

CUMULATION OF LAWSUITS BETWEEN ADMINISTRATIVE DECISIONS AND FACTUAL ACTIONS IN ADMINISTRATIVE COURT DECISIONS

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Abstract

The concept of Administrative Decisions (KTUN) has evolved considerably since the promulgation of the Government Administration Law (AP Law), especially with the broadening of disputed objects to cover governmental actions. This change was further reinforced by Regulation of Supreme Court Number. 2 of 2019, transferring jurisdiction over tort claims against government officials from the General Courts to the Administrative Courts (PTUN). However, its implementation remains challenging, especially regarding the cumulative filing of KTUN and tort lawsuits, remaining unregulated explicitly, as referred to in Supreme Court Decision No. 343 K/TUN/TF/2024 and number 594 K/TUN/TF/2024. The core issues include the *ratio legis* behind the expanded interpretation of KTUN under AP Law, judicial reasoning in accepting the accumulation of disputed objects and formulating an ideal concept for combining KTUN and factual actions in one claim. This research adopts a normative (doctrinal) method with a casuistic-conceptual approach. The findings indicate that the expansion of KTUN under AP Law aims to enhance legal protection for citizens against administrative actions,

promote good governance, ensure governmental accountability, and broaden the supervisory role of PTUN. Supreme Court Decisions Number 343 K/TUN/TF/2024 and Number 594 K/TUN/TF/2024 affirm that cumulative claims involving KTUN and factual actions are permissible when both share a strong legal correlation as part of a single administrative series. The ideal concept of cumulative lawsuits includes close legal relevance, consistency among the object, legal grounds, and claims, support for a swift, simple, and low-cost judicial process, promotion of legal utility, prevention of conflicting rulings, and avoidance of prohibited claim mixing.

Keywords: Administrative Decision, Factual Action, Administrative Court, Cumulation of Lawsuits.

Introduction

The initial regime of interpretation of Administrative Decisions (“KTUN”) was established by Law Number 5 of 1986 on Administrative Courts, as amended several times most recently in Law Number 51 of 2009 on the Second Amendment to Law Number 5 of 1986 (“Peratun Law”). Article 1 point 9 of the Peratun Law originally specifies that Administrative Disputes (“TUN”) handled by the Administrative Court (“Peratun”) are confined to legal acts (*rechtsbandelingen*) in the form of unilateral actions (*eenzijdige*), specifically KTUN (*beschikking*) issued by administrative authorities or officials.¹

After the issuance of Law Number 30 of 2014 on Government Administration (“AP Law”) philosophically gave birth to an expansion of the meaning of the object of Administrative Court’s dispute.² The

¹H. Supandi, *Hukum Peradilan Tata Usaha Negara (Kepatuhan Hukum Pejabat dalam Mentaati Putusan Pengadilan Tata Usaha Negara)*, (Medan: Pustaka Bangsa Press, 2011), p. 139-140. Compare with S. Prajudi Atmosudirjo, *Hukum Administrasi Negara* Cetakan Ke-10, (Jakarta: Ghalia Indonesia, 1994), p. 94.

²The AP Law reorganizes the object of dispute benchmarks in Peratun so that if initially factual actions are excluded as objects of dispute, they can now become objects of dispute. See in Enrico Simanjuntak, “Perkara Advokasi Publik Pasca Berlakunya Undang-Undang Administrasi Pemerintahan (UUAP)”. *Jurnal IUS Kajian*

enactment of the AP Law has created a new archetype in the process of handling administrative disputes at Peratun so that factual action disputes have become the absolute competence of Peratun.³ Furthermore, the legal legitimacy of Peratun's absolute competence to handle factual action disputes is emphasized in Regulation of Supreme Court Number 2 of 2019 on Guidelines for Settling Government Action Disputes and the Authority to Adjudicate Administrative Torts by Administrative Authority/*Onrechtmatige Overheidsdaad* ("Perma Number 2 of 2019").

Legal actions and factual actions are species of the genus of governmental actions (*bestuurshandelingen*).⁴ Conceptually, factual actions are unilateral actions taken by administrative agencies/officials consisting of two definitions, *first*, actions in the kind of carrying out material acts and *second*, actions in the category of not carrying out material acts. In other words, factual actions consist of active actions (administrative commission) and passive actions (administrative omission).⁵

The regulations of Article 1 point (8) of the AP Law stipulate as follows:

"Government Administration Actions, hereinafter referred to as Actions, are actions by Government Officials or other state administrators to perform and/or not perform concrete actions in the context of government administration."

Hukum dan Keadilan, vol. VI, number 1, pp. 16-33, (2018), <https://doi.org/10.29303/ius.v6i1.535>, p. 15.

³ Enrico Simanjuntak, *Hukum Acara Peradilan Tata Usaba Negara: Transformasi dan Refleksi*, (Jakarta Timur: Sinar Grafika, 2018), p. 83.

⁴ David Pasaribu and Irene Cristna Silalahi in Angga Prastyo, et al, *Antologi: Identifikasi Masalah dan Solusi Kelembagaan Badan Peradilan Kontemporer*, (Bogor: Senat Gelombang III Program Pendidikan Calon Hakim Terpadu Angkatan IV Tahun 2024/2025, 2025), p. 163.

⁵ David Pasaribu and Irene Cristna Silalahi in Muhammad Adiguna Bimasakti, et al., *Catatan Akhir Jabatan Sang Pawang Toga Biru Sebuah Karya Pengantar Purnabakti Ketua Pengadilan Tata Usaba Negara Pekanbaru*, (Pekanbaru: PTUN Pekanbaru, 2025), p. 117.

Meanwhile, the term ‘factual action’ is introduced in Article 87(a) of the AP Law. This provision expands the scope of KTUN to also encompass factual actions.⁶ Article 87 of the AP Law thereby amends the definition of an Administrative Decision that was previously stipulated in Article 1 point (9) of the Peratun Law.

The transformation of absolute competence above and the complexity of administrative actions that can be used as objects of cases in Peratun become issues in this research and require special studies due to the fact that the transition is not easy to implement. In addition, the complexity of administrative actions can be seen through the intersection between legal actions and factual actions where legal actions are not always found in written format but can be unwritten (*ongeschreven publiekrechtelijke rechtsbandelingen*) and factual actions are also not always physical but as according to Rene Seerden and F.A.M Stroink that factual actions can be written (explanatory acts).⁷

Furthermore, in practice, in filing a lawsuit at the Administrative Court, there is often a cumulation of lawsuits filed by citizens. The discourse will stop if the filing of a cumulation of lawsuits against several KTUN because this is possible in the constellation of administrative judiciary practice.⁸ The discourse becomes more intriguing when the cumulation of lawsuits involves combining disputed objects from both KTUN and factual actions.

The cumulation of the object of lawsuit of KTUN and factual action is possible if the objects of dispute have the same relationship or legal characteristics (*innerlijke samenhang*). However, it should be noted

⁶*Ibid.* Ps. 87 huruf (a).

⁷Zaka Firma Aditya, et al, *Hukum Administrasi Negara Kontemporer: Konsep, Teori dan Penerapannya di Indonesia*, (Depok: Rajawali Press, 2023), p. 158.

⁸Mahkamah Agung, Surat Edaran Mahkamah Agung Nomor 7 Tahun 2012 tentang Rumusan Hasil Rapat Pleno Kamar Mahkamah Agung sebagai Pedoman Pelaksanaan Tugas Bagi Pengadilan, Kamar Candra.

that the Peratun Law (formal law)⁹ and AP Law (material law)¹⁰ do not regulate the cumulation of objects in dispute resolution at the Peratun.

