



## Legal Position and Rights to Sue Community Citizens in Onrechtmatige Overheidsdaad Disputes, Post the Entrance of Law No 30 of 2014 Concerning Government Administration

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### ARTICLE INFO

*Keywords:* Legal Standing, Right to Sue, Community Citizens, Onrechtmatige Overheidsdaad

*Received :* 21, September

*Revised :* 23, October

*Accepted:* 30, November

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### ABSTRACT

UU no. 30 of 2014 concerning Government Administration explicitly states that it is possible for Government Officials to be tested by the PTUN. This is of course in order to create good government. This research is normative juridical legal research. This research will analyze the legal position and right to sue the community regarding the Onrechtmatige Overheidsdaad dispute. The research results concluded three things; First, the public has sufficient requirements to file a lawsuit because the legal position and right to sue are regulated in the Decree of the Chief Justice of the Supreme Court Number 36/KMA/SK/II/2013, Law Number 5 of 1986 concerning Administrative Justice, and others. Second, UUAP No. 30 2014 also explicitly states that the government is prohibited from abusing its authority and the PTUN has the authority to decide whether there are elements of abuse of authority. This means that Law Number 30 of 2014 provides space for the public to file a lawsuit. The three definitions of 'Community Citizens' in UUAP No. 30 2014 must be changed after the publication of PERMA Number 01 of 2023 concerning Guidelines for Adjudicating Environmental Cases.

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## **INTRODUCTION**

The government or state administration is a legal subject, as a drager van de rechten en plichten or supporter of rights and obligations. As a legal subject, the government carries out various actions that do not give rise to legal impacts (factual actions) and those that give rise to legal impacts (legal actions). Furthermore, if the phrase legal action is used in State Administrative Law, it is known as Administrative Legal Action (*administratieve rechtshandeling*), namely a statement of will that arises from an administrative organ in special circumstances, intended to give rise to legal consequences in the field of State Administrative Law. Legal consequences arising from legal actions are consequences that have relevance to the law, such as the creation of new legal relationships, changes or termination of existing legal relationships.

An administrative legal action is different in nature from a civil legal action, especially in terms of its binding nature. Administrative Legal Actions can bind citizens without requiring the consent of the citizen concerned, therefore Administrative Legal Actions must be based on applicable laws and regulations, the actions must not deviate from and conflict with applicable rules. In other words, administrative legal actions can only be carried out in terms and in a manner that has been regulated and permitted by statutory regulations, so that they can cause legal consequences, namely that administrative actions can be canceled if they are carried out contrary to the rules. This is what is then called a State Administration dispute (TUN), namely a dispute that arises in the field of State Administration filed by a person or legal entity against a TUN agency/official carrying out government affairs.

In the context of this research, the author focuses on the object of the TUN body/official in question, namely the government. Because the government carries out administrative actions, then to assess whether all government actions are legal or not, an administrative court is carried out. The government, with its authority, can carry out legal actions (*Rechtshandeling*) which of course cause certain legal consequences to arise. Then the actions (*handling*) carried out by the government can often conflict with the interests of citizens, and may even result in losses for citizens. There is a very open possibility that the government could commit unlawful acts as regulated in Article 1365 BW.

Acts against the law (*Onrechtmatige daad*) themselves are an important matter in the field of civil law. In 1883 Hoge Raad interpreted against the law (*Onrechtmatige*) in Article 1365 BW (1401 BW Ned) as "een daad of verzuim in strijd met des daders rechtsplicht of inbreuk makend of eens anders recht" (acting or not acting contrary to the legal obligations of the creator or violates the rights of others), thus, it is interpreted narrowly only regarding actions that directly violate a legal regulation. Only since 1919 after being pioneered by the Supreme Court in the Netherlands (Hoge Raad Decision dated 31 January 1919) contained in the magazine "*Nederlandsche Jurisprudentie*" 1919-101, the term of *onrechtmatige daad* has been interpreted broadly, so that it also includes an act, which is contrary to morality or with what is considered appropriate in social life. According to Article 1365 of the Civil Code, every person who commits an unlawful act is obliged to compensate for the losses arising from his or her mistake. In the principle of *verbintenissenrecht*, one human being is

independent of other humans. In this society, one human being respects another human being. Actions that disturb this balance are called unlawful acts (onrechtmatige daad).

In the context of protecting and respecting the dignity and human rights of citizens, it is appropriate that legal protection facilities be provided for citizens whose interests are harmed by government actions. Citizens who are harmed by government actions can submit objections and apply for the right to sue (legal standing) to the TUN. Legal standing is a determinant of whether a person in a lawsuit is a legal subject who has fulfilled the requirements according to law to file a case before a court in a case as regulated by law.

