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Jurisdiction Conflict between Indonesian District Courts and State Administrative Courts: The Possibility Using 'Joint-Proceeding' Concept for Resolution

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ABSTRACT

This study aims to examine the impact of jurisdictional conflict between the Indonesian District Court and Administrative Court after PERMA Number 2 of 2019' enachment on justice seekers, and examine the possibility of applying 'joint-proceeding' concept as a solution. The research uses normative legal research by examining data in the form of primary legal materials of two judges' decisions relating with conflict of court jurisdiction, as well as secondary legal materials namely 'joint-proceeding'. The research analyses qualitatively the data to assess the impact of the jurisdiction conflict and to analyze the possibility of using 'joint-proceeding concept. It shows that conflicts of court jurisdiction between district court and state administrative court has an impact on injustice and legal uncertainty for justice seekers since furthermore the pleading is not accepted then. The concept of 'joint-proceeding' which has been recognized in the Indonesian judicial system may be applied as the way to overcome the conflict, especially in case there are two legal aspect engaged in a state administrator's legal conduct, namely both private and administrative legal aspect. 'Joint-proceeding' concept will create an efficient legal process and legal certainty. However, a discussion still has to be made on how to hear the case with two different procedures: the civil procedure and the administrative procedure.

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Keywords:
Conflict, jurisdiction, District Court, State Administrative Court, joint-proceeding

BACKGROUND

After the enactment of Law Number 30 of 2014 concerning Government Administration (UUAP), as well as Supreme Court Regulation No. 2 of 2019 of Guidelines for Dispute Settlement of Government Actions and the jurisdiction to Adjudicate Unlawful Acts by Government Agencies and/or Officials (PERMA2/2019), a problem of jurisdiction still remains relating with adjudicating government legal actions that containing civil and state administrative aspects. This creates a disparity in interpretation for judges and justice seekers.

Prior to PERMA No. 2 of 2019, the State Administrative Court (PTUN) was only authorized to adjudicate disputes regarding the invalidity of the decisions of state administration officials. If there is a claim for compensation due to the invalidity of a state administrative decision based on an unlawful act, it becomes the authority of the District Court (PN). Based on UAP and PERMA No. 2 of 2019, the PTUN's authority has expanded. The criteria for the object of the TUN dispute are deconstructed. The PTUN is currently not only authorized to adjudicate written decisions but also has the authority to adjudicate factual administrative actions of government officials.[1] UUAP is clarified by the Indonesian Supreme Court' Letter No.4 of 2016 (SEMA No. 4 of 2016), where promulgates that the State Administrative Court has the authority to adjudicate the government unlawful acts, which commonly referred to as 'onrechtmatige overheidsdaad' (OOD).

Furthermore, the Supreme Court issued Perma No. 2 of 2019 to complete the procedural law to adjudicate unlawful acts by government agencies/officials (OOD). According to Fauzani and Rohman, [2] Perma No. 2 of 2019

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[1] Enrico Simanjuntak, 2018, *Hukum Acara Peradilan Tata Usaha Negara: Transformasi dan Refleksi*, Sinar Grafika, Jakarta Timur.p. 28.

[2] Muhammad Addi Fauzani & Fandi Nur Rohman, "Problematik Penyelesaian Sengketa Perbuatan Melawan

still contains some problems. First, the use of 'violating' term is still in a narrow meaning, not as wide as the term "against" which is inherent in active and passive nature, as well as the use of foreign term 'onrechtmatige overheidsdaad' which is less commonly used in Indonesian law. Second, the elements of unlawful acts in Perma No. 2 of 2019 is unclear as stipulated in Article 1365 of the Civil Code, so that it will be difficult for judges to determine the parameters. Third, there is a time reduction in Perma No. 2 of 2019 which is 90 days including the days used for administrative efforts. Fourth, the compensation parameter is not regulated even though the essence of unlawful acts is the existence of compensation from the authorities due to unlawful acts. This regulation is in contrast to the provisions of Article 28D Paragraph (1) of the Republic Indonesia Constitution which states that, "Everyone has the right to recognition, warrant, protection, fair legal certainty and equal treatment before the law".

This study aims to examine the conflict of jurisdiction between PN and PTUN after the enactment of PERMA No. 2 of 2019 and its impact on justice seekers, as well as to analyze the possibility of applying 'joint-proceeding' concept to overcome the conflict. From the search, no one has reviewed the solution to the conflict of jurisdiction between the PN and the Administrative Court. Thohari examines the conflict in adjudication between the PN and the Religious Courts.[3] Maksum only reviewed the limits of PN and PTUN's authority after the enactment of PERMA No. 2 of 2009.[4] Pramana, Arjaya, and Widiati examined the intersection between the PN and the Administrative Court.[5] Based on the back ground, the research will analyze the problems relating with the impact of the jurisdiction conflict to justice seekers, and the possibility of using 'joint-proceeding concept to overcome the conflt of jurisdiction. It important to overcome the conflct of jurisdiction since it tend to harm their rights procedurally, and to create legal certainty.[6]

METHODS

This research is a normative legal research,[7] by examining regulations, court decisions, and theories or concepts related to the jurisdiction of courts. The data studied in the form of secondary data, consists of primary and secondary legal materials. Primary legal materials include the Indonesian Constitution, Law No.48 of 2009 concerning Judicial Power, Law No.2 of 1986 relating to the General Court Bodies and its amendments namely Law No.8 of 2004 and Law No.49 of 2009, Law No.5 of 1986 concerning Administrative Courts as amended by Law No.9 of 2004 and Law No.51 of 2009, Law No.30 of 2014 of Government Administration, and the Supreme Court Regulation No.2 of 2019 of Guidelines for Dispute Resolution of Government Actions and Authority to Adjudicate Unlawful Acts by Bodies and/or Officials Government (Onrechtmatige Overheidsdaad), as well as judges' decisions relating conflicts of jurisdiction between the PN and PTUN. Secondary legal materials include the theory of justice and certainty in the judiciary, as well as the concept of "joint-proceeding'. Primary and secondary legal materials were collected through literatures study. The secondary data in the form of legal materials were analyzed qualitatively to answer the problem. The results are concluded with a deductive method of thinking.