The decision of the Administrative Court of Denpasar (“PTUN”) in case Number 10/G/TF/2023/PTUN.DPS *jo.* Decision of the Administrative High Court (“PT TUN”) Mataram Number 56/B/TF/2023/PT.TUN.MTR *jo.* Supreme Court (Mahkamah Agung) Decision Number 334 K/TUN/TF/2024 and Decision of PTUN Denpasar Number 20/G/TF/2023/PTUN.DPS *jo.* PT TUN Mataram Decision Number 9/B/TF/2024/PT.TUN.MTR *jo.* Supreme Court Decision Number 594 K/TUN/TF/2024 are two examples of cases accommodating the cumulation of KTUN and factual actions. The decisions have acquired legal force (*inkracht van gewijsde*) at the cassation stage. The cumulation of the dispute in this case involves the KTUN, represented by the order and notice of building demolition, and the factual action, represented by the Defendant’s actual demolition. This research will question the *ratio legis* of the expansion of the meaning of KTUN in the AP Law and explore the fundamental points of the Judge’s consideration in accepting the cumulation of the object of dispute and examine the ideal concept of cumulation of lawsuits between KTUN and factual actions as a dispute resolution in Peratun to produce substantive justice.

This study’s novelty lies in expanding legal protection for citizens, especially in Peratun. In the last decade, the administrative judiciary system in Indonesia has tended to strictly separate the object of lawsuit in the category of KTUN and factual actions, which often creates limitations for justice seekers in filing a comprehensive lawsuit against a series of actions originating from the same authority. This research offers a new standpoint by examining the possibility and urgency of

⁹Dewi Asimah, “Implementasi Perluasan Kompetensi PTUN dalam Mengadili Tindakan Faktual (Onrechtmatige Overheidsdaad / OOD)”, *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan Fakultas Hukum Unpad*, vol. 4, number 1, pp. 152-170, (2020). <https://doi.org/10.23920/acta.v4i1.531>, p. 153.

¹⁰ Republik Indonesia, Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan, Penjelasan Umum, LN Number 292 TLN Number 5601.

combining the two types of disputed objects in one lawsuit, in order to ensure the principles of simple, fast, and low-cost justice, legal expediency, and protection of public rights more fully.

Research Method

This research adopts a normative (doctrinal) approach. Theoretically, normative or doctrinal research in this study aims to find concepts, principles, bases, and doctrines regarding the *ratio legis* of the extension of the meaning of KTUN in the AP Law as well as the practice of administrative courts in Indonesia dealing with the cumulation of lawsuits between KTUN and factual actions in the PTUN Denpasar Decision in case Number 10/G/TF/2023/PTUN.DPS *jo.* Decision of the PT TUN Mataram Number 56/B/TF/2023/PT.TUN.MTR *jo.* Supreme Court Decision Number 334 K/TUN/TF/2024 and Decision of PTUN Denpasar Number 20/G/TF/2023/PTUN.DPS *jo.* PT TUN Mataram Decision Number 9/B/TF/2024/PT.TUN.MTR *jo.* Supreme Court Decision Number 594 K/TUN/TF/2024.¹¹

The research approach uses a casuistic-conceptual approach as an effort to analytically describe the legal considerations (*ratio decidendi*) of the Peratun decisions that have been determined above to be conceptualized and abstracted so as to form an ideal concept of the cumulation of claims between KTUN and factual actions in dispute resolution at the Peratun to answer the main problems in the research.¹² The author uses secondary data obtained by means of literature study/document study.

Discussion

¹¹ S. Wingjosoebroto, *Hukum, Paradigma, Metode dan Dinamika Pemikirannya*. (Jakarta: Elsam, 2002), p. 148.

¹² Purwati, *Metode Penelitian Hukum Teori dan Praktek*. (Surabaya: Jakad Media Publishing, 2020), p. 86.

Ratio Legis for the Expanded Regulation of Administrative Decision in the AP Law

The Peratun Law's enactment led to the creation of a judicial body known as Peratun.¹³ This arrangement represents the existence of Indonesia as a state of law recognizing the presence of an administrative court. Administrative justice is proposed to provide legal protection for citizens over the issuance of a KTUN by an administrative authority harming citizens.¹⁴ In addition, Peratun also aims to provide legal protection for administrative authorities¹⁵ that have carried out administrative actions based on written law (*geschrevenrecht*) and unwritten law (*ongeschrevenrecht*).¹⁶

As a judicial body, Peratun is empowered to adjudicate administrative disputes in accordance with Article 47 of the Peratun Law.¹⁷ The authority of Peratun to handle administrative disputes is in line with the government's statement submitted to the House of Representatives of the Republic of Indonesia on April 29, 1986 as follows:¹⁸

“The Republic of Indonesia as a state of law aims to realize a prosperous, safe, peaceful, and orderly national life. In an effort to achieve these goals, the government is authorized to issue provisions or regulations in various aspects of community life, and therefore the possibility of disputes arising between the Government and citizens can occur. The State Administrative

¹³ Enos Paselle, et al, “The Role of the State Administrative Court in Jurisdictional Disputes: A Case Study of Fadel Muhammad’s Lawsuit Against the DPD RI, Begawan Abioso”, vol. 15, no. 2, pp. 99-105, (2024), p. 99. <https://doi.org/10.37893/abioso.v15i2.1117>

¹⁴ See in Penjelasan Umum Undang-Undang Nomor 5 Tahun 1986 tentang Peradilan Tata Usaha Negara, LN no. 77, TLN no. 3344.

¹⁵ Yulius and Jos Yohan Utama, “Optimizing the Role of State Administrative Court Decisions in State Financial Recovery”, *Law Reform*, vol. 20, no. 1, pp. 34-53, (2024), p. 41. <https://doi.org/10.14710/lr.v20i1.61779>

¹⁶ Uyan Wiryadiand Edy Dwi Martono, “Politik Hukum Dalam Pembentukan Peraturan Perundang-Undangan Nasional”, *Jurnal Krisna Law*, vol. 6, no. 1, pp. 1-10, (2024), p. 1. <https://doi.org/10.37893/krisnalaw.v6i1.790>

¹⁷ S. Prajudi Atmodudirjo, *Hukum Administrasi Negara*, *Op.cit.*, p. 129.

¹⁸ Dewan Perwakilan Rakyat Republik Indonesia. Catatan Rapat Proses Pembahasan Rancangan Undang-Undang tentang Peradilan Tata Usaha Negara, 1987.

Court was created to resolve disputes that arise as a result of Government actions that are considered to violate the rights of its citizens.”

Furthermore, Article 1 point (10) of the Peratun Law states:

“State administrative disputes are disputes arising in the field of state administration between persons or civil legal entities and 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.”¹⁹

Article 1 point (9) states the definition of KTUN as follows:

“A State Administrative Decree is a written decision issued by a state administrative body or official that contains a state administrative legal action based on the applicable laws and regulations, which is concrete, individual, and final, which has legal consequences for a person or civil legal entity.”

The scope of disputes in Peratun experienced substantial changes following the promulgation of the AP Law. The introduction of this law created new models and facilitated the evolution of KTUN regulation, thereby expanding the comprehensive authority of Peratun. Essentially, the AP Law has redefined the legal boundaries of disputed objects in Peratun. In other words, administrative or factual actions by the government can now serve as disputed objects in Peratun, even though they were not previously recognized as part of state administrative disputes. This expansion ensures the protection of citizens' legal rights against administrative actions (*bestuurshandelingen*) carried out by government authorities.

Article 1 point (7) of the AP Law

¹⁹ Republik Indonesia. Undang-Undang Nomor 5 Tahun 1986 tentang Peradilan Tata Usaha Negara, LN No 77, TLN no. 3344.