Furthermore, the losses experienced by society due to government actions are of course closely related to legal protection, where this cannot be separated from discussions regarding the rights that must be obtained and the obligations that must be carried out by legal subjects. Legal protection is the recognition and guarantee provided by law in relation to human rights. This legal protection is important to study because it is closely related to the three basic ideas of law by Achmad Ali, namely justice, expediency and legal certainty.

## **LITERATURE REVIEW**

Regarding to the background above, the research question is: how is the legal standing and right to sue community members in the Onrechtmatige Overheidsdaad dispute, after the enactment of Law No. 30 of 2014 concerning Government Administration?

## **METHODOLOGY**

The research type used normative juridical legal research. Normative legal research is research that examines statutory regulations in a coherent legal system. Normative legal research was carried out by examining all laws and regulations relating to legal issues relating to State Administrative Courts (UU No. 5 of 1986), Government Administration (UU No. 30 of 2014).

## **RESULT AND DISCUSSION**

### **History of the TUN Judiciary in Indonesia and Characteristics of the TUN Judiciary After Law No. 30 of 2014 Concerning Government Administration**

#### **A. History of the TUN Judiciary in Indonesia**

The existence of administrative justice in the *rechstaat* concept is motivated by the government's authority to normalize all regulations in the form of statutory regulations, so administrative justice is provided as a forum for the community to seek justice. Apart from that, the most basic characteristic of legal actions carried out by the government is unilateral decisions and decrees. It is said to be unilateral because whether a government legal action is carried out or not depends on the unilateral will of the government. Decisions and decrees as legal instruments of the government in carrying out unilateral legal actions, can be the cause of legal violations for citizens, especially in modern legal states which give broad authority to the government to interfere in the lives of citizens. Therefore, legal protection is needed for citizens against

government legal actions. For this reason, administrative justice was also established, the essence of its existence is to protect the fundamental rights of citizens in addition to ensuring that people obtain legal certainty in seeking justice.

In Indonesia, the authority to review government policies relating to citizens' rights is placed in a separate judicial institution, namely the State Administrative Court. The existence of the PTUN cannot be separated from the commitment of the Indonesian people to establish a rule of law and protect the interests of its citizens. The position of the State Administrative Court (PTUN) in the 1945 Constitution of the Republic of Indonesia after the amendment has been strictly regulated, especially in Article 24 paragraph (2) of the 1945 Constitution, which contains:

*"Judicial power is exercised by a Supreme Court and subordinate judicial bodies in the general court, religious court, military court, state administrative court and by a Constitutional Court."*

The strict regulation of the position of the State Administrative Court (PTUN) in the constitution is influenced by the idea of the need to improve the quality of supervision of the government. Because the potential for abuse of authority by government officials is increasing, which is clearly detrimental to the general public. Provisions regarding material law and formal law from the State Administrative Court are then regulated in Law Number 5 of 1986 concerning the State Administrative Court.

The absolute competence of the PTUN is contained in Article 47 of Law No. 5 of 1986 which stipulates that the court has the duty and authority to examine, decide and resolve state administrative disputes. It indicates that a state administration dispute, according to Article 1 point 4, is a dispute that arises in the field of state administration between a person or civil legal entity and a state administration body or official, both at the central and regional level, as a result of the issuance of an Administrative Decree. State, including employment disputes based on applicable laws and regulations.

From the provisions in Law No. 5 of 1986, it can be seen that the PTUN's competence is very narrow, only relating to State Administration Decisions which are considered to be detrimental to society. As is known, decisions must be concrete, individual and final, apart from that the PTUN does not have the authority to adjudicate them. The above conditions continued for almost 20 years, then in line with the increasing number of tasks that had to be carried out by the government which were influenced by the notion of a welfare state. Added to this is the government's authority to exercise discretion, namely the freedom to take policy if there is no law regulating it or a vague law owned by the government. Therefore, the PTUN competence contained in Law No. 5 of 1986 is no longer relevant, because it is too narrow to only adjudicate concrete, individual and final decisions.

To expand legal protection to the public thus they do not become victims of government arbitrariness, in 2014 Law No. 30 of 2014 concerning Government Administration was passed. In relation to this, in fact many things

have happened in the community, one example being that community land is used as a development location by the local government, where the community concerned has to give up their land. Not to mention the case of dismissing someone from their position, with unclear reasons for the dismissal. These various actions have the potential to become arbitrariness if not controlled properly. This law expands the competence of the PTUN which no longer only adjudicates State Administrative Decisions but is also given the authority to adjudicate other cases related to state administration. The PTUN is given the authority to adjudicate whether or not the decisions or actions of state administrative officials contain abuse of authority, the issue of positive fictitious decisions, and other competencies whose complexity in quantity and quality also increases.

