umum.

[31] Sjahran Basah in Ahmad Fauzi Harahap. (2020). "Penerapan Perluasan Keputusan Tata Usaha Negara Sebagai Upaya dalam Penegakan Hukum Administrasi dan Kaitannya dengan Prinsip-Prinsip Good Governance (Sebagaimana Diatur dalam

Dewi Asimah states there are several examples of contemporary factual action dispute objects that have been examined by Peratun, such as the blocking internet networks/bandwidth, warning information disasters, verbal statements of government, disobeying to criminal decisions or decisions of Badan Pertimbangan Kepegawaian, not appointing village heads, installing the land stakes by office heads without regard to the certificate, sealing the renovated building, allowing citizens to close roads for the individual needs, etc.[32]

Rene Seerden and F.A.M. Stroink state the scope of factual action cases can be divided into 1) explanatory acts (*willenserklarungen*) such as providing information, public warnings, reports, plans, expert opinions and 2) factual function (*verrichtungen*) such as money payment, police patrol or official travel.[33] In other words, theoretically, factual action is not only the real action form but also written form as well as explanatory acts. Likewise, legal action is not always found in written form but also unwritten public law juridical acts (*ongeschreven publiekrechtelijke rechtshandelingen*).[34]

The followings below are the characteristics of factual action:[35]

1) Factual action is not intended to impact the legal consequences (*rechtsgevolgen*) or at least potentially has the legal consequences.
2) The essence of factual action is empirical and not fanciful/imaginary like legal actions. In other words, factual actions are material actions or real actions.[36]

The empirical meaning in the second point above has two meanings, namely:[37]

1) Empirical in the sense of actual events/circumstances, for example a report is made based on actual circumstances (empirical); and
2) Empirical in the sense that it can be felt with the senses, for example the building construction that can be seen with the naked eye.

The Supreme Court in its regulatory function responds to factual action disputes by issuing Perma Number 2 of 2019. This Perma Number 2 of 2019 differentiate the government action and the administrative tort disputes. The dispute of government action emphasizes the disputes in the field of government administration or other state administrators as the result of government actions.[38] Meanwhile, disputes of administrative tort declares the invalid and/or void of government actions or the binding legal force and compensation in accordance with statutory regulations.[39]

The Author consider that the factual action cannot be generalized as the administrative tort. Philipus M. Hadjon, et al state sometimes the factual actions is the administrative torts if it causes the legal consequences (*rechtsgevolgen*) and disadvantages for community members.[40] This is the form of differentiation between government action disputes (Article 1 number 3 of Perma Number 2 of 2019) and administrative tort disputes (Article 1 number 4 of Perma Number 2 of 2019).

The factual action can be categorized as the administrative tort if the government's actions collide to the statutory regulations and general principles of good governance (AUPB). As a result, the action can be declared to be void and/or invalid and with no binding legal force. Citizens also can request the additional form lawsuit (*petitum*) such as a compensation.[41]

The concept of administrative tort is not similar to the factual action because not all factual actions committed by government violate statutory regulations or AUPB. Sometimes government actions cannot be held accountable

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Pasal 87 UU No. 30 Tahun 2014 tentang Administrasi Pemerintahan)". *Jurnal Binamulia Hukum*, 9(2), (171-182). https://doi.org/10.37893/jbh.v9i2.126, p. 174.

[32] Tri Cahya Indra Permana, et al. (2022). *Beberapa Pemikiran tentang Peradilan Administrasi dan Keadilan Administratif Memperingati 70 Tahun Prof. Dr. H. Supandi, S.H., M.Hum*. Depok: PT Raja Grafindo Persada, p. 241.

[33] *Ibid*., p. 243.

[34] Dewi Asimah, et al, "Implementasi Perluasan Kompetensi PTUN dalam Mengadili Tindakan Faktual (*Onrechtmatige Overheidsdaad*/OOD", *op.cit*., p. 158.