LITERATURE REVIEW

Jurisdiction of the District Court (PN) and the State Administrative Court (PTUN)

Mertokusumo formulated jurisdiction or absolute competence as the authority of court bodies in examining certain types of cases which absolutely cannot be examined by other court bodies.[8] For instance, absolut competence of PN is defferent with PTUN. Harahap had an opinion[9], absolute competence limits the authority to adjudicate between judicial bodies. The law has determined the limits of jurisdiction of each court body.

Hukum oleh Penguasa di Peradilan Administrasi Indonesia: Studi Kritis terhadap Peraturan Mahkamah Agung No. 2 tahun 2019", *Jurnal Widya Pranata Hukum*, Vol. 2. No. 1, Februari 2020.pp. 37-38.

[3] Ilham Thohari, 2015, Konflik Kewenangan Antara Pengadilan Negeri Dan Pengadilan Agama Dalam Menangani Perkara Sengketa Waris Orang Islam, *Universum*, Vol.9(2). Pp.173-188. DOI: https://doi.org/10.30762/universum.v9i2.84

[4] Hairul Maksum, 2020, "Batasan Kewenangan Mengadili Pengadilan Umum Dalam Penyelesaian Sengketa Perbuatan Melawan Hukum Yang Melibatkan Badan Negara Atau Pejabat Pemerintah (Ditinjau dari Peraturan Mahkamah Agung Nomor 2 tahun 2019)", *Juridicia*, Vol. 2, No. 1. Pp.4-16. https://doi.org/10.46601/juridica.v2i1.178

[5] I Gede Aris Eka Pramana, I Made Arjaya dan Ida Ayu Putu Widiat, 2020, Kompetensi Absolut Peradilan Tata Usaha Negara Terkait Titik Singgung Antara Peradilan Tata Usaha Negara dan Peradilan Umum dalam Sengketa Pertanahan, *Jurnal Analogi Hukum*, 2(1). Pp.27-31. **DOI:** https://doi.org/10.22225/ah.2.1.2020.27-31

[6] Hairul Maksum, op cit. p.5.

[7] Kornelius Benuf, Muhamad Azhar, 2020, Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer, *Jurnal Gema Keadilan*, 7(1). Pp.20-33. https://doi.org/10.14710/gk.2020.7504; Peter Mahmud Marzuki, 2017, Penelitian Hukum: revision edition. Kencana Prenada Media, Jakarta. p.6.

[8] Sudikno Mertokusumo, 1998, *Hukum Acara Perdata*, Liberty, Yogyakarta.pp. 63-65.

[9] M. Yahya Harahap, as quoted from Z.A. Sangadji, 2003, *Kompetensi Badan Peradilan Umum & Peradilan TUN*, Citra Aditya Bakti, Bandung.p. 8.

Article 18 of Law No.48 of 2009 stipulates that Judicial power is exercised by a Supreme Court and judicial bodies under it which consists of the general court bodies, religious court bodies, military court bodies, and state administrative court bodies, and by a Constitutional Court. Article 25 Paragraph (2) of Law No.48 of 2009 confirms that the general court has the authority to hear and decide on criminal and civil cases in accordance with the provisions of the legislation. In connection with these provisions, Article 50 of Law No.2 of 1986 stipulates that The District Court has an authority to hear, decide, and resolve criminal cases and civil cases at the first level. Harahap shares appoint of view, [10] that the General Court as outlined in Article 50 and Article 51 of Law No.2 of 1986 as amended by Law No.8 of 2004 and Law No.49 of 2009, only authorized to adjudicate general criminal cases and general civil cases.

Article 25 Paragraph (4) of Law No.48 of 2009 then provides the Administrative Court's authority, namely to hear, decide, and resolve administrative law disputes in accordance with the provisions of the legislation. PTUN's jurisdiction furthermore being developed. The previous authority was deemed not sufficient to guarantee the protection of the citizens'rights so that a much more comprehensive law is needed that not only guarantees the rights of citizens, but also becomes a reference for state officials in making policies. The government then passed Law No.30 of 2014 (UAP) to expand legal protection to the public so that they would not become victims of government arbitrariness. In Paragraph 5 of the General Explanation of UAP explained that in order to guarantee citizen' rights protection, this Law allows the community members to file objections and appeals against decisions and/or actions, to the agency and/or government officials or superiors of the officials concerned. Citizens can also file a lawsuit against the decisions and/or actions of Government Agencies and/or Officials to the State Administrative Court.

Simanjuntak said that after the enactment of the UAP, PTUN's authority was expanded, the the object of which the TUN authorized were deconstructed. Various restrictions on written decisions that had been determined by the Administrative Law as the object of dispute were 'discovered' by the UAP. PTUN is currently not only authorized to adjudicate written decisions but also has the authority to adjudicate (factual) government administrative actions.[11] The Administrative Court has jurisdiction to adjudicate whether or not an abuse of authority remains in the decisions or actions by state administration officials, including positive fictitious decision problems, and other competencies.[12] Article 1 point 7 UAP, provides the meaning of government administrative decisions as government administration decrees which are also called state administrative decrees, which are writtenly issued by Government Agencies and/or Officials in the government administration. According to Article 1 point 8 of the UUAP, Government administrative means an actions by government officials or other state administrators to perform and/or not take concrete actions in the context of administering the government. In addition, Government administration is defined as the procedure for making decisions and/or actions by government agencies and/or officials. Article 87 of UAP then includes the criteria for state administration decisions as:

1. A written decision which also includes factual actions.
2. Decisions of state administration bodies and/or officials in the executive, legislative, judicial, and other state administrators.
3. Based on statutory provisions and general principles of Good Governmental Governance.
4. It is final in a broader meaning.
5. Decisions that have the potential to cause legal consequences, and/or
6. Decisions that apply to Community Members.

