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Legal Certainty The Obligation To Make Administrative Efforts Before Filing A Lawsuit In The Administrative Court

Bonifacius Raya Napitupulu
Universitas Pembangunan Nasional "Veteran" Jakarta, Indonesia
bonifaciusraya@gmail.com

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ABSTRACT
In accordance with the provisions of Article 48 of Law Number 5 of 1986 concerning the State Administrative Court which has been last amended by Law Number 51 of 2009 concerning the Second Amendment of Law Number 5 of 1986 concerning the State Administrative Court ("Peratun Law") which states that not every State Administrative Decision (beschikking) as the object of the State Administrative dispute can be directly sued through the State Administrative Court, because if there are administrative remedies, the state administrative dispute must be resolved first through administrative efforts before being resolved through the State Administrative Court. This research uses a qualitative normative method, which is a process to find a legal rule, legal principles, and legal doctrines to answer the legal issues faced. The result of this study is that Sema No. 1 of 2017 has been affirmed through Perma No. 6 of 2018, thus according to the Court, as long as the administrative effort is intended to file a lawsuit to the PTUN or at least related to the procedural law of the PTUN, the word "can" must be interpreted as "mandatory" to take administrative efforts first. Then the PTUN plays a role in ensuring that law enforcement occurs effectively, by paying attention to the principles of justice and legal certainty that are the basis for every decision taken, and the PTUN plays the role of a court that has the authority to resolve state administrative disputes after the administrative efforts have been passed, in accordance with applicable regulations.

INTRODUCTION

State Administrative Disputes are disputes that arise in the field of State Administration between a person or a civil legal entity and a State Administrative Agency or Official, both at the central and regional levels (Jaelani, 2020). Indonesia is a country of law based on the sovereignty of the people which is regulated in accordance with the provisions of Article 1 paragraphs (2) and (3) of the 1945 Constitution. As a country of law, all actions in the administration of government in Indonesia must be in accordance with the law. The definition of law usually refers to written law, which can be in the form of laws and regulations or other legal products, as well as unwritten laws. This unwritten law includes the general principles of good governance, norms of customs, customs, norms of manners, and other elements of law that are not explicitly regulated in written legal texts. Without a legal basis in laws and regulations, the actions taken will not have legitimacy. Thus, laws and regulations have a very central and strategic role in the administration of government (Setiadi, 2022).

According to F.H van der Burg, legal protection for the resolution of problems related

to state administrative disputes as a result of the issuance of state administrative decisions (*beschikking*), according to F.H van der Burg, can be pursued through two possibilities, first through the state administrative court/administrative court (*administratief rechtspraak*) and the second through administrative appeals (Safitri & Sa'adah, 2021).

In the state of Pancasila law, the main principle put forward in resolving disputes between the government and the people is the principle of dispute resolution by deliberation, including through means of administrative efforts, so that it is expected to restore harmony and harmony in the relationship between the government and the people. If through administrative efforts, the people are not satisfied with the decision of the administrative effort, then the last means and effort in resolving disputes between the people and the government is through the State Administrative Court (Sugiharto, Hari., & Abrianto, 2018). In accordance with the provisions of Article 48 of Law Number 5 of 1986 concerning the State Administrative Court which has been last amended by Law Number 51 of 2009 concerning the Second Amendment of Law Number 5 of 1986 concerning the State Administrative Court ("Peratun Law") which states that not every State Administrative Decision (*beschikking*) as the object of the State Administrative dispute can be directly sued through the State Administrative Court, because if there are administrative remedies, the state administrative dispute must be resolved first through administrative efforts before being resolved through the State Administrative Court. The State Administrative Court is a court that has the authority to examine, adjudicate and decide state administrative disputes (Gaspersz et al., 2023).

In the Explanation of Article 48 of the Law on Administrative Measures, it is stated that administrative efforts are a procedure that can be taken by a person or a civil legal entity if he is not satisfied with a State Administrative Decree. The procedure is carried out within the government itself and consists of two forms, namely Objections and Administrative Appeals. In terms of its completion, it must be carried out by the superior agency or other agency from the one that issued the decision concerned, where the procedure is called an "administrative appeal".

Prior to the affirmation with the issuance of the Supreme Court of the Republic of Indonesia Regulation (PERMA) Number 6 of 2018, dated December 4, 2018 concerning Guidelines for Resolving Government Administrative Disputes After Taking Administrative Efforts, there used to be two paths or two lines of litigation in the State Administrative Court. For State Administrative Decisions that do not recognize administrative efforts, lawsuits are addressed to the State Administrative Court as a first-instance court, while for State Administrative Decisions that recognize administrative efforts, lawsuits are directly addressed to the State Administrative High Court (Hadjon, 2002). Therefore, the State Administrative Court and its procedural law contained in the Law on Governance, are currently facing a number of dynamics in its implementation in connection with the birth of Law Number 30 of 2014 concerning Government Administration.

There are 2 (two) court decisions where these two decisions are inkracht decisions that have been finalized by the State Administrative Court, which have different legal views/considerations, namely the State Administrative Court Decision Number 172/G/2021/PTUN-JKT stating that administrative efforts in the form of "objections" and "administrative appeals" are legal options based on the Supreme Court Circular Letter (SEMA) 1 of 2017 while the Decision of the Jakarta State Administrative Court Number 99/G/TF/2021/PTUN-JKT jo. 12/B/TF/2021/PT. TUN. JKT jo 329 K/TUN/TF/2021 dated September 2, 2021 states that if one of the stages of administrative efforts is not filed, the lawsuit does not meet the formal requirements for filing a lawsuit at the State Administrative Court. The formal requirements for submitting a lawsuit to the PTUN are as follows:

1. The one who can file a lawsuit is a person or a civil legal entity;
2. Submitted within a grace period of 90 days from the time of receipt or announcement of

the State Administrative Decree being sued;
3. The lawsuit must contain: the name, nationality, place of residence, and place of residence of the defendant, the basis of the lawsuit and the matter requested to be decided by the court;
4. The lawsuit must be accompanied by a valid power of attorney, if the lawsuit is made and signed by the plaintiff's attorney;
5. The lawsuit as far as possible is also accompanied by the State Administrative Decree that is sued;
6. The lawsuit is filed in writing to the competent court containing a demand that the disputed State Administrative Decision be declared null or void, with or without being accompanied by a claim for compensation and/or rehabilitation;
7. A lawsuit for a state administrative dispute is submitted to the competent Court whose jurisdiction includes the place where the defendant is located (Putrijanti, A., Leonard, L. T., & Utama, 2018).

