



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 149/PUU-XXI/2023**

Concerning

**Deadline for Filing a Lawsuit Against a State Administrative Decision
for Third Parties not Directly Addressed**

- Petitioner** : Cecilia Soetanto
- Type of Case** : Judicial Review of Law Number 5 of 1986 concerning State Administrative Court as lastly amended by Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Court (State Administrative Court Law) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution).
- Subject Matter** : Article 55 of the State Administrative Court Law is contrary to Article 28H paragraph (2) of the 1945 Constitution.
- Verdict** : To dismiss the Petitioner's petition entirely.
- Date of Decision** : Tuesday, January 16, 2024
- Overview of Decision** :

The Petitioner is an individual Indonesian citizen, who once filed a lawsuit at the State Administrative Court (PTUN) but was rejected because the Defendant and Intervenor Defendant II's objections were accepted regarding the deadline for filing a lawsuit as stated in PTUN Decision Number 150/G/2023/PTUN.JKT. In the Petitioner's opinion, the enactment of the provisions of Article 55 of the State Administrative Court Law has created uncertainty of fair law and does not fulfill justice.

Regarding the Court's authority, even in the *a quo* Petitioner's petition it is written, "Material Review of Article 55 of Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts", the Court can understand that what is actually petitioned for constitutionality review is a petition for review of the constitutionality of norms of law, *in casu* Article 55 of the State Administrative Court Law (State Gazette of the Republic of Indonesia of 2009 Number 160, Supplement to the State Gazette of the Republic of Indonesia Number 5079, hereinafter referred to as the State Administrative Court Law), so that the Court has the authority to hear the *a quo* petition;

Whereas regarding the Petitioner's legal standing, in the Court's opinion, the Petitioner has been able to describe the assumptions regarding the specific injury of constitutional rights, according to the Petitioner, by the enactment of the norms of Article 55 of the State Administrative Court Law. The Petitioner has also been able to describe that there is a causal relationship (*causal verband*) between the assumptions regarding the injury of constitutional rights and the enactment of the norms of the article being petitioned for judicial review. Thus, the Petitioner has the legal standing to act as a Petitioner in the *a quo* Petition.

Regarding the Petitioner's argument about the deadline for filing a lawsuit against a State Administrative Decision (KTUN) as stated in Article 55 of the State Administrative Court Law, the Court has previously considered it through Constitutional Court Decision Number 57/PUU-XIII/2015 which was pronounced in an open plenary session on 16 November 2015 and Constitutional Court Decision Number 22/PUU/XVI/2018 which was pronounced in an open plenary session on 22 November 2018. Pursuant to the excerpt from the legal considerations of the decision, it is clear that the issuance of a KTUN could have legal consequences not only for the party directly addressed but also for parties not addressed *in casu* the family. If read systematically, Article 53 paragraph (1) of the State Administrative Court Law has provided signs that the legal consequences of a KTUN are not only for the parties directly addressed, namely the phrase "a person or civil legal entity who feels that their interests have been prejudiced by a KTUN can file a lawsuit...". Thus, a person or civil legal entity who feels that their interests have been prejudiced has the potential to file a KTUN lawsuit with the PTUN.

Whereas in accordance with the considerations above, substantively and considering the urgency of fair legal certainty regarding the deadline for filing an application with the PTUN, in the Court's opinion, the legal considerations in the Court decisions above have comprehensively answered the constitutionality issue questioned by the Petitioner. Furthermore, the legal considerations of these cases have also clearly stated that the deadline of 90 (ninety) days for filing a lawsuit which is calculated from the receipt or announcement of the decision of the state administrative body/official, applies only to "persons/individuals or civil legal entities" directly addressed by the KTUN. Meanwhile, extending the deadline for a third party not directly addressed by KTUN to file a lawsuit will create legal uncertainty. Thus, the Court's legal considerations in assessing the constitutionality of Article 55 of the State Administrative Court Law in Constitutional Court Decision Number 57/PUU-XIII/2015 and Constitutional Court Decision Number 22/PUU-XVI/2018 also apply *mutatis mutandis* as a legal consideration to the *a quo* petition.

Whereas regarding the argument on the Supreme Court Circular Letter (SEMA) which, according to the Petitioner, is an explanation of Article 55 of the State Administrative Court Law because it regulates the implementation of the *a quo* article for third parties not addressed by a KTUN. In this regard, through Constitutional Court Decision Number 22/PUU-XVI/2018, the Court has taken the position that Article 55 of the State Administrative Court Law is constitutional, so all forms of extending the deadline for filing a lawsuit, including for third parties not directly addressed by a KTUN, is within the authority of the legislators. In this regard, without the Court intending to assess the legality of SEMA Number 2 of 1991 and SEMA Number 3 of 2015, this cannot affect the enactment of Article 55 of the State Administrative Court Law as interpreted by Constitutional Court Decision Number 22/PUU-XVI/2018 as a higher regulation that has binding legal force on all Indonesian citizens.