Wicaksono et al, argue that the expansion or limiting of absolute competence of PTUN is based on the scope of state administrative decisions, so as the dynamics of setting up state administrative decisions is an important point to be observed. It is further stated that the formulation of the decision in the UAP as set forth in Article 87 creates a discourse but does not reduce the binding force of the relevant norm by building it on the presumption iustae causa principle. The determination of state administrative decisions criteria in Article 87 UAP has been criticized because of its very basic substance. This provision should be included in the main article. In fact, it is considered to have included covert changes.[13]

The development of the state administrative decisions concept as regulated in Article 87 of UAP includes factual action as a form of state administrative decisions, so that a lawsuit against a factual action which is an 'onrechtmatige overheidsdaad' lawsuit, which used to be the absolute competence of PN, turned into the absolute competence of PTUN. The changing of competence gives the birth of juridical consequences in the form of changes in terms of procedural law.[14] Asimah, et al have the opinion that Article

[10] M. Yahya Harahap, 2019, *Hukum Acara Perdata tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan,* Sinar Grafika, Jakarta.p.231.
[11] Enrico Simanjuntak I, *Loc.Cit.*
[12] Ridwan, et.al., *Op.Cit.*pp. 342-343.
[13]Dian Agung Wicaksono, et.al., "Diskursus Kompetensi Absolut Pengadilan Tata Usaha Negara Dalam Mengadili Perbuatan Pemerintah Dalam Pengadaan Barang/ Jasa", *Jurnal RechtsVinding Media Pembinaan Hukum Nasional,* Vol. 9, No. 3, Desember 2020.pp.369-370.
[14]Bagus Oktafian Abrianto, et.al., "Perkembangan Gugatan Perbuatan Melanggar Hukum oleh Pemerintah Pasca Undang-Undang Nomor 30 Tahun 2014", *Negara Hukum,* Vol. 11, No. 1, Juni 2020.p.60.

87a of UAP which states that written decisions also include factual actions are provisions that are contrary to the legal aspects of the legislation and are still unclear rules (obscure norm), because there is no authentic explanation regarding the conception of factual actions as the new meaning of the PTUN object in Article 87. The concept of administrative law recognizes two types of government action, namely recht handelingen (legal action) and feitelijke handelingen (factual-real action) which have different meanings. The transfer of government administrative disputes from the general court to the Administrative Court is also not clearly and unequivocally stated what type of dispute is transferred as stipulated in Article 85 UAP.[15] Ridwan, et al said that the UAP provisions equate decisions with actions. In fact, the decision is part of the action, so the arrangement is not appropriate. The regulation in UAP causes its own problems from the legal aspect of the procedure, where many judges are confused about how the process of examination and proof is in court if the case being sued is a factual government action.[16]

Indonesian Supreme Court Regulation No. 2 of 2019 in its preamble states that unlawful acts by government agencies and/or officials or 'onrechtmatige overheidsdaad' are the authority of the State Administrative Court based on UAP. The provision divides two types of disputes, namely disputes over government actions and disputes over unlawful acts by Government Agencies and/or Officials. Article 2 Paragraph (1) Indonesian Supreme Court Regulation No. 2 of 2019 then promulgates that unlawful acts by Government Agencies and/or Officials case falls in the State Administrative Court competence. Furthermore, Article 2 Paragraph (2) regulates that the Administrative Court has the authority to adjudicate government action disputes after taking administrative efforts as referred to in UAP and Indonesian Supreme Court Regulation No. 6 of 2008 concerning Guidelines for Settlement of Government Administration Disputes After Going through Administrative.

Unlawful as provided in Article 1365 of Indonesian Civil Code.

Article 1365 of the Indonesian Civil Code stipulates that any unlawful act that causes harm to another person obliges the person who due to his/her fault issued the loss to compensate for the loss. An act against the law based on the provisions in Article 1365 of the Civil Code must contain the following elements[17]:

a. There is an action.
   The 'action' in question can be interpreted as doing something in an active sense, or not doing something in a passive sense. For example, someone has a legal obligation to do something but the person doesn't do something. The element of 'agreement or agreement' and the element of 'allowable cause' as contained in the agreement is not contained in an unlawful act.
b. The act against the law.
   The element of 'against the law' is defined in the broadest sense, which includes:
   1) Acts that violate applicable laws;
   2) Actions that violate the rights of others guaranteed by law;
   3) Actions that are contrary to the legal obligations of the perpetrator;
   4) Actions that are contrary to morality (geode zeden); or
   5) Actions that are contrary to good attitudes in society to pay attention to the interests of others.
c. The act includes any mistake
   The law and jurisprudence require an element of mistake on the perpetrator in carrying out the act to be subjected to Article 1365 of the Indonesian Civil Code. An action is considered by law to contain an element of mistake so that it can be held legally responsible if it contains the following elements:
   1) There is an element of intentionality;
   2) There is an element of negligence and
   3) There is no justification or excuse for forgiveness, such as overmacht, self-defense, insanity, and others.
d. There is a loss to the victim
   Losses due to unlawful acts, based on jurisprudence, also recognizes the concept of immaterial losses, in contrast to losses due to default which only recognizes material losses. Both immaterial and material losses will be valued in money.
e. There is a causal relationship between actions and losses.
   There are two theories related to causal relationships, namely the theory of factual relationships and the theory of approximate causation. The theory of factual relations in law regarding unlawful acts is often referred to as the law regarding 'but for' or 'sine qua non', that the cause that causes the loss is the factual cause, as long as the loss will never exist without the cause. The theory of proximate cause, often also referred to as legal cause, was created in order to achieve elements of legal certainty and justice.