Administrative measures only apply to certain State Administrative Disputes (TUN) which have indeed been provided for administrative efforts by these laws and regulations contained in the Ordinance Law. Meanwhile, beyond that, namely State Administrative Disputes (TUN) for which administrative efforts are not available, can be directly submitted to the State Administrative Court (PTUN).

Law Number 30 of 2014 concerning Government Administration ("UUAP") is a material law in the state administrative justice system (Wahyunadi, 2016). This Law provides significant changes in formal law in the procedural process at the State Administrative Court. The changes that have occurred include testing on the abuse of authority that intersects with crime, the opening of opportunities for testing against government illegal acts (*onrechtmatigeoverheidsdad)*, including the birth of a new paradigm for Administrative Efforts whose concept was initially regulated in the Peratun Law.

Based on the description above, with the difference in the judges' considerations of these two decisions between these two decisions, the author is interested in conducting research that will discuss "Legal Certainty of the Obligation to Make Administrative Efforts Before Filing a Lawsuit in the State Administrative Court"

RESEARCH METHOD

This research uses a normative method qualitatively. According to Peter Mahmud Marzuki, normative legal research is:

> "A process to find a rule of law, legal principles, and legal doctrines to answer the legal issues at hand."(Marzuki, 2010)

In this model of legal research, law is often considered a rule or norm that determines human behavior that is considered appropriate. Law is also often understood as what is written in laws and regulations or legal texts (Asikin, 2003).

This qualitative method has an important role in understanding and understanding legal cases in the legal consideration of the decision of the State Administrative Court Number 99/G/TF/2021/PTUN-JKT which states that if one of the stages of administrative efforts is not submitted, the lawsuit does not meet the formal requirements for filing a lawsuit at the State Administrative Court. Meanwhile, in the Decision of the State Administrative Court Number 172/G/2021/PTUN-JKT, it states that administrative efforts in the form of "objections" and "administrative appeals" are legal options based on the Supreme Court Circular Letter (SEMA) 1 of 2017.

The approaches used in this study are the *statute approach*, the *historical approach*, and the conceptual *approach*. The legislative approach is carried out by researching laws and regulations related to the legal issues being studied. The historical approach is carried out by

examining the development of legal products based on the sequence of periodizations or historical realities that underlie them. The conceptual approach is carried out by studying the views of doctrines in legal science, researchers will find ideas that give birth to legal understandings, legal concepts and legal principles that are relevant to the issue at hand.

The historical approach method in the context of administrative law often includes the philosophical reasons underlying an administrative effort before a lawsuit is filed with the State Administrative Court (PTUN). This is important because it aims to provide an opportunity for the parties involved to resolve the dispute administratively before involving a formal litigation process in court.

RESULTS AND DISCUSSION

Legal certainty of the obligation to make administrative efforts before filing a lawsuit at the State Administrative Court.

Legal certainty by everyone can be realized by establishing a law in the event of a concrete event. The applicable law is basically not allowed to deviate, this is also known as *fiat justitia et pereat mundus* (even though the world collapses the law must be enforced). That is what legal certainty wants (Moho, 2019). Legal certainty is a judicial protection against arbitrary actions, which means that a person will be able to obtain something that is expected under certain circumstances. The community expects legal certainty, because with legal certainty, the community will be more orderly. The law is tasked with creating legal certainty because it aims at public order. On the contrary, the community expects benefits in the implementation or enforcement of the law (Rahim et al., 2023).

Law is for humans, so the implementation of law or law enforcement must provide benefits or usefulness for society. Law is not synonymous with justice. The law is general, binding on everyone, and generalizing. Whoever steals must be punished, and everyone who steals must be punished, regardless of who steals. Legal certainty is very synonymous with understanding legal positivism. Legal positivism argues that the only source of law is the law, while the judiciary means solely the application of the law to concrete events (Ariyanti, 2019).

Administrative Justice is a subject of great social and political importance, which is related to the wider field of public administration. A good judicial system can have a good influence and also contribute to the social and economic development of a country (Guimaraes et al., 2018).

An interesting thing that needs to be observed if there are 2 (two) elements that are mutually attractive between Justice and Legal Certainty, Roeslan Saleh in Siregar stated: "Justice and legal certainty are two legal goals that are often inconsistent with each other and difficult to avoid in legal practice. The more a legal regulation that meets the demands of legal certainty, the greater the likelihood of an urgent aspect of justice. The imperfection of these legal regulations in practice can be overcome by providing an interpretation of the legal regulations in their application to concrete events. If in its application in concrete events, justice and legal certainty are mutually urgent, then the judge must prioritize justice over legal certainty as far as possible" (Risdianto, 2017).

The Law on Government Administration is intended as one of the legal bases for Government Agencies and/or Officials, Community Citizens, and other parties related to Government Administration in an effort to improve the quality of government administration. The administration of government includes all activities carried out by agencies and/or Government Officials who carry out government functions within the scope of executive institutions, legislative institutions, judicial institutions and those that carry out government functions mentioned in the 1945 Constitution and/or laws. The principle of legal certainty is a principle in the state of law that prioritizes the basis of the provisions of laws and regulations,

propriety, fairness, and fairness in every policy of government administration (Lismanto & Utama, 2020).