## **B. Characteristics of the TUN Judicial Post Law No. 30 of 2014 concerning Government Administration**

UU no. 30 of 2014 concerning Government Administration is the material law of the State Administrative Court system with the explanation that this law specifically actualizes the constitutional norms of the relationship between the State and its citizens. Every decision and/or action by a government official or other state administrator which includes institutions outside the executive, legislative and judicial powers, may be subject to review by the court. The court in question is the State Administrative Court. Submission of lawsuits regarding Government Administration disputes which have been registered with the general court, but have not yet been examined, with the enactment of this Law, shall be transferred and resolved by the State Administrative Court.

As is known, the birth of Law no. 30 of 2014 concerning Government Administration also automatically indicates that the provisions in Law No. 5 of 1986 are no longer relevant to be maintained, so the government issued Law No. 30 of 2014 concerning Government Administration as a replacement. The issuance of this law has provoked pros and cons among administrative law experts regarding the various materials regulated, especially in terms of expanding the absolute competence of the PTUN.

Therefore, the government's actions in running the government must also be given a reference. So, the substance of the Government Administration Law gives the PTUN many new authorities. The following are the characteristics of the authority mandated by Law No. 30 of 2014 to PTUN:

### **1. The Meaning of a Decision**

Referring to Law No. 5 of 1986 as also regulated in Law No. 51 of 2009, the meaning of a State Administrative Decree is a written determination issued by a State Administrative Agency or Official containing State Administrative legal actions based on statutory regulations. applicable, which are concrete, individual and final, which give rise to legal consequences for a person or civil legal entity. However, in Law Number 30 of 2014 Article 87 of the Transitional Provisions regulates the detailed criteria for TUN decisions as follows;

- First, if previously decisions were always associated with a concrete, individual and final nature, decisions that did not cover these three

things cumulatively could not be submitted to the PTUN. However, the Government Administration Law no longer has to cover these three characteristics, in this article it only says "is final in a broader sense".

- Second, government administration is not interpreted only as decisions as in the PTUN Law, but also includes factual actions. PTUN handles objects in the form of government administrative actions. In Article 85 of the Government Administration Law, it is stated that filing a Government Administration dispute lawsuit which has been registered with the general court but has not yet been examined, with the enactment of this Law will be transferred and resolved by the PTUN.
- Third, the scope of government administration regulations does not only cover the executive sector, but also government in a broad sense, namely the executive, legislative and judiciary. Thus, the decisions that can be appealed to the PTUN are not only those of the president, governor, regent or mayor as has been the case up to now. However, it also includes the decision of the chairman of the DPR and the decision of the chairman of the Supreme Court.

## 2. Responsive Fictional Decisions

There are principal differences between the PTUN law and the Government Administration law regarding negative fictitious decisions and positive fictitious decisions. Article 3 of the PTUN Law regulates negative fictitious decisions, namely if a State Administrative Agency or Official does not issue the requested decision while the time period has passed, then the State Administrative Agency or Official is deemed to have refused to issue the decision in question.

In accordance with Article 53 of the Government Administration Law, in principle it regulates that if within the specified time limit, the Government Agency or Official does not issue and/or carry out a decision and/or action, then the request is considered legally granted. The birth of positive fictitious decisions cannot be separated from changes in the public service paradigm which require government agencies or officials to be more responsive to public requests. One of the basic desires and directions of legal politics in government administration law is to increase the quality of government administration.

## 3. Authority of PTUN to Assess Elements of Abuse of Authority

The Government Administration Law gives the PTUN the authority to assess whether or not there are elements of abuse of authority committed by government agencies or officials. This provision is regulated in Article 21 of Law No. 30 of 2014.

## **Understanding Legal Status and the Right to Sue and the Differences Between Community Members and Citizens in Terms of Statutory Regulations**

### **A. Definition of Legal Position and Right to Sue**

In order to understand the legal position and right to sue, it is first understood that human nature is a zoon politicon or social creature. As social creatures, of course humans always interact with humans or other parties, which often causes friction, namely their interests are disturbed or they feel disadvantaged by the actions of humans or other parties. To protect human interests in society, according to Sudikno Mertokusumo, he explains one of the most relevant social rules, namely the Rule of Law.