[35] Zaka Firma Aditya, et al., *Hukum Administrasi Negara Kontemporer, op.cit*., p. 168.

[36] Hidayat Pratama Putra. (2022). "Tantangan dalam Penanganan Perkara Tindakan Administrasi Pemerintahan di Peradilan Tata Usaha Negara". *Jurnal Hukum Peratun,* 5(1), 75-94 https://doi.org/10.25216/peratun.512022., p. 79.

[37] Zaka Firma Aditya, dkk, *Hukum Administrasi Negara Kontemporer, op.cit*., p. 168.

[38] Mahkamah Agung, *Peraturan Mahkamah Agung Nomor 2 Tahun 2019*, *op.cit.,* Article 1 number 3.

[39] *Ibid.,* Article 1 number 4.

[40] Philipus M. Hadjon, et al. (2008). *Pengantar Hukum Administrasi Indonesia* (*Introduction to the Indonesian Administrative Law*). Yogyakarta: Gadjah Mada University Press, p. 177.

[41] Mahkamah Agung, Surat Edaran Mahkamah Agung Nomor 2 Tahun 2019 tentang Pemberlakuan Rumusan Hasil Rapat Pleno Kamar Mahkamah Agung Tahun 2019 sebagai Pedoman Pelaksanaan Tugas Bagi Pengadilan.

even though causes disadvantage matter to the other parties.[42] For example, the government's action is increasing the Value Added Tax (VAT) from 11 percent to 12 percent imposed on luxury goods and services.[43] It causes people who consume or use luxury goods/services get the higher VAT rate than the previous year. Another example is the is the government's budget efficiency measures within ministries or institutions.[44] This action will certainly have an impact on ministries or institutions affected by budget efficiency because it causes the deduction of funds in their environment, including employees who work in ministries or government institutions.

In other circumstances, sometimes the government also uses its rights to do the factual action by forcing citizens in order to obey regulations or stop colliding the law. This is known as administrative coercion (*bestuurdwang*).[45] For example, the Ministry of Environment and Forestry imposed administrative coercion likes administrative sanctions to Pertamina Refinery Unit V regarding a crude oil leak from the undersea pipe that was caught in a ship's anchor.[46]

An administrative tort by a government agency/official is a factual act that has been tested and declared to be in conflict with statutory regulations and/or AUPB. In other words, according to the author, in examining cases of factual actions that are also administrative torts, they must go through a double testing stage (double checking) that is *first*, whether an object of dispute is a factual action and *second*, whether the factual action is an administrative tort that is contrary to statutory regulations or the AUPB. Therefore, by accommodating factual action disputes in Peratun, Peratun judges are required to have a broad sense in receiving, examining, and resolving action disputes in Peratun.

2. Analysis The Prohibition of Misleading Lawsuit Between KTUN and Factual Action

a. Prohibition of Misleading Between KTUN and Factual Action

Het zijn dan geen rechtshandelingen, maar wel rechtsfeiten meaning that the factual action is not a legal action, but a legal fact.[47] In finding legal facts, of course, accuracy is required in receiving, examining, and resolving factual action cases.

It cannot be denied that KTUN and factual actions are objects of TUN disputes that can be related to one another. Such conditions are often known as a cumulation of objects which are based on their legal character/nature, which are closely related to each other (*innerlijke samenhang*).[48]

In examining the relationship between objects in the form of KTUN and factual actions, the PTUN must respond wisely to the lawsuits being examined. Apart from the connection between decisions and actions, the principles of simple, speedy trial, and low-cost are also indicators when considering adjudicating TUN cases. The problem is whether by cumulating these objects, it actually confuses the KTUN lawsuit with factual actions as prohibited in SEMA Number 3 of 2023.[49]

Basically, the phrase mixing up is different from clearly placing the object of dispute in the lawsuit. Based

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[42] 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)*, 11(1), 89-108, p. 91.