The state administrative court is a judicial institution within the Supreme Court. The State Administrative Court is a judicial institution that has the authority to adjudicate State Administrative Disputes. State Governance Disputes are disputes that arise in the field of State Administration between a person or a civil legal entity and a State Administrative Agency or Official, both at the central and regional levels, as a result of the issuance of a State Administrative Decree. Including personnel disputes based on applicable laws and regulations (Siboy et al., 2022).

The State Administrative Court is referred to, by S. Prajudi Admosudirdjo mentioned the term state administrative justice in a narrow sense, while Rochmat Soemitro uses the term pure administrative justice or administrative justice in a narrow sense. The Administrative Court in question is the State Administrative Court which has the following elements: (Arta & WiraSena, 2022)

a. The existence of laws, especially in the environment of Administrative Law that can be applied to a problem;
b. The existence of concrete legal disputes, which are basically caused by written provisions of the state administration;
c. At least two parties, and at least one of the parties must administer the state;
d. The existence of an independent and separate judicial body with the authority Kertha Widya Law Journal Vol. 9 No. 2 December 2021 105 decides disputes in a neutral or impartial manner;
e. The existence of formal law in order to implement the law, finding the law "in conreto" to maintain the observance of material law (Basah, 1989:55).

According to Article 47 of the Law. No. 5 of 1986, that the court is tasked and authorized to examine and decide and resolve State Administrative disputes. However, in Article 48 paragraph (1) of the Law. No. 5 of 1986 states that in the event that a State Administrative Agency or Official is authorized by or based on laws and regulations to administratively resolve a certain State Administrative dispute, the State Administrative dispute must be resolved first through available administrative efforts. The court is only authorized to examine, decide and resolve certain State Administrative disputes as referred to in paragraph (1) if all administrative efforts concerned have been taken as stipulated in Article 48 paragraph (2) of the Law. No. 5 of 1986x(Ridwan et al., 2018).

This means that not all state administrative disputes can be resolved directly through the State Administrative Court, but there are several disputes that must be resolved first through administrative efforts. In the Explanation, it is stated that what is meant by administrative efforts is a procedure that can be taken by a person or a civil legal entity if he is not satisfied with a State Administrative Decision. The administrative efforts are carried out based on (2) two forms, namely: (Safitri & Sa'adah, 2021)

1. Objection: Settlement by the same agency. By submitting a letter of objection (bezwaarschrift) addressed to the State Administrative Agency or Officer who issued the State Administrative Decision. Second
2. Administrative Appeal: Settlement by a superior agency or other agency than the one that issued the State Administrative Decree. The procedure for submission through an administrative appeal letter (*administratiefberoep*) addressed to the superior official or other agency from the one who issued the State Administrative decision or another agency authorized to re-examine the disputed State Administrative decision.

Law No. 30 of 2014 concerning Government Administration has a lower position than Law. No. 5 of 1986 concerning the State Administrative Court in accordance with the *principle of lex superior derogat legi inferiori* which means that a higher law (legal norm/rule) negates

the enforceability of a lower law (norm/legal rule). Determining whether a norm has a higher position than other norms is certainly not a difficult thing because the state of law generally has a hierarchically organized written legal order.

In the Indonesia legal system, the types and hierarchy of laws and regulations are regulated in the provisions of Article 7 and Article 8 of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations. Some countries regulate the hierarchy of their laws and regulations in their constitutions, and even regulate the position of international agreements in the national legal system so as to answer the question of the legal position and force of international agreements in the national legal system.

In administrative disputes in the United States it is handled by the Administrative Procedure Act (APA) which provides procedures for challenging federal administrative actions. The public can file a lawsuit in *Federal District Court* after following certain administrative procedures, including the administrative appeal process. Individuals who are dissatisfied with an administrative decision must follow an internal administrative process before they can sue in court. There is also a mechanism to challenge administrative decisions in the Court of Appeals and eventually to the Supreme Court (Gellhorn, 2011).

Then in the United Kingdom, administrative disputes are regulated through Judicial Review. Individuals can apply for judicial review to assess the validity of administrative decisions issued by government agencies. This is a form of supervision by the courts over administrative actions. The judicial review process is submitted to the High Court, which can then direct the administrative decision to be reversed or corrected if it is found that the decision is unlawful or unfair (Simanjuntak, 2021).

In the Decision of the State Administrative Court Number 172/G/2021/PTUN-JKT, it states that administrative efforts in the form of "objections" and "administrative appeals" are legal options based on the Supreme Court Circular Letter (SEMA) 1 of 2017. The Panel of Judges is based on the Supreme Court Decision Number 292 K/TUN/2021 dated August 18, 2021, which in its consideration essentially outlines:

"That in essence, the spirit of Law Number 30 of 2014 concerning Government Administration is an effort to optimize the resolution of problems internally by government agencies and/or officials, but the norms are inadequate or incomplete, so to fill the gap, in order to strengthen its application by state administrative bodies or officials at the executive level, Supreme Court Regulation Number 6 of 2018 concerning Settlement Guidelines was issued Government Administrative Disputes After Taking Administrative Measures, Article 2 paragraph (1) states: "The court is authorized to receive, examine, decide and resolve government administrative disputes after taking administrative measures". The provision also does not explicitly and explicitly state the "must" of submitting administrative efforts before filing a lawsuit to the State Administrative Court. Therefore, State Administrative judges must be wise and wise, by looking objectively and proportionately so as not to eliminate the right to sue citizens as a human right to fight for their constitutional rights through the courts within the framework of the Pancasila law state, as expressly guaranteed by the basic law of the State of Indonesia Preamble to the 1945 Constitution, Article 28 D paragraph (1), Article 28 I paragraph (4) of the 1945 Constitution, Article 17 of Law Number 39 of 1999 concerning Human Rights, and Article 1 number 2 of Law Number 30 of 2014 concerning Government Administration (UUAP)".