[15]Dewi Asimah, "Implementasi Perluasan Kompetensi PTUN dalam Mengadili Tindakan Faktual (*Onrechtmatige Overheidsdaad*/Ood)", *Acta Diurnal Jurnal Ilmu Hukum Kenotaritan,* Vol. 4, No. 1, Desember 2020.p.155

[16] Ridwan, et.al., op cit.p.354.

[17] Munir Fuady, 2017, *Perbuatan Melawan Hukum – Pendekatan Kontemporer,* Citra Aditya Bakti, Bandung.pp.10-14

Disputes on Government Administrative Actions and Disputes on Unlawful Acts by Government Agencies and/or Officials or 'Onrechtmatige Overheidsdaad'.

Mertokusumo argues that the doctrine of unlawful acts by the government is essentially no different from the teaching of unlawful acts in general: both are teachings about balance in society. The teaching on unlawful acts is generally viewed from the point of view of the sufferer of loss (gelaedeerde), while the teaching on unlawful acts by the government is viewed from the position of the offender (laederende), namely the government or ruler. In the case of unlawful acts by the government, what must be considered is whether the balance of society is disturbed by the occurrence of losses that occur due to violations of that interest, and 'condemn' it as against the law.[18] Prodjodikoro said that the term 'onrechtmatige overheidsdaad' is sometimes translated as 'acts against (violating) the law by the government' or 'acts against (violating) the law by the authorities'.[19] The terms "unlawful acts by the government" and "unlawful acts by the authorities" are none other than 'onrechtmatige overheidsdaad'.

Indonesian Supreme Court Regulation No. 2 of 2019 divides two types of disputes, namely disputes over government actions and disputes over unlawful acts by government agencies and/or officials. Government action disputes are disputes that arise in the field of government administration between citizens and government officials or other state administrators. Refers to Article 1 point 1 of Indonesian Supreme Court Regulation No. 2 of 2019, government actions as referred to in the above definition must also be interpreted as actions by government officials or other state administrators in terms of not taking concrete actions in the context of administering government. Meanwhile, disputes on unlawful acts by government agencies and/or officials, or 'Onrechtmatige Overheidsdaad' are disputes which contain demands to declare invalid and/or cancel the actions of government officials, or do not have binding legal force along with compensation in accordance with the provisions of laws and regulations.

'Joint-Proceeding' concept.

The concept of joint-proceeding' is known in Indonesian criminal proceeding as stipulated in Criminal Procedure Code of 1981 and Law No. 31 of 1997 concerning Military Courts. Article 98 of the Criminal Procedure Code states that if an act that forms a criminal case in a district court causes harm to another person, then the presiding judge of the trial at the request of that person may decide to joining the claim for compensation into its criminal case'proceeding. Compensation claim under Article 98 of the Criminal Procedure Code is a civil claim in nature but may be granted through criminal justice. Joining compensation claims into its criminal case's proceeding aims to provide protection for victims of criminal acts and gives that victims an easy ways to get compensation by joining the procedure in its criminal case'procedures. Satrih has a point of view,[20] that joint-proceeding supports an efficiency of trial, a speedy of justice. Adnani mengatakan, bahwa penggabungan perkara telah sesuai dengan asas peradilan yang sederhana, cepat dan biaya ringan sebagaimana termaktub dalam Pasal 4 ayat (2) Undang-Undang Nomor 4 tahun 2004.[21] As Bozhev correctly points out, in comparison with an option compensation of damage as part of civil proceedings, consideration of a claim simultaneously with a criminal case has a number of advantages for both a victim and a court: saving of funds for the proceedings; exemption of claimant from payment of State duty; the presence of favorable conditions for a more complete and rapid proof of a claim and the identification of persons obliged to bear responsibility; availability of more effective means for ensuring the appearance of the defendant in court; the possibility of faster compensation for damage, etc. (Bozhev, 2004). Therefore, the institution of civil claim in criminal proceedings is more convenient for parties and cost-effective variant of the application for compensation for damage caused by an offense than the usage of procedures of civil proceedings.[22]

Joint-proceeding may be conducted when the settlement of criminal case contains two aspects, namely the civil injure aspect and the criminal aspect. Prior to the existence of the Criminal Procedure Code, such cases were resolved by the Court sequentially. Criminal cases are settled

[18] Sudikno Mertokusumo, 2019, *Perbuatan Melawan Hukum Oleh Pemerintah*. Yogyakarta: CV. Maha Karya Pustaka.p. 45.

[19] Wirjono Prodjodikoro, sebagaimana dikutip dari Yadhy Cahyady, "Implementasi Peraturan Mahkamah Agung Nomor 2 Tahun 2019 terhadap Perbuatan Melanggar Hukum oleh Badan dan/atau Pejabat Pemerintahan dalam Rangka Penagihan Pajak Dengan Surat Paksa", *Jurnal Pajak dan Keuangan*, Vol. 3, No. 1, 2021.p.169.

[20] Satrih, "Penggabungan Perkara dalam Proses Penyelesaian Ganti Rugi Tumpahan Minyak", *JHAPER*, Vol. 3, No. 1, 1 Januari – Juni 2017.pp.70-71.

[21] Adriani Adnani, "Penggabungan Ganti Rugi dalam Perkara Perdata Menurut Sistem Peradilan Pidana Indonesia", *Lembaga Penelitian dan Penerbitan Hasil Penelitian Ensiklopedia*, Vol. 2, No. 3, 1 April 2020.p.5.

[22] Andrii Lapkin, Volodymyr Maryniv, Daryna Yevtieieva, Anton Stolitnii, Andrii Borovyk, 2019, Compensation for Damage Caused by Offences as the Way of Protection of Victims' Rights (On the Example of Ukraine): The Economic and Legal Aspects, Journal of Legal, Ethical and Regulatory Issues, 22(3). **https://www.abacademies.org/articles/compensation-for-damage-caused-by-offences-as-the-way-of-protection-of-victims-rights-on-the-example-of-ukraine-the-economic-and-l-8343.html**

first, then followed by the settlement of civil compensation claim. Such a process will take a long time and cost a lot, and didn't support the principles of a speedy, simply, and efficiency of proceeding. [23] It will make a difficulty for people who have problems with limited funds. These problem encourages the legislator to provide 'joint-proceeding' of a civil claim into its criminal case'proceeding. A joint-proceeding of a civil claim into a criminal proceeding requires that in a certain circumstance or fact, consist of criminal which causes civil injury or moral harm, of which makes the perpetrator has two responsibilities: the criminal and civil liability.