In addition, the assessment regarding *petitum* of the Petitioner's petition, namely *petitum* number 2 and number 3 which essentially petitions the Court to declare that the Court has the authority to review the *a quo* SEMA and interpret Article 55 of the State Administrative Court Law as stated in the *a quo* SEMA, if carefully read, in the Court's opinion, is not within the Court's

authority. Furthermore, if the *a quo* Petitioner's petition is granted by the Court as stated in the petition *petitum, quod non*, this will actually create legal uncertainty. Because, apart from just accommodating the concrete case experienced by the Petitioner which is the enactment of norms that actually have no relevance to the constitutionality of the norms of Article 55 of the State Administrative Court Law, it will also give rise to other problems with the emergence of new interpretations of the application of the norms of the *a quo* article. Thus, even though the *a quo* Petitioner's petition is linked to the SEMA, because the essence of the Petitioner's petition is related to the deadline for filing a lawsuit against a KTUN under the provisions of Article 55 of the State Administrative Court Law and by considering the petition *ex aequo et bono*, the Court can understand the Petitioner's petition is actually related to the constitutionality of Article 55 of the State Administrative Court Law in question.

Whereas pursuant to the entire description of the legal considerations above, in the Court's opinion, it is evident that the provisions of Article 55 of the State Administrative Court Law have provided fair legal certainty as well as equal opportunities and benefits to achieve equality and justice as guaranteed in Article 28H paragraph (2) of the 1945 Constitution as argued by the Petitioner so that the Petitioner's petition is entirely legally unjustifiable. Accordingly, the Court passed down a decision in which the verdict was to Dismiss the Petitioner's petition entirely.

Dissenting Opinion

Whereas against the *a quo* Constitutional Court Decision, Constitutional Justice Saldi Isra has a dissenting opinion as follows:

[6.1] Considering that the Petitioner submits a review of the norms of Article 55 of Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Court (hereinafter referred to as the State Administrative Court Law), in this case, the provisions of Article 55 of the State Administrative Court Law state, "A lawsuit can only be submitted within the period of ninety days from the receipt or announcement of the Decision of the State Administrative Body/Official".

[6.2] Considering that regarding the norms of Article 55 of the State Administrative Court Law whose constitutionality is being reviewed, in the *petitum* number 2 and number 3 of the *a quo* petition, the Petitioner petitions the Court to declare:

2. having the authority to review Article 55 of the State Administrative Court Law and the SEMA which is a complementary explanation of the application of the law for third parties not addressed by the State Administrative Decision as referred to in Article 55 of the State Administrative Court Law.

3. Article 55 of the State Administrative Court Law is contrary to the 1945 Constitution and has conditionally binding legal force (conditionally constitutional), to the extent that it is interpreted as ninety days as stated in the SEMA which describes the application of this Article for third parties not addressed by the State Administrative Decision as referred to in Article 55 of the State Administrative Court Law, calculated from the receipt of a statement letter from the relevant agency that stating that a PTUN Decision is needed first;

[6.3] Considering that after carefully observing and studying the petition *petitum* as stated in Paragraph **[6.2]** above, I am of the opinion that such *petitum* formulations can be positioned or categorized or assessed as unusual *petitum* formulations. This is concluded for several reasons.

First, the phrase "Article 55 of the State Administrative Court Law and the SEMA" in number 2 of the *a quo petitum*, implies as if the Court has the authority to review a SEMA ("the Supreme Court Circular Letter"). Moreover, number 2 of the *petitum* is likely intended to

encourage the Court to confirm SEMA as an explanation of law. When placed in the *a quo* petition, such *petitum* seems to be trying to justify the SEMA referred to by the Petitioner as an explanation of Article 55 of the State Administrative Court Law.

Second, the construction of the *petitum* number 3 of the *a quo* petition by including the word "SEMA" is an unusual *petitum* formulation. If the Petitioner wants to include or interpret the norms of Article 55 of the State Administrative Court Law or in accordance with the substance in the SEMA in question, the Petitioner does not need to include the SEMA, but should simply raise the SEMA material which will be interpreted conditionally constitutional in interpreting Article 55 of the State Administrative Court Law.

Third, if the two *petitums* (number 2 and number 3) are placed in the statutory system, placing a SEMA as an explanation of a norm can give rise to legal problems. In fact, within the limits of reasonable reasoning, it is common to understand in the construction of the law that, if an article requires an explanation, then the explanation in question must be included in the explanation of the law in question.

[6.4] Considering the legal considerations in Paragraph **[6.2]** and Paragraph **[6.3]** above, linked to judicial review at the Court, Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Judicial Review of Laws (hereinafter referred to as PMK 2/2021), has confirmed an unclear or obscure petition in judicial review. In this regard, Article 74 of PMK 2/2021 states, "The Court may declare a Petition as unclear or obscure, among other things because:

- a. there is an inconsistency between the Petition arguments in the *Posita* and the *petitum*;
- b. an argument is not stated in the *posita*, but it is stated in the *petitum* or vice versa;
- c. the Petitioner's petition in the *petitum* is contrary to one another and does not provide alternative options.

[6.5] Considering that by referring to the obscure petition criteria in Paragraph [6.4] above, with the unusual method or model of formulating the *petitum*, the Court should not need to discuss the subject matter of the *a quo* petition. Pursuant to these considerations, I have a dissenting opinion with the *a quo* verdict. Within the limits of reasonable reasoning, it is sufficient that the Petitioner's petition be declared inadmissible (*niet ontvankelijke verklaard*).