With the Supreme Court's decision, therefore, against the contradiction of the parties' arguments regarding the submission of administrative remedies according to the Panel of Judges, it is an effort to optimize the resolution of problems internally by government agencies and/or officials, and does not eliminate the right to sue the Plaintiff as a citizen as a human right to fight for his constitutional rights through the courts, so that administrative remedies according to the panel of judges in this decision are an option.

In the Decision of the Jakarta State Administrative Court Number 99/G/TF/2021/PTUN-JKT jo. 12/B/TF/2021/PT. TUN. JKT jo 329 K/TUN/TF/2021 dated September 2, 2021 states that if one of the stages of administrative efforts is not filed, the lawsuit does not meet the formal requirements for filing a lawsuit at the State Administrative Court. In this decision, the judge considered that observing the development of administrative law in Indonesia which requires the settlement of administrative disputes to be resolved first at the government level (internal settlement) and make the means of settlement as a premium remedium institution while settlement through judicial institutions is the last resort (ultimum remedium).

The realization of the government's wishes is then normatively in Articles 75 to 78 of the AP Law, but in its development the government as the intended institution of the norm has not yet formed an implementing regulation so that the procedural law for administrative efforts at the government level is not yet available, while on the other hand the Supreme Court in this case the State Administrative Chamber is charged to guide the provisions related to the administrative efforts of the AP Law at the court level.

Historically, as an effort to achieve uniformity in examinations at the State Administrative Court, the Supreme Court issued SEMA No. 1 of 2017 which was circulated on December 19, 2017 with the intention of adjusting to the AP Law and the terminology used is the word "DAPAT". However, in line with the thoughts and efforts to return to the spirit that the AP Law wants to target, then the Supreme Court officially issued Perma No. 6 of 2018 concerning Administrative Efforts which was stipulated on December 4, 2018, the Perma then returned to the principle of the judiciary as an ultimum remedium institution and in Article 2 paragraph (1) of Perma 6 of 2018 it emphasizes that basically the court is only authorized to adjudicate administrative disputes after take administrative efforts. Furthermore, the terminology of the word "can" to take administrative efforts as referred to in the AP and Sema Law No. 1 of 2017 has been emphasized through Perma No. 6 of 2018, thus according to the Court, as long as administrative efforts are intended to file a lawsuit to the PTUN or at least related to the procedural law of the PTUN, the word "can" must be interpreted as "mandatory" to take administrative efforts first. In other words, in articles 21 and 53 of Law No. 30 of 2014 concerning Government Administration, it is stated that it must be resolved first through administrative efforts before filing a lawsuit to the State Administrative Court.

In general, the use of the word "Can" in the law indicates that an entity has the authority or authority to perform a certain action or activity, but is not required to do so. In other words, "Can" indicates an option or possibility to do something, not an obligation that must be fulfilled. In Chapter III concerning the Variety of Language of Laws and Regulations Law No. 12 of 2011 concerning the formation of laws and regulations To express the discretionary nature (subject to or left to one's own discretion) of an authority given to a person or institution, use the word can.

There are differences in the judges' views from the two decisions. In the Explanation of Article 48 of the Law on Administrative Measures, it is stated that administrative efforts are a procedure that can be taken by a person or a civil legal entity if he is not satisfied with a State Administrative Decree. The procedure is carried out within the government itself and consists of two forms, namely Objections and Administrative Appeals. In terms of its completion, it must be carried out by the superior agency or other agency from the one that issued the decision concerned, where the procedure is called an "administrative appeal".

There are those who argue that the word "may" in Article 75 paragraph (1) of the UUAP means that a person may not use his right to file an administrative remedy because he accepts the decision/action, but when the person concerned is going to file a lawsuit, the available administrative measures are still mandatory to be taken first because the Government Administration Law does not expressly require administrative efforts to be taken before filing a lawsuit to the State Administrative Court. However, there are still other laws that require

administrative efforts that have not been firmly repealed so that they are still relevant to use administrative efforts.

However, there are also those who argue that in the Government Administration Law there is no rule that the court is only authorized to examine, adjudicate, and resolve disputes when all administrative efforts have been taken first. This means, if the community chooses not to use administrative efforts and immediately file a lawsuit, it is still justified. Thus, the court cannot declare the lawsuit inadmissible on the grounds that the plaintiff has not taken administrative measures (MARWASIH, 2018).

Another difference in principle is that if in the PTUN Law as a result of public dissatisfaction with the settlement of administrative appeals, a lawsuit is filed with the State Administrative High Court (PT TUN), based on Article 51 paragraph (3) of the PTUN Law which states, "The State Administrative High Court is tasked and authorized to examine, decide, and resolve at the first level of State Administrative disputes as referred to in Article 48".

Legal *reasoning* of judges at the State Administrative Court regarding the obligation to make administrative efforts before filing a lawsuit at the State Administrative Court.

In the legal system in many countries, including Indonesia, the principle of authority of the State Administrative Court (PTUN) requires applicants to make administrative efforts before filing a lawsuit at the State Administrative Court. This administrative effort is expected to be an effective mechanism to resolve administrative disputes before burdening the court with cases that should be resolved at the administrative level first (Baherman, 2020).

If there is a violation of citizens' rights committed by government instruments, citizens are given the right to file objections (bezwaar), appeals (beroep), or lawsuits (eisen) through administrative efforts or state administrative courts. In the provisions of Article 75 paragraph. (1) and Article 76 paragraph. (2) The Government Administration Law provides the right for citizens to file objections (bezwaar) and/or appeal (beroep) to government agencies when receiving decisions and/or receiving government action against them.

Thus, the use of the word "may" in Article 75 verse. (1) and Article 76 paragraph. (2) The Law on Government Administration is correct and becomes irrelevant and inappropriate if Article 75 paragraph. (1) and Article 76 paragraph. (2) This Government Administration Law uses the word "shall". When a citizen receives a decision and/or receives an adverse government action, the citizen concerned can use or not use the right.