Joint proceeding also provided the Military Court process, as regulated in Article 183 to 187 of Law No.31 of 1997. However, there were very few military joint-proceeding cases.[24] Article 183 Paragraph (1) of Law No. 31 of 1997 stipulates that if an act that indicted as a crime by militarian cause harm to another person, the Military Court has a jurisdiction to hear the case and the Judges on the victim's request may decide to join the compensation claim into its criminal case' proceeding.

As described previously, this research will focus on the absolute jurisdiction conflict between Indonesian district court and Administrative Court in hearing the case which contains two elements: a civil aspect and administration aspect in a certain legal conduct or action by an administrative officer. It followed furthermore to analyze the possibility to implement joint-proceeding concept to resolve the conflict to protect the justice seeker from the uncertainty process.

Setiawan concludes that the central theme of unlawful acts is the issue for compensation as formulated in Article 1365 of Indonesian Civil Code. It formulates that every act that violates the law, and causes harm to others, obliges the person who caused the loss compensate for the loss.[25] The guarantee of compensation according to the civil law system can be imposed on any party who because of his actions, whether negligent or intentionally, causes losses to other parties. The compensation is given in the form of money.[26]

The plaintiff in an unlawful act by a government agency and/or official will in practice file a petition to state that the disputed administrative' decission is invalid because it violates administrative law and requests it to be revoked. The Plaintiff may at the same time file a claim for compensation for any unlawful acts by the Government Agency and/or Official. The claim for compensation based on Law No.5 of 1986 of administrative procedural law is merely an additional claim,[27] after the primary claim is granted in the form of a statement "void" or "illegitimate" of the decision being sued. There for, the claim for compensation is not absolute. That is, in a lawsuit, the claim for compensation may or may not be included.[28] It is in accordance with Article 53 Paragraph (1) of Law No.5 of 1986 which states that a person or civil legal entity who feels that his interests have been harmed by an administrative officer' decision may file a written claim to the competent court containing an order to declare the disputed administrative' decision 'null and void' or 'invalid', with or without a claim for compensation and/or rehabilitation. This provision reinforced by Article 97 Paragraphs (8), (9), and (10) which states that in the event the lawsuit is granted, the Court's decision can order the administrative Agency or Official who issues the administrative decree, to revoke the disputed administrative decree, or to revoke the disputed administrative decree and issue a new administrative decree, or to issue administrative decree in the event that the lawsuit is based on the assembly's deliberation. This order can be accompanied by the imposition of compensation.

RESULT AND DISCUSSION

This section will start with describing the conflict of jurisdiction and its impact to the justice seeker. It follows by analyzing the possibility to use 'joint-proceeding concept to cope with the conflict.

The conflict jurisdiction between District Court (PN) and Administrative Court (PTUN) and its impact to Justice Seekers.

After the enactment of the Supreme Court Regulation No.2 of 2019, PTUN has an expanded authority. Prior to the provision, unlawful acts by Government Agencies and/or Officials become the authority of PN. After the enactment of Supreme Court Regulation No.2 of 2019, it changed into the Administrative Court jurisdiction. Currently, PTUN is not only authorized to adjudicate written decisions but also has the authority to adjudicate factual actions of government administrators. Actions according to Article 1 point 8 of the UAP are interpreted as actions by Government Officials or other state administrators to take and/or not to take concrete actions in the context of administering the government. Government administration is defined as the procedure for making decisions and/or actions by government agencies

[23] Kapten Chk Agustono, *Penggabungan Perkara Gugatan Ganti Rugi dalam Undang-Undang No. 31 tahun 1997 tentang Peradilan Militer*. pp.1-2

[24] *Ibid*.p 2.

[25] Setiawan, *Masalah Hukum dan Hukum Acara Perdata*, Alumni, Bandung 1992.p.325.

[26] Haryo Sulistyantoro, "Penggabungan Gugatan Perkara Ganti Rugi Terhadap Kitab Undang-Undang Hukum Pidana", *Liga Hukum: Jurnal Ilmu Hukum*, Vol. 1, No. 2, 2009.p.3.

[27] Enrico Simanjuntak, "Tantangan dan Peluang Kompensasi Ganti Rugi di Peradilan Tata Usaha", *Jurnal Hukum Peratun*, Vol. 2, No. 2, 2019.pp.17-18.

[28] Maftuh Effendi, "Tuntutan Ganti Rugi pada Peradilan Administrasi", *Perspektif*, Vol. XV, No. 4, Oktober 2010.p.412.

and/or officials. Article 87 of UAP then include the criteria for State Administration Decisions which are interpreted as:

1. A written decree which also includes factual actions;
2. Decisions of State Administration Bodies and/or Officials in the executive, legislative, judicial, and other state administrators.
3. Based on statutory provisions and AUPB.
4. It is final in a broader sense.
5. Decisions that have the potential to cause legal consequences, and/or
6. Decisions that apply to Community Members.

The concept of administrative decisions as regulated in Article 87 of the UAP includes factual actions as a form of administrative decision so that a lawsuit against factual action which is an 'onrechtmatige overheidsdaad' suit, which used to be the absolute competence of PN, turns into the jurisdiction of the Administrative Court. The Supreme Court Regulation No.2 of 2019 divides two types of disputes, namely disputes over government actions and disputes over unlawful acts by Government Agencies and/or Officials. Regarding the transfer of government administrative disputes from the general court to the Administrative Court, it is also not clearly and unequivocally stated what type of dispute is transferred as stipulated in Article 87 UAP.