*“A Government Administration Decision, which is also called a State Administrative Decision or a State Administration Decision, hereinafter referred to as a Decision, is a written decision issued by the Government.”*²⁰

Article 1 point (8) of the AP Law

*“Government Administration Actions, hereinafter referred to as Actions, are actions by Government Officials or other state administrators to perform and/or not perform concrete actions in the context of governance.”*²¹

Article 87 of the AP Law

“With the enactment of this Law, State Administrative Decisions as referred to in Law Number 5 of 1986 concerning State Administrative Courts as amended by Law Number 9 of 2004 and Law Number 51 of 2009 shall be interpreted as:

- a. written determination which also includes factual actions;*
- b. Decisions of State Administrative Bodies and/or Officials within the executive, legislative, judicial, and other state administrators;*
- c. Based on statutory provisions and AUPB;*
- d. Final in a broader sense;*
- e. Decisions that have the potential to cause legal consequences; and/or*
- f. Decisions that apply to citizens.”*

From the legal norms described above, it can be inferred that the issuance of the AP Law has led to significant broadening of the scope of KTUN. *First*, now the object of dispute in Peratun also involves government administration actions/factual actions. *Second*, the decision of the administrative authority now also includes the executive, legislative, judicial and other state administrators as long as it is related to the implementation of government functions. *Third*, the concept of KTUN extends beyond being concrete, individual, and final; it also encompasses administrative actions that may potentially result in harm. Consequently, KTUN can now be understood as a written decree that

²⁰ Republik Indonesia, Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan, LN No. 292, TLN No. 5601, Ps. 1 angka 7.

²¹*Ibid.*

is broadly final and as a determination with the potential to produce legal consequences for citizens.

The extension of the object of dispute above is in line with the propositions of the theory of the rule of law, mandating that every action of the state administration and citizens must comply with the applicable law. In addition, the implementation of the law must reflect the aspirations of the people and ensure the participation of citizens in taking administrative actions. Laws are made not to protect the interests of a few rulers, but to ensure the interests of all citizens.²²

Expressively *verbis*, the *ratio legis* for the extension of the meaning of KTUN can be seen in the General Elucidation of the AP Law.

*“In order to provide a guarantee of protection to every citizen, this Law allows citizens to file objections and appeals against decisions and/or actions, to the relevant Government Agency and/or Official or the Official's superior. Citizens can also file a lawsuit against Decisions and/or Actions of Government Agencies and/or Officials to the State Administrative Court, because this Law is the material law of the State Administrative Court system.”*²³

Furthermore, the General Elucidation of the AP Law states:

*“The regulation of Government Administration in this Law guarantees that Decisions and/or Actions of Government Bodies and/or Officials against Citizens cannot be carried out arbitrarily. With this Law, citizens will not easily become objects of state power.”*²⁴

Thus, the expansion of KTUN in the AP Law is motivated by the need to create good governance and protect the constitutional rights

²² Bobi Aswandi, et al, “Negara Hukum dan Demokrasi Pancasila dalam Kaitannya dengan Hak Asasi Manusia (HAM)”, *Jurnal Pembangunan Hukum Indonesia*, vol. 1, no 1, pp. 128-145, (2019). p. 132. DOI: <https://doi.org/10.14710/jphi.v1i1.128-145>

²³ Republik Indonesia. Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan, Penjelasan Umum, LN Number 292 TLN No. 5601.

²⁴*Ibid.*

of every citizen. The fundamental *ratio legis* is the fulfillment of more optimal legal protection for citizens, harmonizing national law with contemporary administrative law practice, and strengthening the role of Peratun as a supervisor of government administration by testing the validity of an administrative action (*bestuurshandelingen*) whether it is in accordance with the laws and General Principles of Proper Administration (“AUPB”) both in clauses of authority, procedure and substance of the KTUN or factual action.²⁵

In addition, the extension of the meaning of KTUN in the AP Law is an answer to the demands of citizens who often suffer losses due to administrative actions in the category of material actions (*materiele daad*). Furthermore, this is to fill the legal vacuum in the Peratun Law, defining KTUN as merely a written determination that is concrete, individual, final and has legal implications, but administrative actions having the tendency to create potential disadvantages. Although the expansion of the object of TUN ideally should be regulated in the Peratun Law, not in the AP Law.

Furthermore, the expansion of the meaning of KTUN is fundamentally in line with the principle of legality (*legaliteitsbeginsel*). This principle means that any administrative action by the government must be based on the applicable laws and regulations or on the authority granted by those regulations. This authority includes the ability to perform certain legal acts, and in public law, is considered a central concept in constitutional law and state administration.²⁶ In a state of law, every government action must be based on legitimate authority, in line with the principle that authority always comes with responsibility. In addition, it is important to distinguish between the office as an institution and the official as an individual, each of which is subject to

²⁵*Ibid*, Ps. 52 and Ps. 64.

²⁶Ridwan, “Pertanggungjawaban Publik Pemerintah dalam Perspektif Hukum Administrasi Negara”, *Jurnal Hukum*, 10 (22), pp. 27-38, (2003), p. 27.

different norms: norms of governance governing the office and norms of behavior governing the conduct of the official.²⁷

Judges' Considerations in Deciding the Cumulation of Lawsuits

1. Analysis of Lawsuit Cumulation in Supreme Court Decision Number 334 K/TUN/TF/2024

The court of first instance assessed that from the aspect of the procedure of performing a series of administrative actions, the objects of disputes I to III in the form of demolition orders by Defendant I (Badung Regent) were procedurally flawed because they were not preceded by a technical study from the Telecommunication Tower Development Arrangement and Supervision Team ("TP3MT") as required by Article 5 paragraph (3) of Badung Regency Regional Regulation Number 18 of 2016 on the Arrangement of Construction and Operation of Integrated Telecommunication Towers ("Badung Regional Regulation Number 18 of 2016). The absence of physical evidence of the technical study makes the coaching process and demolition recommendation underlying the administrative action to demolish the Plaintiff's telecommunication tower legally invalid. As a result, the demolition action does not fulfill the procedural requirements as stipulated in the prevailing laws and regulations.²⁸

Furthermore, the issuance of disputed objects I through III ordering the demolition of the Plaintiff's telecommunication tower contains substantial and procedural defects because it does not consider the permit application that has been submitted by the Plaintiff in accordance with applicable regulations, and ignores the principles of

²⁷This correlates with the principle of no authority without accountability (*geen bevoegdheid zonder verantwoordelijkheid*). In addition, there are two important entities, namely positions and officials, each of which is governed by two types of norms: *bestuurnorm* (norms of governance) for positions, and *gedrag norm* (norms of behavior) for officials as individuals. M. Ikbar Andi Endang, "Diskresi dan Tanggung Jawab Pejabat Pemerintahan Menurut Undang-Undang Administrasi Pemerintahan", *Jurnal Hukum Peratun*, vol. 1, no.2, pp. 223-244,(2018), p. 232.