[43] Publication of the Kementerian Koordinator Perekonomian Republik Indonesia. "Presiden Prabowo Subianto Tegaskan Pemberlakuan PPN 12% Hanya Dikenakan Terhadap Barang dan Jasa Mewah" https://www.ekon.go.id/publikasi/detail/6122/presiden-prabowo-subianto-tegaskan-pemberlakuan-ppn-12-hanya-dikenakan-terhadap-barang-dan-jasa-mewah, accessed on February, 15, 2025.

[44] Main News Kementerian Keuangan Republik Indonesia. "Efisiensi Anggaran, Menkeu Sri Mulyani: Tidak Ada PHK Tenaga Honorer di Kementerian dan Lembaga". https://www.kemenkeu.go.id/informasi-publik/publikasi/berita-utama/Tidak-Ada-PHK-Tenaga-Honorer, accessed on February, 15, 2025.

[45] Zaka Firma Aditya,dkk, *Hukum Administrasi Kontemporer: Konsep, Teori dan Penerapannya di Indonesia, op.cit*., p. 225.

[46] Article "Oil Spill Case, ICEL: Pertamina's Administrative Sanctions Must Be Transparent". https://www.mongabay.co.id/2018/05/23/kasus-tumpahan-minyak-icel-sanksi-administratif-pertamina-harus-transparan/, accessed on February, 15, 2025.

[47] Quoting FCMA Michiels, in Ridwan, "Pengujian Tindakan Faktual dan Perbuatan Melanggar Hukum oleh Pemerintah dalam Sistem Peradilan Tata Usaha Negara", *op.cit.*, p. 98.

[48] Mahkamah Agung, *Surat Edaran Mahkamah Agung Nomor 7 Tahun 2012 tentang Rumusan Hukum Hasil Rapat Pleno Kamar Mahkamah Agung Sebagai Pedoman Pelaksanaan Tugas Bagi Pengadilan*, Angka 6 pada Rumusan Hasil Rapat Pleno pada Kamar Candra.

[49] Mahkamah Agung, *Surat Edaran Mahkamah Agung Nomor 3 Tahun 2023 tentang Pemberlakuan Rumusan Hasil Rapat Pleno Kamar Mahkamah Agung Tahun 2023 Sebagai Pedoman Pelaksanaan Tugas Bagi Pengadilan*, Huruf E Rumusan Hukum Tata Usaha Negara Angka 2.

on the KBBI, the phrase mix up means reverse or confuse.[50] Meanwhile, the word cumulation (*samenvoeging van wordering*) according to the KBBI means combining several lawsuits (in one lawsuit letter before a judge).[51]

Lawsuits cumulation consists of subjective cumulation and objective cumulation. Cumulation of lawsuits is subjective, namely, if in one lawsuit letter there are several plaintiffs or several defendants. Meanwhile, objective claim cumulation is carried out if the plaintiff submits several claims to the defendant in one lawsuit at once.[52]

Soepomo quoted Star Busman's opinion, explaining that if someone has more than one demand (*aanspraak*), which are aimed at the same goal, then by submitting a demand for one of these things, the common goal has been achieved.[53] With this doctrinal approach, it can be concluded that combining claims in one lawsuit is permitted if there is a close relationship between one claim and another.[54]

Thus, it can be stated that mixing different meanings with a cumulation of objects that clearly positions and relates one object to another (*innerlijke samenhang)*. Mixing up lawsuits has the connotation of causing the object of the dispute to change. The object of the dispute should be the KTUN, but instead the object of the dispute is factual action. This causes random conditions for the object of the dispute.