One of the impacts of the jurisdiction change after the enactment of the Supreme Court No.2 of 2019 as studied by Ridwan et al is discomfiture of the judges in proceeding and proffing the factual action of the government' cases.[29] Other impacts on justice seekers found in this study are described and analyzed below.

The Impact in case No.2/G/2019/PTUN Yk, and no.92/Pdt.G/2019/PN.Yk.

The chronology of the case begins with the occupancy of Class III of State Buildings by Soepomo, a retired civil servant, since 1973 based on an Occupancy Permit by the Central Government. After Soepomo died, his children continued the occupancy based on a lease agreement with the DIY local Government because the management of the state building was transferred to the DIY Local Government. Based on the provisions of Article 16(2) of Government Regulation No. 40 of 1994 in conjunction with Article 17(2) of Government Regulation No. 31 of 2005, the heirs are entitled to transfer class III class III state building status to become the occupants own. Even, based on the provisions of Article 19(1) of PP No.31 of 2005, residents of state building who are in the process of buying and selling as referred to in Article 18 are exempted from the obligation to pay house rent as referred to in Article 10(1) letter a.

On the basis of these provisions, and based on the fact that the adjacent class III state house also succeeded in obtaining a change of status to the property of the occupants or their heirs, Soepomo's heirs submitted an application for transfer of status and rights to the land and state house into property rights. The application was never answered by the DIY Regional Government. On the contrary, the DIY Regional Government with a letter from the Head of the Regional Revenue and Asset Management Office No.94/10294/PBD dated December 31, 2018 set a very high increase in the rental price of the state house, which in 2017 was still Rp.450,000 a year, to Rp.105,000,000 a year. The increase caused Soepomo's heirs to be unable to pay it. Soepomo's heirs finally filed a lawsuit against the DIY Regional Government to the Yogyakarta State Administrative Court with case registration No.2/G/2019/PTUN Yyk., against the DIY Regional Government c.q Head of the Regional Revenue and Asset Management Office with demands:

1. Declare void or invalid the rental price offer letter issued by the Head of the Regional Revenue and Asset Management Office No.94/10294/PBD dated December 31, 2018.
2. Order the Defendant to revoke the rental price quotation letter issued by the Head of the Regional Revenue and Asset Management Office No.94/10294/PBD dated December 31, 2018.
3. Order the Defendant to pay court costs.

The Yogyakarta State Administrative Court handed down its decision on May 2, 2019, which reads:

1. Accept the defendant's exception regarding the object of dispute is not the absolute authority of the PTUN.
2. Declare that the plaintiff's lawsuit is not accepted.

The judge's consideration for the decision stated that the object of the dispute in the form of a rental price offer letter did not fulfill the elements of a state administrative act as referred to in Article 1 Point 9 of Law No.51 of 2009 in conjunction with Article 87 of Law No.30 of 2014 because it was included in the actions of the Defendant in its capacity as a state administrative body/official to carry out a civil legal action, namely the extension of the lease agreement for regionally owned houses based on PP No.27 of 2014 concerning Management of Regional Property, as well as Permendagri No.19 of 2016 concerning Technical Guidelines for the Management of Regional Property, as well as Article 1548 of the Civil Code.

Because the lawsuit to the PTUN was not accepted on the grounds that it was not the authority of the PTUN, the plaintiff filed it with the Yogyakarta District Court on July 24, 2019 with case register Number 92/Pdt.G/PN Yk. with the same Plaintiff and Defendant and the same legal basis. The claims filed in case number 92/Pdt.G/PN Yk. include:

[29] Ridwan, et.al., op cit.p.354.

1. Declare R.Soepomo (the plaintiffs' father) as the holder of the right to control, occupy and inhabit the land and state house class III.
2. Declare that the defendants, either individually or jointly, have committed unlawful acts in the lease agreement, in the application for transfer of status of class III state land, and in the issuance of a right of use over the disputed land and building object.
3. Declare as valid and binding the letter of Defendant I, namely the Decree of the Minister of Public Works & Power Plant No.72/KPTS/1969 dated 1-4-1969.
4. Declare and stipulate that the land and building of the object in dispute are class III state houses.
5. Declare as valid and binding the lease agreement between Plaintiff IV as the representative of the Plaintiffs and Defendant IV on the land and building of the object in dispute, namely the class III state house located at Jl.Tunjung, Baciro, Gondokusuman, Yogyakarta City.
6. Declare and determine that the Plaintiffs have the right to control, occupy, and inhabit the land and building of the disputed object, namely the class III state house located at Jl.Tunjung, Baciro, Yogyakarta City.
7. Declare and determine that the Plaintiffs have the right to apply for the transfer of status to property rights to the land and building of the disputed object, namely the class III state house located on Jl.Tunjung, Baciro, Gondokusuman, Yogyakarta City.
8. Declare the certificate of Use right on the disputed land object No.63 series BL 125266 dated 3-02-2017 invalid, void, null and void.
9. Etc.

The defendants filed an absolute authority exception stating that the dispute was the authority of the PTUN. For the claim in case number 92/Pdt.G/PN Yk. the judge gave a verdict which read:

1. Grant the Defendants' exceptions
2. Declare that the district court does not have the authority to hear this case
3. Order the plaintiffs to pay the costs of this case.

As for the consideration of the judges in handing down the decision, among others, because what is at issue is an unlawful act committed by a government agency/official. So, according to the panel of judges, this is the absolute authority of the PTUN, based on SEMA Number 4 of 2016.

The case basically wanted to question the unlawful act committed by the government in the lease agreement of a state house. There are two actions here, namely the lease agreement between the government and the residents, and the unlawful act by the government in the lease agreement, which cannot be separated from one another. The judge in the consideration of the decision No.2/G/2019/PTUN Yyk., included the lease agreement by the authorities as a government action in the field of civil law so that it is subject to civil law and the dispute falls under the authority of the District Court. Meanwhile, after it was submitted to the District Court with the same case position, the District Court judge stated that because the claim was a claim of unlawful action, it fell under the authority of the State Administrative Court. There is an inconsistency in the judge's interpretation here which has an impact on uncertainty and injustice for justice seekers, because it causes the plaintiff's claim not to be accepted, both at the PTUN and the District Court.