²⁸ Direktori Putusan, Putusan PTUN Denpasar No. 20/G/TF/2023/PTUN.DPS.

good public services, including the principles of accuracy, equality, and good service. The omission of the permit application and rejection that is not based on valid law shows a violation of Government Regulation Number 16 of 2021 on Implementation Regulations of Law Number 28 of 2002 on Building and AUPB. Because Disputed Objects IV through VI in the form of demolition notification letters by Defendant II (Head of the Badung Regency Pamong Praja Police Unit) are direct derivatives of Disputed Objects I through III, based on the theory of two faces of law (*Das doppelte Rechtssatz*)²⁹ and the principle of regulatory enforceability, all of the disputed objects should also be declared void and must be revoked. Disputed Object VII in the form of demolition action is a derivative factual action from disputed objects I to VI, so it is also declared void by the Panel of Judges.³⁰

In addition, the court of first instance considered the claim for material damages by the Plaintiff based on the legislations of Article 97 paragraph (10) of the Peratun Law and Article 5 paragraph (3) of Perma Number 2 of 2019. The plaintiff claimed a loss of Rp29.5 billion, but

²⁹The theory of the two faces of law (*Das doppelte Rechtssatz*) was popularized by Adolf Julius Merkl who was a colleague of Hans Kelsen. See in Stanley L. Paulson, "Hans Kelsen on legal interpretation, legal cognition, and legal science", *Jurisprudence*, vol. 10, no. 2, pp. 188-221, (2019), p. 193. DOI: 10.1080/20403313.2019.1604887. Adolf Julius Merkl (1890-1970), professor of administrative law at the University of Vienna, was one of Kelsen's first students at the Vienna School in the early 1990s. Merkl wrote two dissertations in particular: "*Das Recht im Lichte seiner Anwendung*" (The Law in the Light of Its Application) in 1917 and "*Das doppelte Rechtsantlitz*" (The Double Face of Law) in 1918. His concept was further developed with his famous study "*Prolegomena einer Theorie des rechtlichen Stufenbaues*" in 1913. Merkl's treatise on general administrative law is therefore part of a formal continuum, which applies Hans Kelsen's Pure Theory of Laws to administrative theory. See Sandrine PINA, "Aperçu de la théorie générale du droit administratif d'Adolf Merkl", *Arch. phil. droit*, Issue 53, (2010), pp. 466-477, p. 467. Merkl's theory is closely related to the classification of legal norms where according to him, legal norms are hierarchical and have a relative validity period, because their validity depends on higher norms. If the higher norm is revoked, the lower norm loses its basis of validity and is also invalidated. See Maria Farida Indrati Soeprapto, *Ilmu Perundang-Undangan (Jenis, Fungsi, Materi Muatan)*, (Yogyakarta: Kanisius, 2007), p. 41.

³⁰ Direktori Putusan, Putusan PTUN Denpasar Number 20/G/TF/2023/PTUN.DPS.

based on the evidence and facts of the trial, only material loss of Rp5,320,481,259.00 was proven, consisting of the value of damage to the tower, construction costs, land rent, and services and retribution for Building Construction Permit (IMB). Therefore, the Court partially granted the claim for compensation and charged Defendant I to pay compensation of the proven value.³¹

Based on the aforementioned legal considerations, the Panel of Judges at the first instance granted the Plaintiff's claim and annulled the entire KTUN that constituted the object of the dispute. The factual act in the form of demolishing the Plaintiff's tower was deemed an administrative wrongdoing. Furthermore, the Panel of Judges ordered the Defendant to revoke the disputed KTUN and to cease the demolition of the Plaintiff's telecommunication tower. In its ruling, the Panel also instructed Defendant I to compensate the Plaintiff for the losses incurred, amounting to Rp5,320,481,259.00 (five billion three hundred twenty million four hundred eighty-one thousand two hundred fifty-nine rupiah).³²

At the appeal level, the Panel of Judges considered that Defendant I could not prove the existence of technical studies as an absolute requirement before TP3MT provided guidance and recommendations. In addition, there was no Demolition Determination Letter which became the legal basis for the demolition of the Plaintiff's tower. Therefore, the demolition action by Civil Service Police Unit was considered juridically flawed.³³

The object of dispute is considered to violate Article 5 paragraph (3) jo. Article 33 of Badung Regional Regulation Number 18 of 2016, Regulation of the Regent of Bandung Regency Number. 43 of 2017 concerning Guidelines for the Preparation of Standard Operating Procedures for Government Administration (Badung Regional

³¹*Ibid.*

³²*Ibid.*

³³ Direktori Putusan, Putusan PT TUN Mataram No.56/B/TF/2023/PT.TUN.MTR.

Regulation Number 43 of 2017), as well as Article 21 paragraph (1) of the Minister of Home Affairs Regulation Number 32 of 2010 concerning Guidelines for Granting Building Construction Permits and Article 25 paragraphs (1), (2), (4) of the Regional Regulation of Badung Regency Number 27 of 2013 concerning the Implementation of Building Construction Permits. In addition, Defendant I's actions were also contrary to the principle of legal certainty and the principle of legitimate expectation, because the Plaintiff had established formal cooperation with Defendant I through an agreement related to the development of Smart City facilities, had built a tower at the agreed location, and had incurred substantial costs and partnered with third parties for operations.³⁴

The Supreme Court Justices considered that the *judex facti* erred in applying the law. Telecommunication towers must be used jointly in the form of integrated towers in accordance with Badung Regional Regulation No. 18/2016. PT Dayamitra built the tower without IMB and Certificate of Functioning (SLF) and did not follow the Integrated Tower Master Plan. Badung District Government has given three warnings and acted based on legal regulations. The plaintiff's cooperation with the regency for Smart City did not justify unauthorized construction. The Panel of Supreme Court Justices considered that the demolition was in accordance with written law and AUPB. Therefore, the Cassation Justices declared the Plaintiff's lawsuit rejected.³⁵

2. Analysis of Lawsuit Cumulation in Supreme Court Decision No. 594 K/TUN/TF/2024

The Panel of Judges at first instance in case Number 20/G/2023/PTUN.DPS rejected the Plaintiffs' lawsuit. The plaintiffs in this case are PT Profesional Telekomunikasi Indonesia and PT Iforte

³⁴*Ibid.*

³⁵ Direktori Putusan, Putusan Mahkamah Agung No. 334 K/TUN/TF/2024.

Solusi Infotek. The defendants are the Regional Regent of Badung and the Head of the Badung District Civil Service Police Unit. The Panel of Judges of the first instance was of the opinion that based on the provisions and legal facts, the issuance of disputed objects I to IV (demolition order and notification) and the factual action (disputed object V) in the form of demolition were administrative sanctions on telecommunication towers and/or BTS owned by the Plaintiffs that were deemed unlicensed. The action was taken as a result of TP3MT guidance and supervision, and was in accordance with the provisions of Article 20 paragraphs (1) and (2), as well as Article 27 of Badung Regional Regulation Number 18 of 2016.³⁶

The case then proceeded to the appeal level by the Plaintiffs. The decision of PT TUN Mataram Number 9/B/TF/2024/PT.TUN.MTR said that it disagreed with the first level decision. The Panel of Judges of PT TUN considered that based on the evidence submitted, there was no evidence of a TP3MT technical study as the basis for guidance to the Plaintiffs. In addition, Defendant I did not issue a Demolition Determination Letter as required by Article 21 paragraph (1) of Regulation of the Minister of Home Affairs (Permendagri) Number 32/2010 before carrying out the demolition. As a result of the absence of the letter, the demolition action taken against the Plaintiffs' (PT Profesional Telekomunikasi Indonesia and PT Iforte Solusi Infotek) telecommunication tower was juridically flawed and contrary to law. Based on these legal considerations, the Appeals Court judges disagreed with the Administrative Court's decision and ruled in favor of the Plaintiffs.³⁷

The Defendants (Regional Regent of Badung and the Head of the Badung District Civil Service Police Unit) were not satisfied with the decision of PT TUN Mataram so they filed a cassation appeal. The

³⁶ Direktori Putusan, Putusan PTUN Denpasar No. 20/G/TF/2023/PTUN.DPS.