According to the author, the cumulation of dispute objects in Peratun is possible between KTUN and factual actions as long as they are related to one another. In other words, the factual action that is the object of the dispute is closely related to the KTUN that preceded it. For example, the Denpasar PTUN Decision in case Number 20/G/TF/2023/PTUN.DPS *jo*. Mataram High Administrative Court Decision Number 9/B/TF/2024/PT.TUN.MTR *jo*. Supreme Court Decision Number 594 K/TUN/TF/2024. The decision has permanent legal force (*inkracht van gewijsde*) at the cassation level. The case in the decision contains a cumulation of the objects of the KTUN dispute and factual actions, namely the warrant and notification of the demolition of the building as well as the demolition action by the Defendant.[55]

The Supreme Court of Justice's consideration confirmed the first instance decision because the issuance or implementation of the object of the dispute was based on the fact that the company continued to operate even though it did not have a permit. The demolition order is issued after the Government has given a written warning so that the issuance of the KTUN and the implementation of factual actions are appropriate and correct and there are no procedural administrative defects.[56]

According to the author, the Panel of Judges in this case prioritized the principles of simplicity, speed, and low costs (*constante justitie*) as well as benefits for the parties (in line with the adage *bring justice closer to the people*) while still paying close attention to the legal character/nature which is closely related to the KTUN objects in the form of warrants and notifications for building demolition and factual actions in the form of demolition actions carried out by government agencies/officials.

Regarding the cumulation of objects, it has been included in the legal rules of SEMA Number 7 of 2012 concerning the Legal Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber as a Guide to the Implementation of Duties for the Court (SEMA Number 7 of 2012), which in essence, the cumulation of KTUN dispute objects is permitted as long as their legal character/nature is closely related to one another (*innerlijke samenhang*).[57] SEMA Number 7 of 2012 should be interpreted broadly (broad sense) so that the cumulation of dispute objects also includes KTUN and factual actions. Apart from that, the perspective on the principles of justice is simple, speedy trial, and low cost (*constante justitie*) as well as the principle of utility for the parties is also a crucial issue

[50] Badan Pengembangan dan Pembinaan Bahasa, *Mencampuradukkan*, https://kbbi.kemdikbud.go.id/entri/mencampuradukkan, accessed on February 16, 2025.

[51] *Ibid.*, https://kbbi.kemdikbud.go.id/entri/kumulasi, accessed on February 16, 2025.

[52] Yolanda Feberta Savitri. (2021). "Kumulasi Obyektif Gugatan Wanprestasi dan Perbuatan Melawan Hukum dalam Satu Surat Gugat (Studi Kasus Putusan Mahkamah Agung Nomor 3057 K/Pdt/2017)". *Jurnal Verstek*, 9(1), 218-226. DOI: https://doi.org/10.20961/jv.v9i1.50011, p. 219.

[53] Supomo in Kidung Sadewa, et al. (2017). "Formulasi Kumulasi Gugatan yang Dibenarkan Tata Tertib Acara Indonesia (Studi Putusan MA Nomor 2157 K/PDT/2012 dan Putusan MA Nomor 571 PK/Pdt/2008)". *Jurnal Verstek*, 5(3), 228-236. DOI: https://doi.org/10.20961/jv.v5i3.33546, p. 230.

[54] M. Yahya Harahap. (2016). *Hukum Acara Perdata*. Jakarta: Sinar Grafika, p. 102.

[55] Direktori Putusan, The Decision of Denpasar Administrative Court Number 20/G/TF/2023/PTUN.DPS *jo*. The Decision of Mataram High Administrative Court Number 9/B/TF/2024/PT.TUN.MTR *jo*. The Decision of Supreme Court Number 594 K/TUN/TF/2024.

[56] Direktori Putusan, The Decision of Supreme Court Number 594 K/TUN/TF/2024.