For judges, adequate understanding of legal reasoning, has an important role in providing legal considerations (*ratio decidendi*) in making decisions. Legal reasoning is a thinking activity that intersects with multifaceted legal meanings (*multidimensional and multifaceted*) (Taqiuddin, 2019).

Efforts to provide a guarantee of a sense of justice to the justice-seeking community are urgently needed by judges who have good legal analysis skills, integrity, morals and ethics. Judges should not take sides with one of the parties litigating in court, such as prosecutors who must side with the interests of the state and try to prove the defendant's guilt for the sake of upholding law and justice, while lawyers who side with the interests of the client so as to seek weakness and leniency for the prosecutor's evidence, also for the same reason, namely for the sake of upholding law and justice (Setiawan, 2018).

It is through this law enforcement that the law becomes a reality. In enforcing the law, there are three elements that must be considered, namely legal certainty (*rechtssicherheit*), usefulness (*zweckmassigkeit*), and justice (*gerechtigkeit*). The law must be implemented and enforced, which is what everyone wants (Anshar & Setiyono, 2020). How the law is is what must apply: basically it is not allowed to deviate: fiat justitia et pereat mundus (even if the world collapses the law must be enforced). The judge's decision was basically made in order to provide such an answer. Since the judge is considered to know the law (*ius curia novit*), the

decision must contain adequate considerations, which can be accepted rationally among judicial institutions, legal science forums, the wider community, and the parties to the case.

Judges need to pay close attention to whether their decisions have the potential to be corrected or canceled by their colleagues at the next level of justice. He also needs to pay attention so that his decision is in line with the doctrine of legal science. In turn, the decision must also pay attention to the response of the wider community, and to a more specific extent, also the response of those directly involved in the case. In the process of the birth of the judge's decision, what is called legal reasoning takes place (Budiastuti, 2019).

For judges, adequate understanding of legal reasoning, has an important role in providing legal considerations (*ratio decidendi*) in making decisions. Legal reasoning is often narrowed down to the judge's reasoning when the person concerned faces a concrete case. In other words, judicial *reasoning* is seen as the most concrete form of legal reasoning (MAULANA, 2023).

Reasoning is essentially an effort to obtain the truth/thought process to find the truth using reason (logical reason. In general, legal reasoning is a type of practical thinking (to change things), not just theoretical (to increase knowledge). Legal *reasoning* is the systematic problematic thinking activity (*gesystematiseerd probleemdenken*) of the subject of law (human) as an individual and social creature in its cultural circle.

Legal reasoning can be defined as thinking activities that intersect with multifaceted legal meanings (*multidimensional and multifaceted*). Legal reasoning as a systematic problematic thinking activity has distinctive characteristics. According to Berman, the characteristics of legal reasoning are: (Hardy, 2017)

1. Legal reasoning seeks to create consistency in legal rules and legal decisions. The basis of his thinking is the principle (belief) that the law must apply equally to all people who belong to his jurisdiction. The same case should be given the same verdict based on the principle of similia similibus (equality);
2. Legal reasoning seeks to maintain continuity in time (historical consistency). Legal reasoning will refer to previously established legal rules and previous legal decisions so as to ensure stability and predictability;
3. In legal reasoning, dialectical reasoning occurs, namely weighing opposing claims, both in the debate on the formation of law and in the process of considering the views and facts submitted by the parties in the judicial process and in the negotiation process.

There are several experts who mention steps in legal reasoning. Kenneth J. Vandevelde mentioned five steps of legal reasoning, namely: (Musa et al., 2023)

1. Identify possible sources of law, usually in the form of laws and regulations and court decisions *(identify the applicable sources of law);*
2. Analyze the sources of law *to establish possible legal rules and policies within those rules;*
3. synthesize the applicable rules of law into a coherent structure, namely a structure that groups the applicable rules *of law into a coherent structure;*
4. Research *the available facts;*
5. Apply the structure of rules to facts to ensure rights or obligations arising from those facts, by using policies located in the rules of law in terms of solving difficult cases *(apply the structure of rules to the facts).*

Decision making is indispensable for judges on the disputes they examine and adjudicate. The judge must be able to process and process the data obtained during the trial process, both from the evidence of letters, witnesses, suspicions, confessions and oaths revealed in the trial (See Article 164 of the HIR). So that the decision to be made can be based on a sense of responsibility, justice, wisdom, professionalism and is objective (Hasibuan, 2018).

In Article 5 of Law No. 48 of 2009 concerning Judicial Power, in deciding a case, the most important thing is the legal conclusion of the facts revealed at the trial. For this reason,

judges must explore values, follow, and understand the values of law and the sense of justice that live in society. According to R. Soeparmono, legal sources that can be applied by judges can be in the form of laws and regulations along with their implementing regulations, unwritten laws (customary law), village decisions, jurisprudence, science and doctrines/teachings of experts. The judge in deciding a case must be based on various considerations that are acceptable to all parties and do not deviate from the existing legal rules. Legal reasoning is defined as the search for "reason" about the law or the basic search for how a judge decides a legal case, a lawyer argues the law and how a legal expert reasons the law (Ibrahim, 2020).

According to Sudikno Mertokusumo, for judges, legal reasoning is useful in taking into account to decide a case. A judge before making his decision must pay attention and try as much as possible so that the verdict that will be handed down later will allow new cases to arise. The verdict must be complete and not give rise to a new lawsuit. The judge's task does not stop by issuing a verdict, but also completes its implementation (Akbar & bakti Harahap, 2022).

Legal reasoning of a judge is closely related to the main task of a judge, which is in charge of receiving, examining and adjudicating and resolving every case submitted to him, then the judge examines the case and finally adjudicates which means giving to the interested party his rights or laws. Such is the importance of a judge's legal reasoning in deciding a case in court, therefore it is very interesting to know about legal reasoning in making case decisions.

The PTUN judge sees that the PTUN has specific authority to handle disputes related to state administration. In this context, administrative efforts are considered appropriate steps to provide opportunities for the administration to resolve the problem without having to go through a litigation process (Syahriyah, 2024).