³⁷ Direktori Putusan, Putusan PT TUN Mataram No. 9/B/TF/2024/PT.TUN.MTR.

cassation case was registered with case Number 594 K/TUN/TF/2024. The Panel of Supreme Court Justices in their legal considerations stated that the decision of PT TUN Mataram Number 9/B/TF/2024/PT.TUN.MTR which was decided on May 28, 2024 as *judex facti* was wrong and mistaken in applying the law. The panel of Supreme Court Judges argued that every telecommunication tower provider and operator must have a permit, and the procedure for administrative sanctions against telecommunication towers operating without a permit has been regulated in Badung Regional Regulation Number 18/2016.³⁸

Based on the legal considerations above, it can be concluded that the Panel of Supreme Court Judges considered that the legal facts related to the dispute had stated that the Plaintiffs (PT Profesional Telekomunikasi Indonesia and PT Iforte Solusi Infotek) did not have a license to operate telecommunication towers. Therefore, it is relevant for Defendant I to impose administrative sanctions (administrative coercion) on the Plaintiffs.³⁹

Furthermore, after conducting guidance and supervision of telecommunication towers owned by Cassation Respondents I and II (formerly the Plaintiffs), it was found that the telecommunication towers owned by Cassation Respondents I and II did not have permits and continued to operate, so based on the results of the guidance and supervision, TP3MT recommended to impose administrative sanctions in the category of demolition of telecommunication towers, and against the recommendation letter issued by TP3MT, the Cassation Petitioner issued a demolition order after the Badung Regency Government through TP3MT had previously given a written warning to Cassation Respondents I and II. Therefore, the issuance of disputed object I up to disputed object IV and the implementation of actions such as

³⁸ Direktori Putusan, Putusan Mahkamah Agung No. 594 K/TUN/TF/2024.

³⁹*Ibid.*

disputed object V were appropriate and correct and not procedurally flawed.⁴⁰

Regarding the factual action in the form of demolition of telecommunication towers and/or BTS buildings in Badung Regency owned by Cassation Respondents I and II by Defendant II, the Panel of Supreme Court justices considered that the action was a form of administrative sanction to the Plaintiffs against unlicensed telecommunication tower and/or BTS buildings as a result of guidance and supervision from TP3MT associated with the legislations of Article 20 paragraphs (1) and (2) and Article 27 of Badung Regional Regulation No. 18 of 2016. Therefore, the overall substance of the issuance of the disputed object and the government's factual action due to the unlicensed telecommunication towers and/or BTS owned by the Cassation Respondents so that the administrative action of demolition is appropriate and legally correct. Therefore, all administrative actions (*bestuurshandelingen*) taken by the Respondents complied with the applicable laws and regulations and did not contravene AUPB.

Based on the legal considerations above, the Panel of Supreme Court justices considers it appropriate to annul the decision of PT TUN Mataram Number 9/B/TF/2024/PT.TUN.MTR and reject the Plaintiffs' lawsuit.⁴¹

3. Analysis of Subjective and Objective Cumulation in a Lawsuit

Any legal subject can be a party to the examination of a dispute in court (*legitima persona standi judicio*) as long as the party has legal standing.⁴² This is a basic concept in judicial procedural law.⁴³

⁴⁰*Ibid.*

⁴¹*Ibid.*

⁴² Asma Karim, "Legal Standing Pemegang Hak Merek Terdaftar Yang Belum Dimohonkan Perpanjangan Kajian Putusan Nomor 139 K/Pdt.Sus HKI/2018", *Jurnal Yudisial*, vol. 13, no. 1, pp. 107-124, (2020), p. 110-111. DOI: 10.29123/jy.v13i1. 359

⁴³ Zainal Arifin Mochtar and Eddy O.S. Hiariej, *Dasar-Dasar Ilmu Hukum, Memahami Kaidah, Teori, Asas dan Filsafat Hukum*, (Depok: Raja grafindo Persada, 2021), p. 162.

There are 2 (two) types of lawsuits cumulation (*samenvoeging van wordering*), namely subjective cumulation and objective cumulation. Subjective cumulation occurs when one lawsuit is filed by several Plaintiffs or addressed to several Defendants in one case. Meanwhile, objective cumulation occurs when the Plaintiff files several claims against the Defendant in one lawsuit.⁴⁴

Decision of PTUN Denpasar in case No. 10/G/TF/2023/PTUN.DPS *jo.* Decision of PT TUN Mataram Number 56/B/TF/2023/PT.TUN.MTR *jo.* Supreme Court Decision Number 334 K/TUN/TF/2024 and PTUN Denpasar Decision Number 20/G/TF/2023/PTUN.DPS *jo.* PT TUN Mataram Decision Number 9/B/TF/2024/PT.TUN.MTR *jo.* Supreme Court Decision Number 594 K/TUN/TF/2024 contains subjective cumulation and objective cumulation in the lawsuit.

Subjective cumulation in Supreme Court Decision Number 334 K/TUN/TF/2024 includes the legal subject consisting of the Plaintiff which is a civil legal entity and several Defendants, namely the Badung Regent and the Head of the Badung Regency Pamong Praja Police Unit. Meanwhile, the subjective cumulation in Supreme Court Decision Number 594 K/TUN/TF/2024 includes several Plaintiffs and several Defendants. The Plaintiffs consist of PT Profesional Telekomunikasi Indonesia and PT Iforte Solusi Infotek.⁴⁵ The Defendants consisted of

⁴⁴ Yolanda Feberta Savitri, “Kumulasi Obyektif Gugatan Wanprestasi dan Perbuatan Melawan Hukum dalam Satu Surat Gugat (Studi Kasus Putusan Mahkamah Agung Nomor 3057 K/Pdt/2017)”, *Jurnal Verstek*, vol. 9, no. 1, pp. 218-226, (2021), p. 219. <https://doi.org/10.20961/jv.v9i1.50011>

⁴⁵ All of these limited liability companies are civil legal entities (*rechtspersoon*) that have the right to file a lawsuit with the Peratun. The definition of the plaintiff in the Peratun Law is not explicitly mentioned in the general legislations of the Peratun Law. The provision of who is the plaintiff in the Peratun procedural law can be linked to the provisions of Article 53 of the Peratun Law. Article 53 of the Peratun Law reads as follows: “Persons or civil legal entities who feel that their interests have been harmed by a State Administrative Decision may file a written lawsuit with the competent court containing a demand that the disputed State Administrative Decision be declared null or invalid, with or without a claim for compensation and/or rehabilitation.” Republik Indonesia, Undang-Undang Nomor 9 Tahun 2004 tentang Perubahan Atas Undang-Undang Nomor 5 Tahun 1986 tentang Peradilan Tata Usaha Negara, LN No. 35, TLN. 4380. Furthermore, Article 1 point

the Badung Regent and the Head of the Badung Regency Civil Service Police Unit.⁴⁶

Furthermore, the objective cumulation in the lawsuit in both Supreme Court Decision Number 334 K/TUN/TF/2024 and Supreme Court Decision Number 594 K/TUN/TF/2024 are similar in that there are several objects of dispute between the KTUN and factual actions. The dispute concerns an order to demolish the telecommunication tower and a notification letter regarding the demolition of the telecommunication tower. Meanwhile, the real action of the administrative authority that became the object of dispute was the demolition of the telecommunication tower building by the Head of the Badung Regency Civil Service Police Unit.

Based on the objective cumulation in Supreme Court Decision Number 334 K/TUN/TF/2024, *mutatis mutandis*, what the Plaintiff requested to be decided by the court (*petitum*) also included declaring void or invalid the order by the Badung Regent and the notification of the demolition of the Plaintiff's telecommunication tower by the Head of the Badung Regency Civil Service Police Unit. Furthermore, the Plaintiff filed a claim that the demolition action taken by Defendant II was an administrative tort that was contrary to the law and AUPB. The Plaintiff also filed a claim for material damages based on the provisions of Article 97 paragraph (10) of the Peratun Law and Article 5 paragraph (3) of Regulation of Supreme Court Number 2 of 2019.⁴⁷

(3) of the Administrative Court Law (UU AP) states: “Government Agencies and/or Officials are elements that carry out Government Functions, both within the scope of the government and other state administrative bodies.” Republik Indonesia. Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan, LN No. 292, TLN No. 5601.