[57] Mahkamah Agung,Surat Edaran Mahkamah Agung Nomor 7 Tahun 2012 tentang Rumusan Hukum Hasil Rapat Pleno Kamar Mahkamah Agung Sebagai Pedoman Pelaksanaan Tugas Bagi Pengadilan, Angka 6 pada Rumusan Hasil Rapat Pleno pada Kamar Candra.

for the Court to resolve cases with the cumulation of dispute objects. The cumulation of dispute objects by placing the character of the dispute object in its place cannot necessarily be stated as confusing the KTUN claim with factual action.[58]

Linked to SEMA Number 3 of 2023, the concept of mixing up lawsuits occurs when the object of the dispute that is wanted to be sued is a decision but what is at issue in the lawsuit is the action. This is a different concept considering that there is a clear separation between objects in the form of KTUN and factual actions. Apart from that, through SEMA Number 3 of 2023, the Supreme Court is not in the mood to revive the positive fictitious provisions. Because positive fictitious provisions have been declared no longer within the authority of the PTUN after the promulgation of Law Number 6 of 2023 concerning the Determination of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law.[59] However, based on the Supreme Court Circular Number 2 of 2024 concerning the Implementation of the Results of the Formulation of the 2024 Supreme Court Chamber Plenary Meeting as Guidelines for the Implementation of Duties for the Court, it appears that the Supreme Court is trying to reactivate negative fictitious decisions within the authority of the Peratun.

b. The Intersection Between Factual Action and Fictitious Decision

As stated previously in Article 1 point 7 of the Government Administration Law, government actions can take the form of carrying out and/or not carrying out concrete actions. In other words, these two government actions can be active or passive. Government action in the form of not carrying out concrete actions is called an omission action.[60] Cases of factual action in the form of an omission often intersect with fictitious decisions.

The author found that there was a misunderstanding in interpreting a fictitious decision, which was actually the government's attitude in the form of not issuing a decision that was camouflaged as a factual action dispute. Basically, fictitious decisions consist of negative fictitious decisions[61] and positive fiction.[62] These two terms are not mentioned explicitly in their respective provisions, namely Article 3 of Law Number 5 of 1986 as amended in Law Number 9 of 2004 and most recently in Law Number 51 of 2009 concerning Administrative Courts (UU Peratun) or Article 53 of the Government Administration Law which has been amended in Article 175 of Law Number 6 of 2023 concerning Determination of Government Regulations in Lieu of Law Number 2 of 2023. 2022 concerning Job Creation becomes law (Job Creation Law). The use of the terms negative fiction and positive fiction is a neologism[63] to facilitate legal construction in each law.

A negative fictitious decision means the attitude of government bodies and/or officials who ignore requests from members of the public so that they are deemed to have rejected the request.[64] Meanwhile, a positive fictitious decision means that the attitude of government bodies and/or officials does not carry out the decision or action that has been requested so that the request is deemed to have been legally granted.[65]

After the enactment of Article 175 of the Job Creation Law, there is a change in the provisions of Article 53 of the AP Law by providing *delegatie provisio* in the form of further provisions regarding the form of decisions and/or actions that are deemed to be legally granted that are regulated in a Presidential Regulation.[66] In other words, it can be concluded that positive fictitious decisions can be resolved internally through the government and

[58] Mahkamah Agung, Surat Edaran Mahkamah Agung Nomor 3 Tahun 2023 tentang Pemberlakuan Rumusan Hasil Rapat Pleno Kamar Mahkamah Agung Tahun 2023 Sebagai Pedoman Pelaksanaan Tugas Bagi Pengadilan, Huruf E Rumusan Hukum Tata Usaha Negara Angka 2.

[59] Indonesia, *Undang-Undang Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja menjadi Undang-Undang*, LN No. 41, TLN No.6856, Article 175.

[60] Muhammad Adiguna Bimasakti, (2022). "Penjelasan Hukum (*Restatement*) Konsep Tindakan Administrasi Pemerintahan Menurut Undang-Undang No. 30 Tahun 2014 Tentang Administrasi Pemerintahan". *op.cit.*, p. 78.

[61] Indonesia, Undang-Undang Nomor 5 Tahun 1986 tentang Peradilan Tata Usaha Negara, LN Nomor 77, TLN Nomor 3344, Article 3.

[62] Indonesia, Undang-Undang Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja menjadi Undang-Undang, LN Nomor 41, TLN Nomor 6856, Article 175.