The lease agreement according to Ilyas et al (2021) can be included as a public agreement or public contract because it is partly based on public law, namely state administrative law, c.q Article 29 (7) of Government Regulation No. 27 of 2014 concerning Management of State / Regional Property and Article 129 (2) Regulation of the Minister of Domestic Affairs No.19 of 2016 concerning Technical Guidelines for the Management of Regional Property. The agreement is also carried out for the implementation of government functions, namely providing welfare to the community through leasing state houses. Therefore,it is included as an act of government.

The rental price offer letter issued by the Head of the Regional Revenue and Asset Management Office No.94/10294/PBD dated December 31, 2018 in case No.2/G/2019/PTUN Yyk. by the Plaintiffs is demanded to be revoked. The basis is that it is contrary to Article 19(1) of Government Regulation No. 31 of 2005, which reads: "Occupants of state houses in the lease purchase process as referred to in Article 18 are exempted from the obligation to pay rent as referred to in Article 10(1) letter a". This lawsuit means a lawsuit against the law by the authorities as referred to in PERMA No.2 of 2019 so that it should be the authority of the PTUN, not the District Court. However, the judge in case No.2/G/2019/PTUN Yyk stated that it was the authority of the District Court, not the PTUN.

Case No.2/G/2019/PTUN Yyk, which was basically a case of unlawful acts by the authorities in this lease agreement, was declared by the PTUN judge to be the domain of civil law. Meanwhile, when filed with the District Court with Case No. 92/Pdt.G/PN Yk, on the same basis, namely the act of raising the rent too high is considered contrary to the general principles of good government, by the District Court judge through his decision is considered to be included in the realm of unlawful acts by the authorities so that it becomes the authority of the PTUN.

From the case presented, it is possible that in practice, governmental actions in leasing will be followed by governmental actions that enter the realm of public law. Which action can then cause harm, for example, the government in the case of a lease agreement unilaterally issues a right of use certificate to another party on land that

was previously leased to the other party. This can be considered detrimental to the tenant's rights. When claiming rights under a lease agreement, it is inevitable to simultaneously claim to declare invalid and revoke the certificate of right of use granted to another party outside the lease agreement.

The existence of a 'double' event, namely a lease agreement dispute involving the authorities which is also related to government actions that harm citizens, such as case No.2/G/2019/PTUN Yk. and Case No.92/Pdt.G/2019/PN.Yk, is very difficult to separate the prosecution. This means that after the enactment of The Supreme Court Regulation No.2 of 2019, which wants to expand the authority of the PTUN, it also leaves a problem when in the dispute there is a 'double' event that falls into the realm of civil law and state administration which is difficult to separate the prosecution. While the merging of the prosecution results in not being accepted, both by the District Court and the PTUN, as in the described case. The impact of The Supreme Court Regulation No.2 of 2019 in the described case is that there is a "throwing of authority" between the District Court and the PTUN in the event that there are multiple legal actions that fall into the realm of civil law (civil agreements) but cannot be separated from state administrative actions.

The impact on case number 9/G/2020/PTUN.PDG

The plaintiffs in the case were four civilians, who sued the Head of the National Land Agency. The demands are as follows.

1. Declare void/invalid the Right to Use Certificate on land No. 21, dated 7/03/2018, Measurement Letter No. 62/2018, dated 21/02/2018 registered in the name of the Bukittinggi City Government, located in Benteng Pasar Atas Village, Guguk Panjang Sub-district, Bukittinggi City, West Sumatra Province.
2. Requiring the Defendant to revoke the Certificate of Right to Use on land No. 21, dated 7/03/2018, Measurement Letter No. 62/2018, dated 21/02/2018, registered in the name of the Bukittinggi City Government, located in Benteng Pasar Atas Village, Guguk Panjang Sub-District, Bukittinggi City, West Sumatra Province.

Afterward the judge in his ruling stated that the lawsuit was not accepted with the consideration of his decision which, among others, stated:

> [Considering, that based on the provisions of Articles 4, 47 and 50 of Law Number 5 of 1986, it is known that the authority of the State Administrative Court is to examine, decide and resolve State Administrative Disputes. According to the provisions of Article 1 paragraph 10 of Law Number 51 of 2009, what is meant by a State Administrative Dispute is a dispute arising in the field of state administration between a person or civil legal entity and a state administrative body or official. civil law with state administrative bodies or officials, both at the central and regional levels, as a result of the issuance of state administrative decisions, including employment disputes based on applicable laws and regulations.Considering that the Panel of Judges will further consider the next criterion, namely from the aspect of the nature of the dispute, whether the dispute arises in the field of State Administration, as follows].
>
> [Considering that paying attention to Jurisprudence Number: 88 K/TUN/1993, dated September 7, 1993 whose legal principles are basically as follows: "Although the dispute occurs as a result of an official's decision letter, but the case involves proving property rights over land, the lawsuit must first be filed with the District Court because it is a civil dispute"].
>
> [Considering, that from the entire description of the legal considerations above, the Panel of Judges concludes that because there is 1 (one) criterion that is not met from the 3 (three) criteria as considered above, thus, at this time the Padang Administrative Court is not authorized to examine, decide and resolve this case, until the civil dispute between the parties has obtained a decision that is legally binding].
>
> [Considering, that because the Padang Administrative Court is not authorized to examine, decide and resolve this case, then the Plaintiffs' claim in this dispute must be declared unaccepted].