⁴⁶Article 1 point (12) of the Peratun Law states: “The Defendant is a state administrative agency or official who issues a decision based on the authority vested in or delegated to them, which is being challenged by an individual or a legal entity under civil law.”

⁴⁷ Direktori Putusan, Putusan PTUN Denpasar No. 20/G/TF/2023/PTUN.DPS *jo.* Putusan PT TUN Mataram No.9/B/TF/2024/PT.TUN.MTR *jo.* Putusan Mahkamah Agung No. 594 K/TUN/TF/2024.

Meanwhile, in Supreme Court case Number 594 K/TUN/TF/2024, the Plaintiffs requested that the KTUN of the disputed object be canceled or invalidated and the factual action be declared an administrative tort. Furthermore, the Plaintiffs in their *petitum* filed a claim for compensation due to factual losses suffered by the Plaintiffs.⁴⁸

The author assesses that the Panel of Judges from the first level to the cassation level in the Decision of PTUN Denpasar Number 10/G/TF/2023/PTUN.DPS *jo.* Decision of PT TUN Mataram Number 56/B/TF/2023/PT.TUN.MTR *jo.* Supreme Court Decision Number 334 K/TUN/TF/2024 and PTUN Denpasar Decision Number 20/G/TF/2023/PTUN.DPS *jo.* PT TUN Mataram Decision Number 9/B/TF/2024/PT.TUN.MTR *jo.* Supreme Court Decision

⁴⁸Initially, Government Regulation Number 43 of 1991 concerning Compensation and Its Implementation Procedures in the Administrative Court stipulated in a limited manner the amount of compensation that could be imposed by an Administrative Court decision, which ranged from a minimum of Rp 250,000 (two hundred and fifty thousand rupiah) to a maximum of Rp 5,000,000 (five million rupiah), based on the material losses suffered by the Plaintiff. This provision is considered outdated and no longer in line with the current currency exchange value or inflation rate. It does not reflect the changing times and the socio-economic dynamics of the country. Furthermore, a fundamental issue regarding compensation, as discussed by Indroharto, is that losses are not always material in nature and measurable in monetary terms, but may also include immaterial losses. See Indroharto, *Usaha Memahami Undang-Undang Tentang Peradilan Tata Usaha Negara, Buku I (Beberapa Pengertian Dasar Hukum Tata Usaha Negara)*, (Jakarta: Sinar Harapan, 1996), p. 37-38. To address this issue, the Supreme Court issued a policy accommodating the public's interest in claiming compensation for administrative torts by the government, through the issuance of Supreme Court Circular (SEMA) Number 2 of 2019. This circular affirms the following:

a) *Government Regulation Number 43 of 1991 concerning Compensation and Its Implementation Procedures in the Administrative Court cannot be applied to disputes over government actions/acts against the law by government agencies and/or officials, because the Regulation strictly applies only to disputes involving written decisions of government agencies and/or officials (State Administrative Decisions);*

b) *The amount of compensation claimed must be based on actual/real losses suffered by the Plaintiff, which must be clearly and specifically formulated in the legal reasoning (posita) of the lawsuit, and its amount and form must be stated in the claim (petitum);*

c) *The amount of compensation that may be granted by the Administrative Court depends on the facts revealed during the trial and the wisdom of the judge in deciding the dispute.*

Number 594 K/TUN/TF/2024 does not question the formality of the lawsuit with regard to the cumulation of lawsuits between KTUN and factual actions. This is evident from the legal considerations (*ratio decidendi*) of the Panel of Judges who examined the merits of the case. In the case, it can also be seen that the factual action in the form of demolition becoming the object of dispute was preceded by the issuance of a written decision on the order and notice of demolition. Therefore, it can be seen that between the object of the KTUN dispute and the factual action is a series of administrative actions (*bestuurshandelingen*) that are systematic and continuous.

Ideal Concept of Lawsuit Cumulation between Administrative Decision and Factual Action

“*Het zijn dan geenrechtshandelingen, maar welrechtsfeiten*”, means that factual actions are not legal actions, but legal facts.⁴⁹ In finding legal facts, of course, it is necessary to be careful in receiving, examining and resolving factual action cases.

It is undeniable that KTUN and factual actions are objects of TUN that can be related to one another. This condition is known as the cumulation of lawsuits based on their legal characteristics that are closely related to one another (*innerlijke samenhang*).⁵⁰

In assessing the relationship between the KTUN object and factual actions, the Peratun must exercise prudence in handling the lawsuit under review. The following are, in the author's view, the ideal parameters for accepting the cumulation of claims involving both factual actions and KTUN.

⁴⁹Quoting F.C.M.A. Michiels, as cited in Ridwan, “Penguujian Tindakan Faktual dan Perbuatan Melanggar Hukum oleh Pemerintah dalam Sistem Peradilan Tata Usaha Negara”, *Jurnal Magister Hukum Udayana*, vol. 11, no. 1, pp. 89-108, (2022), p. 98. DOI: <https://doi.org/10.24843/JMHU.2022.v11.i01>. p07

⁵⁰Mahkamah Agung, Surat Edaran Mahkamah Agung Nomor 7 Tahun 2012 tentang Rumusan Hukum Hasil Rapat Pleno Kamar Mahkamah Agung Sebagai Pedoman Pelaksanaan Tugas Bagi Pengadilan, Angka 6 Rumusan Hasil Rapat Pleno pada Kamar Candra.

First, between the KTUN and the factual actions challenged simultaneously in one case, there is a series of administrative actions that are gradual and systematic. For example, the challenged factual action is a series of administrative actions from the KTUN that was originally issued. An example is the case in Supreme Court Decisions Number 334 K/TUN/TF/2024 and Number 594 K/TUN/TF/2024. The cases in these two decisions contain a cumulation of KTUN disputed objects and factual actions that are gradual, systematic, and closely related, namely the order and notification of building demolition as KTUN and the act of demolition by the Defendant as a factual action.⁵¹

The cumulation of lawsuits against administrative decisions and factual actions in one case reflects judicial recognition that administrative decisions and factual actions are in one normative sequence, which cannot be separated. This is in line with Adolf Julius Merkl's view that legal norms do not stand alone, but are interrelated hierarchically upwards as derivatives, and downwards as the basis for implementation. Thus, the judicial practice demonstrates a structural understanding of the stratified legal system as proposed by Adolf Julius Merkl.⁵² Therefore, not all disputes in Peratun can be applied object cumulation. Object cumulation is not allowed if there is no hierarchical legal relationship between the KTUN and the factual action.

Second, the suitability of the object of dispute with the *posita* (*fundamentum petendi*) and *petitum*. The object of the dispute between the KTUN and the factual action must be clearly explained in the lawsuit. The reasons and basis of the lawsuit must contain a description that

⁵¹Direktori Putusan, Putusan PTUN Denpasar No.10/G/TF/2023/PTUN.DPS jo. Putusan PT TUN Mataram No.56/B/TF/2023/PT.TUN.MTR jo. Putusan Mahkamah Agung No. 334 K/TUN/TF/2024 and Putusan PTUN Denpasar No. 20/G/TF/2023/PTUN. DPS jo. Putusan PT TUN Mataram No. 9/B/TF/2024/PT.TUN.MTR jo. Putusan Mahkamah Agung No.594 K/TUN/TF/2024.