[63] Azza Azka Norra. (2020). "Pertentangan Norma Fiktif Negatif dan Fiktif Positif serta Kontekstualisasinya Menurut Undang-Undang Administrasi Pemerintahan", *Jurnal Hukum Peratun*, 3 (2), 141-154, https://doi.org//10.25216/peratun.322020.141-154, p. 145.

[64] Indonesia. Undang-Undang Nomor 5 Tahun 1986 tentang Peradilan Tata Usaha Negara, *loc.cit*.

[65] Indonesia. Undang-Undang Nomor 6 Tahun 2023, *loc.cit.*

[66] Dian Agung Wicaksono et al. (2021). "Quo Vadis Pengaturan Kewenangan Pengadilan Tata Usaha Negara dalam Penerimaan Permohonan Fiktif Positif pasca Penataan Regulasi dalam Undang-Undang Cipta Kerja", *Jurnal Rechtsvinding*, 10(2), 323-337. DOI: http://dx.doi.org/10.33331/rechtsvinding.v10i2.715, p. 325.

applications will no longer be submitted to the PTUN as previously regulated in Article 53 of the Government Administration Law. Until this writing was written, the Presidential Regulation to implement the provisions of Article 175 of the Job Creation Law had not been formulated. This situation certainly causes uncertainty regarding access to justice for community members to submit legal action.

In implementing public services to citizens, government agencies/officials often ignore requests addressed to them (administrative inaction), unresponsive, or process applications slowly (delaying services).[67] Therefore, it is not uncommon for members of the public to file lawsuits with the Peratun which are packaged as objects of dispute over factual actions that are actually fictitious decisions. According to the author, this is a form of public anxiety in obtaining access to justice for a series of actions in the form of the government's silence regarding requests for decisions/actions submitted by members of the public. Community members demand the concretization of juridical control mechanisms for acts of maladministration of public services and maximize all means to demand justice.

The author conducted research on several decisions that have permanent legal force in connection with the engineering of fictitious decisions into factual action disputes. Supreme Court Decisions Number 770 K/TUN/TF/2024 and Number 771 K/TUN/TF/2024 are examples of cases of factual action that are actually fabricated negative fictitious decisions. The object of the dispute in both cases is the Defendant's action in the form of not including a Mining Business Permit for the Production Operation Stage (IUP OP) of a civil legal entity in the list of Mining Business Permits (IUP) that meet the provisions (MODI). In the two cases at the cassation level, the Supreme Court of Justice was of the view that the object of the dispute in the case was not a factual action but was the action of the Defendant who refused to issue an Administrative Decision (KTUN) according to Article 3 of the Peratun Law.[68]

The decision of the Supreme Court Judge in the two cases above is in line with SEMA Number 2 of 2024 concerning the implementation of the results of the formulation of the 2024 Supreme Court Chamber Plenary Meeting as a guideline for the implementation of duties for the court confirming that the silence of government officials who did not grant the Plaintiff's request on the Minerba One Data Indonesia (MODI) list cannot be seen as a factual act of omission but rather an act of refusing to issue a KTUN according to Article 3 of the Peratun Law.[69]

Apart from that, the author also found that in factual action cases, there is a cumulation of objects between factual actions that are actually fictitious decisions and KTUN in one case, which is motivated by the object of the dispute, which is an inseparable series. For example, in the Supreme Court decision Number 494 K/TUN/TF/2024, there is a cumulation of KTUN objects with positive fiction that are packaged in factual action codes with the object of the dispute being the blocking of the Ownership Certificate and the action of not transferring/transferring rights regarding the blocking of the Ownership Certificate.[70] The considerations of the Supreme Court of Justice are *judex factie* has been mistaken and wrong in assessing the object of the dispute, which is a positive fictitious decision. These legal considerations are based on the provisions of Article 175 point 6 of the Job Creation Law, which has amended Article 53 of the Government Administration Law which essentially contains the obligation of government agencies and/or officials to determine and/or carry out decisions and/or actions on requests submitted by members of the public.[71]