The case was a civil case regarding the ownership of land rights, but had an impact on the invalidity of the land rights certificate that was the object of the dispute, which was also demanded to be canceled. The judge in this case did not use PERMA No.2 of 2019 because it did not regulate claims of invalidity of government actions based on civil disputes. The judge then used the provisions of Law Number 5 of 1986, which separates that civil claims must first be filed with the District Court, then based on the District Court's decision, a claim for invalidity of a state administrative decision (in this case a land title certificate) can be filed through the State Administrative Court. PERMA No.2 of 2019 thus also does not provide a solution to the problem of claiming the invalidity of state administrative decisions as a result of civil disputes. Here the presence of PERMA No.2 of 2019 does not provide an efficient solution for justice seekers, so they still have to sue in stages for civil disputes in which the invalidity of the relevant state administrative decision is also to be demanded.

Using 'joint-proceeding' concept to resolve conflicts of absolute authority.

With the existence of the Supreme Court Regulation No.2 of 2019, it is expected that there will be no more conflicts of absolute authority between the District Court and the State Administrative Court. Furthermore, civil cases that must be followed by a claim of invalidity of a state

administrative decision can be filed in one of the courts only. In fact, from the four cases as described previously, there is still a problem of absolute authority and a problem of two stages of case submission, which has an impact on uncertainty and injustice for justice seekers, because the case is then declared unaccepted. These two judicial processes, as pointed out by Agustono (2016), also contradict the principle of speedy of justice.

There is a concept that can be used to overcome the problem of absolute authority and the problem of filing a lawsuit in two stages as it arose in the four cases described earlier. It is called 'joint-proceeding'. The concept is known well in Indonesia as stipulated in Article 98 of the Criminal Procedure Code and Article 9 and Articles 183 to 187 of Law No31 of 1997. Joining the proceeding of those provisions mean:

1. Joining criminal cases and civil cases in the form of compensation claims resulting from criminal acts, into the authority of the criminal justice. The compensation claim falls under the authority of the civil justice, while the trial of the criminal offense is the authority of the criminal justice. However, with the concept of 'joint-proceeding', both prosecution can be merged and tried under the authority of the criminal justice. The nature of this merger is not mandatory. This means that compensation claims can be filed separately, not joined in the criminal trial.
2. Joiningcriminal cases committed together by military and civilian, referred to as connexity, into the authority of military courts or civilian courts based on the gravity of the harm caused. Criminal cases committed by military fall under the authority of the military court, while criminal offenses committed by civilian fall under the authority of the district court. With the concept of 'joint-proceeding', which is then named convexity, the criminal offenses committed jointly between military and civilian can be merged to be tried in one authority of the appointed judicial body.

The concept of 'joint-proceeding' can be expanded to join a series of legal actions carried out by state administrative officials that contain civil aspects as well as administrative aspect, as in the case of Case No.2/G/2019/PTUN Yk. and Case No.92/Pdt.G/2019/PN.Yk. In these cases, the civil aspect falls under the authority of the District Court, while the administrative aspect falls under the authority of the State Administrative Court. Take two such cases for instance, when there is a denunciation of the application to transfer the status of state-house leased under a lease agreement, which is accompanied by the removal of the applicant as he is not willing to pay the rental price of the state land which is considered very expensive, it is very difficult to only claim a statement of default, without simultaneously ordering a certain legal action. In such conditions, through the concept of 'joint-proceeding', the claim of the civil aspect of the legal actions of state administrative officials (default) can be combined with the claim of the unlawful aspect of state administrative officials (unlawful) or the claim for the invalidity of the decision of state administrative officials, becoming the authority of one of the courts.

Regarding the authority, it can be determined like the model of connexity as introduced in Article 9 and Articles 183 to 187 of Law No. 31 of 1997, i.e. one is chosen based on the weight of the interest, whether it is deeper on civil or administrative interests. If the emphasis is on civil interests, then it can be determined to be the authority of the district court. Conversely, if the focus is on administrative law interests, it will become the authority of the state administrative court. With the concept of 'joint-proceeding', two objects of lawsuits that fall under different absolute competencies can be merged. By joining, the two objects of dispute can be decided more efficiently and thoroughly in one decision so as to avoid conflicting decisions.

The joining can also be analogously based on the concept of joint-proceeding' for compensation claims in criminal trials. This concept of joint-proceeding combines two different judicial procedures, namely the civil procedure to examine the compensation claim, and the criminal procedure to try the criminal offense. The joint of the civil aspect of the state administration's legal actions with the unlawful acts aspect of the state administration officials is also the same problem, namely joining two cases with different judicial procedures. The civil aspect of the claim is examined using civil procedural law, while the unlawful act claim uses state administrative procedural law.

Although the concept of joint-proceeding can provide efficiency in the judicial process as argued by Satrih, or realize simple, fast, and low cost justice as argued by Adnani, as well as legal certainty of judicial authority, on the other hand there are still problems that must be resolved. The problem that exists in the concept of joining compensation claims with criminal trials is how to examine and adjudicate in one examination with two different procedural laws, namely between civil and criminal procedures. Likewise, when the concept of joint-proceeding is applied to joint the demands of civil aspects and state administrative aspects in the legal actions of state administrative officials. There are two procedural laws applied, namely civil procedural law and state administrative procedural law.

CONCLUSSION

From the results and discussion, it can be concluded that the conflict of absolute authority between the District Court and the State Administrative Court after the enactment of The Supreme Court Regulation No.2 of 2019 has an impact on injustice and legal uncertainty for justice seekers because it causes their claims to be uaccepted. To overcome the problem, the concept of 'joint-proceeding' which has also

been recognized in the Indonesian judicial system can be applied, especially to joint the legal acts of state administrative officials which contain two aspects, namely civil aspects and state administrative aspects. On the one hand, the joining will create an efficient judiciary and legal certainty, despite there are still limitations on how to examine the joining of cases with two different procedural laws.

Further study is needed to overwhelmed the problems that still exist in the application of the concept of 'joint-proceeding' of legal acts by state administrative officials that have civil and state administrative aspects, so that the application of the concept can work well to produce a judicial process that is increasingly fair, efficient and certain for justice seekers.

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