⁵² Maria Farida Indrati Soeprapto, *Ilmu Perundang-Undangan (Jenis, Fungsi, Materi Muatan)*, *Loc.cit.*

shows why the object of dispute is considered legally defective, such as defects in authority, procedure or substance and explain the relationship between the accumulated objects, including aspects of *innerlijke samenhang*. The claim must be formulated in line with the object of the dispute and the statement of claim, so that the claim is in accordance with the arguments and the disputed object. In other words, between the Administrative Decree and the factual action cumulated if the subject cumulation and object cumulation have the same legal basis or event and are related to what is requested to be decided by the court.

Third, in addition to the relationship between decisions and factual actions, the principle of simple, fast and light costs (*constante justitie*) is also an indicator in considering adjudicating state administrative cases. The principle of organizing judicial power in the provisions of Article 2 paragraph 4 of the Law Number 48 of 2009 on Judicial Power (“Judicial Power Law”) stipulates that: “*Judicial proceedings shall be conducted in a simple, fast and low cost manner.*”⁵³ Furthermore, Article 4 paragraph 2 of the Judicial Power Law states that: “*The court shall assist the seeker of justice and endeavor to overcome all obstacles and hindrances in order to achieve a simple, fast and low cost trial.*”⁵⁴ Referring to the Explanation of Article 2 paragraph 4, ‘simple’ means that the examination and resolution of cases are conducted efficiently and effectively, while ‘low cost’ means affordable for the citizen. This principle does not diminish thoroughness and accuracy in upholding truth and justice.⁵⁵

In principle, the principle of simple trial refers to clear, understandable and straightforward procedures. fast trial is defined as examination in an efficient and effective manner. A low-cost trial means that the costs of the litigation process can be borne by the people and

⁵³ Republik Indonesia, Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman, LN. 157, TLN. 5076.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*, Penjelasan Ps. 2 ayat (1). See also Lucky Raspati, “Keberadaan Ahli dan Implikasi Negatifnya terhadap Asas Peradilan Cepat, Sederhana dan Biaya Ringan (Suatu Kritik terhadap Pemeriksaan Ahli dalam Peradilan Pidana di Indonesia)”, *Jurnal Negara Hukum*, vol. 3, no.2, pp. 249-273, (2012), p. 267.

are affordable. The fewer and simpler the formalities required or necessary in court proceedings, the better. Too many formalities that are difficult to understand, or have multiple meanings that lead to multiple interpretations, do not ensure legal certainty. This will lead to public dissatisfaction with the court dispute resolution system.⁵⁶

The principle of fast trial⁵⁷ refers to the course of justice. Too much formality is an obstacle to the course of justice. A fast trial will enhance the authority of the court and increase public trust in the judiciary. Low costs are intended to ensure that court fees can be borne by the general public.⁵⁸

By cumulating lawsuits between KTUN and factual actions in one case process, cumulating lawsuits can accelerate dispute resolution because related cases are resolved at once without the need to file separate lawsuits. This supports the principle of fastness. In addition, the cumulation of claims simplifies the judicial process because closely related disputes are examined together in one hearing, thus supporting the principle of simplicity. Finally, because the Plaintiff does not need to file several separate lawsuits and only bears one court fee, the cumulation of lawsuits also supports the principle of low cost.

Fourth, the application of the principle of legal expediency for the litigants. The principle of legal expediency emphasizes that the implementation of the law must bring maximum benefits to the parties and society, especially in the form of dispute resolution that is effective, efficient, and creates substantive justice.

⁵⁶ Efa Laela Fakhriah, "Mekanisme Small Claims Court dalam Mewujudkan Tercapainya Peradilan Sederhana, Cepat, dan Biaya Ringan", *Mimbar Hukum*, vol. 25, no. 2, pp. 258-270, (2013), p. 263. <https://doi.org/10.22146/jmh.16096>

⁵⁷The principle of speedy trial originates from the Magna Carta. The charter affirms that, in principle, justice and truth must not be denied or delayed—neither in terms of the ultimate goal, which is justice, nor in terms of the process undertaken to achieve that ultimate goal, namely the law. See in Spyendik Bernadus Blegur, "Asas-Asas Hukum Utama dalam Hukum Acara Peradilan Tata Usaha Negara", vol. 5, no. 1, pp. 39-56, (2022), p. 46. <https://doi.org/10.25216/peratun.512022.39-56>.

⁵⁸ Efa Laela Fakhriah, "Mekanisme Small Claims Court dalam Mewujudkan Tercapainya Peradilan Sederhana, Cepat, dan Biaya Ringan", *Op. cit.* p. 263.

Although the systematics of the Peratun Law only mentions the object of dispute in the form of an administrative decision and the AP Law distinguishes between factual action disputes and KTUN disputes, this situation cannot be used as an obstacle for Judges to cumulate lawsuits as long as the objects of KTUN and factual actions have the same legal characteristics (*innerlijke samenhang*). In addition, the cumulation of lawsuits is actually procedurally beneficial (*processueel doelmatig*).⁵⁹

Here the Judge plays his role in positioning the law to serve humans and humanity, so that if concrete problems arise, the law needs to be improved, not forcing humans to adjust to a legalistic legal framework. Law is not a closed institution, but an inseparable part of human life.⁶⁰ The concept is a legal paradigm that prioritizes aspects of substantive justice which does not mean ignoring legal texts (procedural justice), but ensuring that the application of law brings welfare and happiness to citizens and administrative authorities in the administration of government administration.⁶¹ Therefore, the application of the cumulation to settle lawsuits between administrative decisions and factual actions in the same case can be said to be in line with the adage of bringing justice closer to the people, accomodating the massive and dynamic dynamics of society and administrative law.

Fifth, avoiding disparity or conflicting decisions. The cumulation of lawsuits plays an important role in preventing disparity of decisions (inconsistency of decisions) on closely related cases. By filing a cumulation of KTUN and interrelated factual actions in one lawsuit, the examination is carried out in an integrated manner by one Panel of

⁵⁹Kidung Sadewa, et al, "Formulasi Kumulasi Gugatan yang Dibenarkan Tata Tertib Acara Indonesia (Studi Putusan MA Nomor 2157 K/PdT/2012 dan Putusan MA Nomor 571 PK/Pdt/2008)", *Jurnal Verstek*, vol. 5, no.3, pp. 228-236, p. 230. <https://doi.org/10.20961/jv.v5i3.33546>

⁶⁰M. Zulfa Aulia, "Hukum Progresif dari Satjipto Rahardjo: Riwayat, Urgensi, dan Relevansi", *Undang: Jurnal Hukum*, vol. 1, no. 1, pp. 159-185, (2018), p. 166. DOI: 10.22437/ujh.1.1.159-185

⁶¹*Ibid.* p. 169-170.

Judges, producing a coherent, harmonized and consistent decision on the entire subject matter of the dispute, avoiding the risk of different or even conflicting decisions if each claim is filed in a separate lawsuit, ensuring the achievement of legal objectives for the parties, maintaining the prestige and integrity of the judiciary in the eyes of the community.

Sixth, cumulation does not connote a prohibition on mixing lawsuits. The issue that is often questioned is whether by cumulating the objects, it mixes the lawsuit of KTUN with factual actions as prohibited in Circular Letter of Supreme Court Number 3 of 2023.⁶² Basically, the phrase mixing up is different from clearly placing the object of dispute in the lawsuit. Based on the Big Dictionary of the Indonesian Language (“KBBI”), the phrase mixing up means to make mixed up or confuse.⁶³ Meanwhile, the word cumulation (*samenvoeging van wordering*) according to KBBI means the merging of several lawsuits.

Thus, it can be stated that mixing up has different meaning from the cumulation of objects clearly placing and relating one object to another (*innerlijke samenhang*). Mixing up a lawsuit has the connotation of causing the object of the dispute to be switched. KTUN should be the object of dispute but the object of dispute is the factual action. This causes a random condition of the object of dispute.