However, it is different from the Supreme Court Decision Number 594 K/TUN/TF/2024 as previously explained. The lawsuit in this case contains a cumulation of the objects of the KTUN dispute and factual actions, namely the warrant and notification of the demolition of the building as well as the demolition action by the defendant. According to the author in the lawsuit, the plaintiff was able to clearly separate the accumulated objects being sued, namely factual actions and KTUN. The plaintiff in this case also explained that there was a connection between the object of the dispute, which was preceded by the issuance of a KTUN in the form of an order and notification of building demolition, and followed up with factual action in the form of demolition by government officials.

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[67] Surya Mukti Pratama. *Pengaturan Baru Keputusan Fiktif Positif dalam Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja dan Kaitannya dengan Kompetensi PTUN*, *Jurnal Rechtsvinding*, p. 3. https://rechtsvinding.bphn.go.id/jurnal_online/PENGATURAN%20BARU%20KEPUTUSAN%20FIKTIF%20POSITIF%20.pdf, accessed on February 15, 2025.

[68] Direktori Putusan, The Decision of Supreme Court Number 770 K/TUN/TF/2024 and The Decision of Supreme Court Number 771 K/TUN/TF/2024.

[69] Mahkamah Agung, *Surat Edaran Mahkamah Agung Nomor 2 Tahun 2024 tentang Pemberlakuan Hasil Rumusan Rapat Pleno Kamar Mahkamah Agung Tahun 2024 sebagai Pedoman Pelaksanaan Tugas Bagi Pengadilan*.

[70] Direktori Putusan, The Decision of Supreme Court Number 494 K/TUN/TF/2024.

[71] *Ibid.*

In this regard, what needs to be guided by according to the author is that in Peratun it is possible to resolve disputes by cumulating lawsuits provided that there is no mixing of factual actions with fictitious decisions. Because this has the implication that the lawsuits become mixed up or blurred (*obscuur libel*) as an example of the case in Supreme Court Decision Number 494 K/TUN/TF/2024 where the ruling stated that the lawsuit was not accepted (*niet ontvankelijk verklaard*).

Conclusion

Factual actions as an extension of the object of the TUN dispute have the aim of being a means of controlling government administration. In its implementation, factual action disputes in Peratun are very diverse and varied. The scope of factual action cases is divided into explanatory acts and factual functions. In examining cases of factual actions which are also administrative torts, ideally they must go through a double testing stage (double checking) that is *first*, whether an object of dispute is a factual action and *second*, whether the factual action is an administrative tort that is contrary to statutory regulations or the AUPB.

Mixing up the lawsuit between KTUN and factual actions occurs if the lawsuit confuses/converts the definitions of each object, both KTUN and factual actions. This is different from the cumulation of dispute objects between KTUN and factual actions. The cumulation of dispute objects between KTUN and factual actions can be carried out as long as there is an interrelated legal character/nature (*innerlijke samenhang*) between one object and another, prioritizing the principle of speedy trial, simple, and low-cost principle (*constante justitie*), also the principle of utility (in line with the adage bring justice closer to the people bring justice closer to the people).

Recommendation

The author provides advice to the President and the House of Representatives to revise Law Number 5 of 1986 concerning Administrative Courts as last amended in Law Number 51 of 2009 and the Government Administration Law to rearrange the scope and limitations regarding the Peratun's authority in examining factual action disputes so that they are in accordance with theoretical meaning. In this regard, it is necessary to clarify which factual actions constitute a form of administrative tort and what the indicators are. Apart from that, the Supreme Court can also revise Perma Number 2 of 2019 to strengthen the examination of disputes over factual actions that constitute administrative torts by government agencies/officials through multiple testing stages (double checking). In addition, the Plaintiff needs to be careful in describing the interrelated objects of the dispute so as not to confuse the lawsuit between KTUN and factual actions. In other words, the lawsuit filed does not become vague (*obscuur libel*).

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