Legal rules (written law) are stated in the form of statutory rules, where if there is a violation of these rules, then the court is the institution that represents society to obtain justice. Then, in order to file a lawsuit to the court, a person must have a basis/reason that can be justified, in this case it could be said to be a reason why someone has legal standing to file the lawsuit. Legal standing is adopted from the common law legal system. Black's Law Dictionary has provided the following definition of Legal Standing: "A Party's right to make legal claims or seek judicial enforcement of a duty or right". If it is interpreted, then Legal Standing is a determinant of who is given the right to file a legal claim. According to Harjono, legal standing is a situation where a person or party is determined to meet the requirements and therefore has the right to submit a request for dispute resolution.

The right to sue is a person's right to file a lawsuit in a case because they feel that their rights have been violated. Several experts have definitions regarding the right to sue. Yahya Harahap said that the party who submits, resolves the dispute is called and acts as the Plaintiff (Plaintiff=planctus, the party who institutes a legal action or claim). Furthermore, the person acting as the plaintiff must be a person who truly has the appropriate position and capacity according to law. Meanwhile, according to Retnowulan Sutantio and Iskandar Oeripkartawinata, a plaintiff is a person who "feels" that his rights have been violated and brings the person he "feels" has violated his rights as a defendant in a case before a judge. Thus, it can be interpreted that the right to sue is related to the right or authority to file a lawsuit, while the legal position is related to the terms or conditions that must be fulfilled to have that right or authority.

### **B. Differences between Citizens and Community Members Judging from Legislation**

In Indonesia, citizenship is regulated by Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia. In Article 1, it is stated "Citizens are citizens of a country determined based on statutory regulations", and "Citizenship is all matters relating to citizens". Regarding the definition of Community Citizen, according to Koentjaraningrat, society is a unit of human life that interacts according to a certain system of customs that is continuous and bound by the same sense of identity.

If the difference between citizens and community members is viewed from legislation, the differences between the two can be distinguished in several ways: First, in terms of status, citizens have different legal status, rights and obligations from community members. A citizen has reciprocal rights and obligations to the state, the main points of which are stated in the state constitution, while citizens do not have the same legal status as citizens. Second, in terms of obligations, citizens have an obligation to defend the country if necessary, pay taxes and obey the law. Meanwhile, community members have an obligation to maintain security and public order and promote shared prosperity. Thus, it can be concluded that citizens have different legal status, rights and obligations from community members. Citizens have a higher position than community members because they have different rights and obligations from community members.

### **Legal Standing and the Right to Sue by Members of the Public in Disputes on *Rechtmatige Overheidsdaad*, After the Enactment of Law No. 30 of 2014 Concerning Government Administration**

As has been explained, Legal Standing determines who is given the right to file a legal claim. In Harjono's opinion, legal standing is a situation where a person or party is determined to meet the requirements and therefore has the right to submit a request for dispute resolution. The definition regarding the Right to Sue, as stated by Yahya Harahap, states that the party who submits the dispute resolution is called and acts as the Plaintiff. Meanwhile, according to Retnowulan Sutantio and Iskandar Oeripkartawinata, a plaintiff is a person who "feels" that his rights have been violated and draws the person who he "feels" has violated his rights as a defendant in a case before a judge.

To test whether community members have legal standing and are entitled to be parties who can sue in *Onrechtmatige Overheidsdaad* disputes, the first thing that needs to be analyzed is whether community members meet the requirements to submit a request for resolution of *Onrechtmatige Overheidsdaad* disputes after the enactment of Law No. 30 of 2014 concerning Government Administration. These conditions must definitely be regulated in law. In the Indonesian legal system, there are several laws and regulations that specifically regulate the limits on Legal Standing (as well as the Right to Sue) for someone who wants to fight for their rights, including those regulated in the following law;

First, the Chief Justice of the Supreme Court Decree No. 36/KMA/SK/II/2013 concerning the Implementation of Guidelines for Handling Environmental Cases. This regulation states that the legal basis for the party applying for legal standing (the author is specific on the legal basis related to the community's right to sue). Regarding the community's right to sue, it is regulated in Article 91 paragraph (1) which asserts: (1) The community has the right to file a class representative lawsuit for its own interests and/or for the interests of the community if it experiences losses due to environmental pollution and/or damage.

Second, Law Number 8 of 1999 concerning Consumer Protection (UU 8/1999). Article 45 paragraph (1) argues that: every consumer who suffers

losses can sue business actors through institutions tasked with resolving disputes between consumers and business actors or through courts within the general judiciary.