Regarding the cumulation of objects, it has been contained in the legal rules of Circular letter of Supreme Court Number 7/2012, basically stating that the cumulation of objects of KTUN disputes is permitted as long as their legal characteristics are closely related to one another (*innerlijke samenhang*). Meanwhile, the cumulation of objects over real KTUN and fictitious decisions is not justified because both have different legal characteristics. Real Administrative Decree as stated in

⁶²Mahkamah Agung, Surat Edaran Mahkamah Agung Nomor 3 Tahun 2023 tentang Pemberlakuan Rumusan Hasil Rapat Pleno Kamar Mahkamah Agung Tahun 2023 Sebagai Pedoman Pelaksanaan Tugas Bagi Pengadilan, Letter E Rumusan Hukum Tata Usaha Negara point 2.

⁶³ Badan Pengembangan dan Pembinaan Bahasa, *Mencampuradukkan*, <https://kbbi.kemdikbud.go.id/entri/mencampuradukkan>, accessed on 16 Februari 2025.

Article 1 point 9 of the Peratun Law is in the form of a written stipulation, while Administrative Decree in the form of a fictitious decision (Article 3 of the Peratun Law as well as Article 175 of Law Number 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation (Omnibus Law) into Law) is characterized by the silence of officials who do not answer the request. Therefore, these two types of lawsuits cannot be combined in one case.⁶⁴

Circular Letter of Supreme Court Number 7/2012 should be construed in a broad sense so that the cumulation of disputed objects also includes KTUN and factual actions.⁶⁵ The cumulation of objects by placing the character of the disputed object in its place cannot necessarily be stated as mixing the KTUN lawsuit with factual actions.

In relation to Circular Letter of Supreme Court Number 3/2023, the concept of mixing lawsuits occurs when the object of the dispute to be sued is the KTUN but the factual action at issue in the lawsuit.⁶⁶ This is a different concept considering that there is a clear separation between objects in the form of KTUN and factual actions. Cassation Decision Number 526 K/TUN/TF/2024 is one example of a case that is subject to the prohibition of mixing claims. The cumulation of objects in the case turned out to be a positive fictitious request that

⁶⁴Mahkamah Agung, Surat Edaran Mahkamah Agung Nomor 7 Tahun 2012 tentang Rumusan Hasil Rapat Pleno Kamar Mahkamah Agung Sebagai Pedoman Pelaksanaan Tugas Bagi Pengadilan, point 6 Rumusan Hasil Rapat Pleno Kamar Candra.

⁶⁵In this context, the legal construction carried out by the judge according to the author is *argumentum per analogiam*. Although there is a legal vacuum regarding the cumulation of objects between KTUN and factual actions, this condition does not cause judges to limp to realize substantive justice. In fact, to fill the legal vacuum, judges can use legal discovery based on legal expediency and the principles of simple, fast, and low-cost justice.

⁶⁶Mahkamah Agung, Surat Edaran Mahkamah Agung Nomor 3 Tahun 2023 tentang Pemberlakuan Rumusan Hasil Rapat Pleno Kamar Mahkamah Agung Tahun 2023 Sebagai Pedoman Pelaksanaan Tugas Bagi Pengadilan, Letter E Rumusan Hukum Tata Usaha Negara point 2.

was engineered into a factual action dispute, so that the lawsuit became unclear (*obscuur libel*) and deserved to be declared unacceptable.⁶⁷

In addition, through Circular Letter of Supreme Court Number 3/2023, the Supreme Court is not trying to revive the positive fictitious provisions. Because the positive fictitious provisions have been declared no longer the authority of the PTUN after the enactment of the Law Number 6 of 2023 on Stipulating Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation (Omnibus law) into Law (“Job Creation Law”).⁶⁸ However, based on SEMA Number 2/2024, it seems that the Supreme Court is trying to reactivate negative fictitious decisions into the authority of Peratun. SEMA Number 2/2024 asserts that: “*The silence of government officials who do not grant the Plaintiff's Application in the Minerba One Data Indonesia (MODI) list, cannot be seen as an administrative omission but rather an act of refusing to issue an Administrative Decision according to Article 3 of the Peratun Law.*”

Conclusion

The *ratio legis* for the expansion of KTUN under the AP Law aims to increase legal protection for citizens against administrative actions, promote good governance, ensure government accountability, and expand the supervisory role of the Peratun. The Court Decision

⁶⁷The object of dispute in Cassation Decision No. 526 K/TUN/TF/2024, namely: “1. *Keputusan Kepala Kantor Pertanahan Kabupaten Bandung Barat Nomor PHP.300/460-32-17/VIII/2023, perihal Permohonan Hak Guna Bangunan dan Hak Pakai Atas Tanah di Persil Cireunden, Cireunden II dan Gunung Masigit Kabupaten Bandung Barat, Provinsi Jawa Barat, tanggal 3 Agustus 2023, yang ditujukan kepada sdr. Apin Kurniawan Direktur PT Sivani Jaya Sakti, Komplek Permata Kota Blok C-22, Jalan P. Tubagus Angke Nomor 170 di Jakarta Utara*; 2. *Tindakan dari Tergugat yaitu tidak memproses Permohonan Penerbitan Sertipikat Hak Guna Bangunan dan Hak Pakai Atas Tanah di persil Cireunden, Cireunden II dan Gunung Masigit, Kabupaten Bandung Barat, Provinsi Jawa Barat, atas permohonan PT Sivani Jaya Sakti tanggal 5 Juli 2023 dan 24 Juli 2023 seluas 55.4810 Hektar.* See in Direktori Putusan, Putusan Mahkamah Agung No. 526 K/TUN/TF/2024.

⁶⁸ Republik Indonesia, Undang-Undang Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja menjadi Undang-Undang, LN no. 41, TLN No. 6856, Ps. 175.

that was the object of the research allowed the cumulation of the KTUN and factual actions in one case as long as they were legally interrelated as a series of administrative actions. Subjective and objective cumulation is considered valid, as the demolition is preceded by an official warrant and notice. This approach ensures the utility of the law by avoiding fragmented litigation over interconnected matters, thereby expediting dispute resolution. The Supreme Court's decision held that all actions taken by the Defendant were procedurally and substantively valid, as they were in accordance with laws and regulations and AUPB. This decision sets an important precedent in accepting the cumulation of objects between KTUN and factual actions in Peratun.

The cumulation of the object of the KTUN and the factual action is acceptable if it meets the main parameters: strong legal relationship (*innerlijke samenhang*), coherence between object, *posita*, and *petitum*, and alignment with the principles of efficient, simple, and low-cost justice. Claims must also have legal merit, prevent inconsistent rulings, and avoid mixing prohibited claims. This approach reflects the judiciary's progressive role in dynamically interpreting the law to address the complexities of administrative action (*bestuurshandelingen*).

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

Decisions Court

Direktori	Putusan.	Putusan	PTUN	Denpasar
No.10/G/TF/2023/PTUN.DPS.				
Direktori	Putusan.	Putusan	PT	TUN
No.56/B/TF/2023/PT.TUN.MTR.				
Direktori	Putusan.	PutusanM	ahkamah	Agung
No. 334 K/TUN/TF/2024.				
Direktori	Putusan.	Putusan	PTUN	Denpasar
No.20/G/TF/2023/PTUN.DPS.				
Direktori	Putusan.	Putusan	PT	TUN
No.9/B/TF/2024/PT.TUN.MTR.				
Direktori	Putusan.	Putusan	Mahkamah	Agung
No.594 K/TUN/TF/2024.				

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*Cumulation of Lawsuits Between Administrative Decisions and Factual Actions in
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