The reasoning of the PTUN judges often refers to the principle of subsidiarity, where the filing of a lawsuit to the PTUN is considered the last step after settlement efforts at the administrative level have been made. This shows that the PTUN is only supposed to handle administrative disputes that cannot be resolved through the usual administrative process. The reasoning of the PTUN judge can also be influenced by previous jurisprudence which strengthens the importance of administrative efforts before the lawsuit. Previous decisions can be a guide in deciding whether a lawsuit application at the PTUN can be accepted or not (Fatoni, 2023).

In the Decision of the State Administrative Court Number 172/G/2021/PTUN-JKT, the judge's legal reasoning is to consider the defendant's exclusion in order, namely the exception on the absolute authority of the court, the exception on *the Objecto Error* lawsuit, and the exception on premature swearing. Then the panel of judges referred to the Supreme Court Decision Number: 292 K/TUN/2021, which in its consideration stated that in essence the spirit of Law Number 30 of 2014 concerning Government Administration is an effort to optimize the resolution of problems internally by government agencies and/or officials, but the norms are inadequate or incomplete, so as to fill the gap, in order to strengthen its application by administrative bodies or officials at the executive level, issued Supreme Court Regulation Number 6 of 2018 concerning Guidelines for Resolving Government Administrative Disputes After Taking Administrative Efforts, Article 2 paragraph (1) states: "The court is authorized to receive, examine, decide and resolve government administrative disputes after taking administrative efforts". The provision also does not explicitly and explicitly state the "must" of submitting administrative efforts before filing a lawsuit to the State Administrative Court.

In the Decision of the Jakarta State Administrative Court Number 99/G/TF/2021/PTUN-JKT jo. 12/B/TF/2021/PT. TUN. JKT jo 329 K/TUN/TF/2021 dated September 2, 2021, the judge's legal reasoning in his legal considerations uses the provisions in Article 2 paragraph (1) of Perma Number: 6 of 2018 concerning Guidelines for Resolving Government Administrative Disputes After Taking Administrative Efforts (hereinafter referred to as Perma

No. 6 of 2018) states that: "The Court is authorized to receive, examine, decide and resolve government administrative disputes after taking administrative measures.

Then as an effort to achieve uniformity of examination at the State Administrative Court, the Supreme Court issued SEMA No. 1 of 2017 which was circulated on December 19, 2017 with the intention of adjusting to the AP Law and the terminology used is the word "can". However, in line with the thoughts and efforts to return to the spirit that the AP Law wants to target, then the Supreme Court officially issued Perma No. 6 of 2018 concerning Administrative Efforts which was stipulated on December 4, 2018, the Perma then returned to the principle of the judiciary as an ultimum remedium institution and in Article 2 paragraph (1) of Perma 6 of 2018 it emphasizes that basically the court is only authorized to adjudicate administrative disputes after take administrative efforts. Furthermore, the terminology of the word "can" to take administrative efforts as referred to in the AP and Sema Law No. 1 of 2017 has been emphasized through Perma No. 6 of 2018, thus according to the Court, as long as administrative efforts are intended to file a lawsuit to the PTUN or at least related to the procedural law of the PTUN, the word "can" must be interpreted as "mandatory" to take administrative efforts first.

The reasoning activities of the Judge with various motives that support him, are always in the vortex of the diversity of juridical thinking orientation frameworks that are maintained in an autopoesis system, so that they can develop according to their own logic, and exist as a typical model of reasoning in accordance with their professional duties (Isnantiana, 2017).

The judge's legal reasoning in the PTUN regarding the obligation to make administrative efforts before filing a lawsuit is an important aspect in ensuring that the administrative legal process runs effectively and efficiently. Despite the challenges in its implementation, this principle helps to reduce the workload of the courts and improve the overall quality of administrative dispute resolution (SANTIADI, 2023).

To be able to find the law, the judge in examining and deciding a case uses the method of legal discovery. The method of legal discovery that is embraced today, as proposed by J.J.H. Bruggink, among others, includes the method of *interpretation* and the construction of this law consists of analogous reasoning coupled with it (*spiegelbeeld*) a contrario, and the third form by Paul Scholten of law refinement (*rechtsverfijning*) which in Indonesian by Soedikno Mertokusumo is called legal refinement (Sulistyawan & Atmaja, 2021).

In the case of dealing with a legal vacuum (*rechts vacuum*) or a legal vacuum (*wet vacuum*), the judge adheres to the principle of ius curia novit, where the judge is considered to know the law. The judge may not reject a case on the grounds that the law does not exist or is unclear. He is prohibited from refusing to impose a verdict on the grounds that the law is incomplete or unclear. He is obliged to understand, follow, and explore the legal values that live in society. Therefore, Judges must make legal discoveries (*rechtvinding*) while still being guided by truth and justice and being partial and sensitive to the fate of the nation and the state of its state (Irianto, 2019).

Obligation to Make Administrative Efforts Before Filing a Lawsuit at the State Administrative Court

In accordance with the provisions of Article 48 of Law Number 5 of 1986 concerning the State Administrative Court which states that not every State Administrative Decision (*beschikking*) as the object of a State Administrative dispute can be directly sued through the State Administrative Court, because if administrative efforts are available, the state administrative dispute must be resolved first through administrative efforts before being resolved through the Administrative Court. State Business. The State Administrative Court is a court that has the authority to examine, adjudicate and decide state administrative disputes (Jaelani, 2020).

The arrangement of administrative remedies intends to guarantee legal protection of civil legal persons/entities carried out by bodies/officials within their government before submitting an application for legal protection to the TUN court. A person or civil legal entity that is harmed by a government decision/action through the provisions of administrative remedies must first be taken action. Furthermore, if the civil law person/entity is still not satisfied with the administrative efforts, then the civil law person/entity can only file a written lawsuit to the TUN court (Ramli & Saputro, 2022).