Third, Law Number 24 of 2003 concerning the Constitutional Court (UU 24/2003) explains the constitutional rights and authorities that are impaired by the enactment of the law, namely: "Individual Indonesian citizens; What is meant by "individuals" includes groups of people who have the same interests."

Fourth, Law Number 5 of 1986 concerning State Administrative Courts (UU 5/1986) and its amendments. There are often two subjects in State Administrative Courts; 1) The plaintiff is any person or civil legal entity who feels that their interests have been harmed as a result of the issuance of a State Administrative Decree; 2) The defendant is a state administrative body or official who issues a decision based on the authority he has.

The many regulations regarding legal standing and the right to sue members of the community above show that according to regulations, members of the public have met the requirements to file a lawsuit. Furthermore, if legal standing and the right to sue members of the public are linked to Law No. 30 of 2014 concerning Government Administration, then the question is whether in this law citizens have legal standing and the right to sue the government for abusing officials? So the thing that needs to be analyzed is the characteristics of Law No. 30 of 2014 concerning Government Administration itself.

The author views that the Government Administration Law has one characteristic that is relevant to this research, namely that the Government Administration Law gives the PTUN the authority to assess whether or not there are elements of abuse of authority committed by government bodies or officials. This provision is regulated in Article 21 of Law No. 30 of 2014, which reads in full:

**1. The Court has the Authority to Receive, Examine and Decide Whether or Not There are Elements of Abuse of Authority Committed by Government Officials**

In the 2014 UUAP, this authority was expanded to two forms of abuse of authority as stated in Article 17 which reads as follows: 1) Government agencies and/or officials are prohibited from abusing their authority. If it is simplified, Article 17 of Law No. 30 of 2014 above expressly prohibits the government from abusing its authority, and Article 21 of Law No. 30 of 2014 also reads in full: "The court has the authority to accept, examine and decide whether or not there are elements of abuse of authority. carried out by Government Officials". Therefore, Law No. 30 of 2014 can provide legal standing for members of the public to file a lawsuit regarding abuse of government officials.

### **Updates Regarding the Legal Position and Rights to Sue Community Members in Disputes *Onrechtmatige Overheidsdaad***

The AP Law as well as SEMA or PERMA 2/2019 also regulates the definition of "Community Citizen" as "a person or civil legal entity related to Decisions and/or Actions".

From the results of research conducted by the author on several laws, coupled with the publication of Perma 01 of 2023 concerning Guidelines for Adjudicating Environmental Cases which has given community members the Right to Suit in the form of Group Representative Lawsuits and Citizen Lawsuits, the phrase "Community Citizens" should be it is no longer possible to only contain "individuals and civil legal entities", but must be changed from "a person" to "one person" and add the words "several people representing groups", to become Community Citizens are "one or several people representing groups of civil legal entities related to Decisions and/or Actions". The reformulation of these changes is not without reason. The reason is, in Perma 01 of 2023, CHAPTER 1 General Provisions, Article 1 number 6, it is stated "Group Representative Lawsuit is a procedure for filing a lawsuit, which consists of one or more people filing a lawsuit for themselves and at the same time representing a group of people whose number is many, which have similar facts or legal bases between group representatives and members of the group in question."

Therefore, PERMA Number 01 of 2023 concerning Guidelines for Adjudicating Environmental Cases would be the juridical basis for researchers to reformulate by changing the definition of Community Citizens in UUAP, SEMA or PERMA 2/2019, because PERMA Number 01 of 2023 does not regulate citizens. community, but rather group representatives, as stated in the contents of the PERMA.

## CONCLUSIONS AND RECOMMENDATIONS

Dealing with the explanation above, it can be concluded; Firstly, community members have sufficient requirements to file a lawsuit because their legal standing and right to sue are regulated in the Decree of the Chief Justice No. 36/KMA/SK/II/2013 and others. Second, Law No. 30 of 2014 concerning Government Administration also explicitly states that the government is prohibited from abusing its authority and that the courts have the authority to decide whether there are elements of abuse of authority. Apart from that, the researcher also proposed updating the definition of "Community Citizen" in the 2014 UUAP, because PERMA Number 01 of 2023 concerning Guidelines for Adjudicating Environmental Cases has been issued which is the juridical basis for researchers to reformulate it by changing the definition of Community Citizen in the UUAP.

## FURTHER RESEARCH

This research still has limitations so further research needs to be done on this topic "Legal Position and Rights to Sue Community Citizens in Onrechtmatige Overheidsdaad Disputes, Post the Entrance of Law No 30 of 2014 Concerning Government Administration".

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