In the Explanation of Article 48 of Law Number 5 of 1986 concerning the State Administrative Court, it is stated that administrative efforts are a procedure that can be taken by a person or a civil legal entity if he is not satisfied with a State Administrative Decision. The procedure is carried out within the government itself and consists of two forms, namely Objections and Administrative Appeals. In terms of its completion, it must be carried out by the superior agency or other agency from the one that issued the decision concerned, where the procedure is called an "administrative appeal".(Jiwantara, 2019)

Prior to the affirmation with the issuance of the Supreme Court of the Republic of Indonesia Regulation (PERMA) Number 6 of 2018, dated December 4, 2018 concerning Guidelines for Resolving Government Administrative Disputes After Taking Administrative Efforts, there used to be two paths or two lines of litigation in the State Administrative Court. For State Administrative Decisions that do not recognize administrative efforts, lawsuits are addressed to the State Administrative Court as a first-instance court, while for State Administrative Decisions that recognize administrative efforts, lawsuits are directly addressed to the State Administrative High Court. Adjudicating the rights and obligations determined by the state is the administrative court (GERA, 2023).

From the perspective of administrative law theory, the resolution of disputes over state administration can be carried out through administrative efforts and administrative courts. In line with this, FH Van Der Burg stated that the resolution of state administrative disputes can be achieved through two possibilities; The first is through the state administrative court/state administrative court (*administratief rechtspraak*) and the second is through the state administrative appeal (*administratief beroep*). The first is settlement through administrative efforts. Dispute resolution through administrative efforts is the resolution of state administrative disputes carried out by the government itself, not by the judiciary. With this nature, settlement in this way is known as settlement through quasi-administrative rechtspraak (quasi-administrative court). It is called so, because it is administrative, the effort functions the same as the judiciary in resolving state administrative disputes but does not have procedural law like the judiciary.

There are 2 (two) types of dispute resolution through administrative efforts, namely through objections (*bezwaar*) and administrative appeals (*beroep administrative*). Usually, objections are submitted to the official who took action or who issued the decision, while administrative objections are submitted to the superior of the official concerned. However, the procedure does not apply absolutely, because the arrangement of administrative efforts is regulated in sectoral laws, so they are different from each other.

Administrative efforts regulated by the Supreme Court Law The Supreme Court acted responsively by issuing an Implementing Regulation, namely Supreme Court Regulation Number 6 of 2018 concerning Guidelines for Resolving Government Administrative Disputes after Undertaking Administrative Efforts, in the Regulation administrative efforts are an obligation that must be taken or formal requirements before filing a Lawsuit to the Administrative Court The state is clearly visible Article 2 which states: (Parlina, 2021)

a. Paragraph 1 "The Competent Court receives, examines, decides and resolves Government Administrative disputes after taking Administrative Efforts".
b. Paragraph 2 "The Court shall examine, decide and settle disputes over Government

Administration in accordance with the procedural law applicable in the Court, unless otherwise specified in the provisions of the applicable laws and regulations".

c. Article 3 which reads: Paragraph (1) "the court in examining, deciding and resolving government administrative dispute lawsuits uses the basic rules that govern the administrative efforts".
d. Paragraph (1) "in the case of the basic provisions for the issuance of decisions and/or actions that do not regulate administrative efforts, the court uses the provisions stipulated in law number 30 of 2014 concerning government administration.

In Law Number 5 of 1986, administrative efforts only apply to certain State Administrative Disputes (TUN) which are indeed provided by laws and regulations. Meanwhile, beyond that, namely State Administrative Disputes (TUN) for which administrative efforts are not available, can be directly submitted to the State Administrative Court (PTUN) (Palilingan et al., 2023).

Administrative efforts are a procedure that can be taken in resolving a problem related to a Civil Legal Entity, this is done if the person or individual feels lacking/dissatisfied with a state administrative decision (KTUN) that exists within the scope of the existing administration or government itself (Rurugala et al., 2022).

Referring to the provisions of Article 1 number (16). Article 75, Article 76, Article 77 and Article 78 in the Government Administration Law, there are a number of fundamental changes related to the administrative process in the Government Administration Law, namely: (Sudiarawan & Hermanto, 2019)

1. First, there is a requirement to unite the Administrative Judicial system with administrative efforts, with the requirement that the final process of Administrative Efforts is a lawsuit to the Administrative Court. This means that the process of administrative efforts, namely both the objection procedure and the administrative appeal, is a premium remedium effort implied in Article 75 of the Government Administration Law. This is a different paradigm from the PTUN Law which requires that administrative efforts against state administrative decisions whose settlement process has been regulated by certain laws through an internal mechanism.
2. Second, there is a requirement for all cases that question state administrative decisions issued by state administrative officials that must go through the mechanism of administrative objection and appeal procedures or in short through internal mechanisms, thus encouraging efforts to resolve disputes through non-judicial mechanisms. internal (Hermanto, & Sudiarawan, 2019). That with the existence of Article 2 paragraphs (1) and (2) in the Regulation of the Supreme Court of the Republic of Indonesia (Perma RI) Number 6 of 2018 concerning Guidelines for the Settlement of Administrative Disputes After Taking Administrative Efforts mentioned above, it is mandatory and applies to all State Administrative disputes. This means that the settlement of State Administrative disputes first takes administrative efforts consisting of administrative objections and appeals.

Administrative Efforts as explained in article 1 number 16 of the Law on Government Administration is a dispute resolution process carried out within the Government Administration as a result of the issuance of Adverse Decisions and/or Actions (Remaja, 2021). From this understanding, it can be understood that administrative efforts are settlement efforts carried out internally by government agencies/officials in the event of the issuance of a Decision and/or the implementation of an action by the government agency/official. In the AP Law, when the public feels aggrieved by a decision and/or action of a government agency/official, they can submit administrative efforts to the Government Official or Superior Officer who determines and/or performs the Decision and/or action. The form of Administrative Efforts that can be submitted by the community is objections and appeals. The following is an explanation of the administrative measures that can be submitted: (Ali, 2021)

1. Objection Submission of objections is addressed to the body and/or official that issued the decision in writing. The deadline for submitting objections is a maximum of 21 (twenty-one) working days from the announcement of the decision by the Agency and/or Government Official. The time limit for resolving objections is 10 (ten) working days at most. In the event that the Agency and/or Government Officer does not resolve the objection within the time period as intended in paragraph (4), the objection is considered to be granted. Objections that are considered to be granted, are followed up with the application of the Decision in accordance with the objection request by the Agency and/or Government Official.The Agency and/or Government Officer is obliged to establish the Decision in accordance with the application no later than 5 (five) working days after the expiration of the grace period for resolving objections. In the event that an objection is received, the Agency and/or Government Officer is obliged to determine the Decision according to the objection request.
2. Appeal An appeal against the decision of the objection can be submitted within a maximum of 10 (ten) working days from the date the decision of the objection is received. The appeal is submitted in writing to the Superior Officer who sets the Decision. Government Agencies and/or Officials shall resolve the appeal within ten (10) working days at most. In the event that the Agency and/or Government Officer does not resolve the appeal within 10 (ten) working days, the appeal is considered granted. Agencies and/or government officials are obliged to determine the Decision in accordance with the application no later than 5 (five) working days after the expiration of the 10 (ten) working days. Regarding the appeal application that is granted, the Agency and/or Government Officer is obliged to make a Decision in accordance with the appeal application. Testing in the government's internal environment is different from testing in the State Administrative Court. The government assesses from the aspect of "doelmatigheid" the purpose or benefit of issuing a decision and "rechtsmatigheid" from a legal perspective. Testing at the PTUN is only from a legal aspect.

As explained in the previous discussion, according to the AP Law, in the event that an Objection or Appeal is not responded to within a certain period of time, the Objection or Appeal is considered granted. Then the government body/official authorized to handle the objection or appeal is obliged to issue a Decision on the matter as stipulated in article 77 paragraph (7) and 78 paragraph (6) of the UUAP.

The above provisions, at first glance, will resemble the provisions of article 53 of the AP Law. Article 53 of the AP Law, especially paragraph (3), stipulates that if within the period specified by the law of the state administrative body/official does not stipulate and/or carry out the Decree and/or action, then the application for the determination of the Decree and/or take the action is considered legally granted. Then to obtain a Decision on acceptance of the application, the applicant must submit an application to the State Administrative Court (Ridwan et al., 2018).

That after taking administrative efforts but there is no resolution, then the dispute can be submitted to the State Administrative Court. The State Administrative Court, in accordance with the purpose of its formation, functions to resolve disputes between the government and citizens or legal entities, namely in the form of disputes arising from the actions of the government as State Administrative Officials who are considered to violate the rights and interests of citizens or legal entities themselves (Hasibuan, & Suranta, 2013). This is part of the formal requirements that must be met to file a lawsuit at the State Administrative Court before testing the substance of the dispute (Rurugala et al., 2022).

The emergence of administrative efforts is inseparable from the government's authority to impose or impose administrative sanctions and/or take certain actions on the community so that to avoid the tyranny of power, the mechanism of objection and/or administrative appeal is an integral part of the provision as a means of legal protection for the community. In

administrative efforts, there has been a decision and/or action taken by a government body. The administrative effort is a procedure specified in a law and regulation to resolve a TUN dispute which is carried out in the government itself. This means that there has been a dispute between government agencies/officials and the community which is resolved internally within the government (Dotulong, 2018).

With the gap between these legal uncertainties, testing should be carried out at the Constitutional Court, so that there is uniformity in the application of administrative efforts for the judiciary. The position of the Constitutional Court is as one of the independent state institutions of judicial power to hold the judiciary to uphold law and justice. It is hoped that the Constitutional Court can play an active role in providing uniformity in the application of administrative efforts and ensuring that the principles of justice and legal certainty are properly enforced.

CONCLUSION

Based on the results of the research and discussion that has been explained earlier, the conclusion of this study is:

The phrase "can" contained in Article 75 of the AP Law has caused legal uncertainty in the practice of proceedings in the State Administrative Court and caused inconsistency or ambiguity in legal considerations by the Panel of Judges as contained in the TUN Case Decision Number 99/G and TUN Case Decision Number 172/G.

As an effort to achieve uniformity of examination at the State Administrative Court, the Supreme Court issued SEMA No. 1 of 2017 which was circulated on December 19, 2017 with the intention of adjusting to the AP Law and the terminology used is the word "DAPAT". However, in line with the thoughts and efforts to return to the spirit that the AP Law wants to target, then the Supreme Court officially issued Perma No. 6 of 2018 concerning Administrative Efforts which was stipulated on December 4, 2018, the Perma then returned to the principle of the judiciary as an ultimum remedium institution and in Article 2 paragraph (1) of Perma 6 of 2018 it emphasizes that basically the court is only authorized to adjudicate administrative disputes after take administrative efforts. Furthermore, the terminology of the word "can" to take administrative efforts as referred to in the AP and Sema Law No. 1 of 2017 has been emphasized through Perma No. 6 of 2018, thus according to the Court, as long as administrative efforts are intended to file a lawsuit to the PTUN or at least related to the procedural law of the PTUN, the word "can" must be interpreted as "mandatory" to take administrative efforts first.

In the legal systems of many countries, including Indonesia, the State Administrative Court (PTUN) has specific authority to handle administrative disputes. The principle of PTUN authority requires the petitioners to first make administrative efforts before filing a lawsuit to the court. This administrative effort is considered an appropriate step to resolve disputes at the administrative level before burdening the courts with cases that should have been resolved through the administrative process. The legal reasoning applied by the judges of the State Administrative Court is very important in making decisions, which reflects the principles of consistency, historical continuity, and dialectical reasoning. Thus, the PTUN plays a role in ensuring that law enforcement occurs effectively, by paying attention to the principles of justice and legal certainty that are the basis for every decision taken..

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