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Article

The Dispute on Determination of the General Election Commission Members: A Study of Administrative Effort Implementation

Perselisihan Penetapan Anggota Komisi Pemilihan Umum: Studi Penerapan Upaya Administratif

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ABSTRACT

This study aims to describe the position of the Selection Team at the State Administrative Court, as well as analyze dispute resolution procedures within the scope of the General Election Commission administration. This study uses a normative juridical method. The collected legal material is analyzed using qualitative data analysis methods with a statute approach to describe the problem and answer study purposes. The results show that the position of the Selection Team is a witness in the process of dispute resolution at the State Administrative Court. Furthermore, the detrimental parties may submit an objection and appeal effort. In this case, administrative dispute resolution has been regulated in General Election Commission Regulation No. 3 of 2021. On the other hand, Judges will only adjudicate cases and resolve disputes at the State Administrative Court after the plaintiff has undergone administrative efforts. Therefore, it is recommended for the Judge to reject lawsuits from the plaintiffs if the lawsuit positions the Selection Team as the defendant. In addition, it is also recommended that the plaintiff know and understand dispute resolution procedures on the determination of members of the General Election Commission at the State Administrative Court. In contrast, if the plaintiff has undergone administrative effort while the General Election Commission rejects the effort. So to get legal certainty, the plaintiff must submit a lawsuit by positioning the Commissioner of the General Election Commission as the defendant at the State Administrative Court.

Keyword: Administrative Effort; Dispute; General Election Commission; Selection Team.

ABSTRAK

Penelitian ini bertujuan untuk mendeskripsikan kedudukan Tim Seleksi di PTUN, serta menganalisis prosedur penyelesaian perselisihan dalam lingkup administrasi KPU. Penelitian ini menggunakan metode yuridis normatif. Bahan hukum yang terkumpul kemudian dianalisis menggunakan metode analisis data kualitatif dengan pendekatan undang-undang untuk mendeskripsikan masalah dan menjawab tujuan penelitian. Hasil penelitian menunjukkan bahwa kedudukan Tim Seleksi adalah sebagai saksi dalam proses penyelesaian sengketa di PTUN. Selanjutnya, pihak yang dirugikan dapat mengajukan upaya keberatan dan banding. Dalam hal ini, penyelesaian perselisihan administratif telah diatur dalam Peraturan KPU No. 3 Tahun 2021. Di sisi lain, Hakim hanya akan mengadili perkara dan menyelesaikan sengketa di PTUN setelah penggugat menjalani upaya administratif. Oleh karena itu, direkomendasikan kepada Hakim untuk menolak gugatan dari para penggugat jika gugatan tersebut mendudukkan Tim Seleksi sebagai pihak tergugat. Selain itu, direkomendasikan juga agar penggugat mengetahui dan memahami prosedur penyelesaian sengketa penetapan anggota KPU di PTUN. Sebaliknya, jika penggugat telah menjalani upaya administratif sementara KPU menolak upaya tersebut. Maka untuk mendapatkan kepastian hukum, penggugat harus mengajukan gugatan dengan mendudukkan Komisioner KPU sebagai tergugat di PTUN.

Kata Kunci: Komisi Pemilihan Umum; Perselisihan; Tim Seleksi; Upaya Administratif.

INTRODUCTION

Definitions and arrangements regarding state administrative officers in various laws and regulations in Indonesia are still general-abstract (Nasarudin, 2016). In addition, norms with different meanings from one regulation to another can cause legal problems (Rakia, 2021). The application of such norms in concrete cases often creates differences in meaning. Sometimes there may be differences in the interpretation of one article among judges at the court of the first instance, the court of appeal level, and the court of cassation level (Bola et al., 2015). Some judges narrowly interpret the meaning of state administrative officer (Susilo, 2013). At the same time, some interpret it broadly. Likewise, in the context of being the defendant, as based on Article 1 point 12 of Law No. 51 of 2009, which explains that:

“The defendant is an agency or state administrative officer who issues decisions based on the authority that belongs to him/her or delegated to him/her that is being sued by a person or civil legal entity.”

PENDAHULUAN

Pengertian dan pengaturan tentang pejabat tata usaha negara dalam berbagai peraturan perundang-undangan di Indonesia masih bersifat umum-abstrak. Selain itu, norma dengan arti yang berbeda antara satu peraturan dengan peraturan lainnya dapat menimbulkan permasalahan hukum. Penerapan norma-norma tersebut dalam kasus-kasus konkrit seringkali menimbulkan perbedaan makna. Kadang-kadang mungkin ada perbedaan penafsiran satu pasal di antara hakim di pengadilan tingkat pertama, pengadilan tingkat banding, dan pengadilan tingkat kasasi. Sebagian hakim mengartikan pejabat tata usaha negara secara sempit. Pada saat yang sama, beberapa menafsirkannya secara luas. Demikian pula dalam konteks menjadi tergugat, sebagaimana berdasarkan Pasal 1 angka 12 UU No. 51 Tahun 2009, yang menjelaskan bahwa:

“Tergugat adalah badan atau pejabat tata usaha negara yang mengeluarkan keputusan berdasarkan wewenang yang ada padanya atau yang dilimpahkan kepadanya yang digugat oleh orang atau badan hukum perdata.”

On the other hand, there are differences or inconsistencies in explaining the state administrative officer in other laws and regulations. For example, Article 1 point 3 of [Law No. 14 of 2008](#) explains that:

“Public agencies are executive, legislative, judicative, and other agencies whose main functions and duties are related to the administration of the state, whose funds are partly or wholly sourced from the State Budget Revenue and Expenditure and/or Regional Budget Revenue and Expenditure, or non-governmental organizations insofar funds are partly or wholly sourced from the State Budget Revenue and Expenditure and/or Regional Budget Revenue and Expenditure, donations from the public, and/or abroad.”

Furthermore, Article 47 of [Law No. 14 of 2008](#) regulates that:

“(1) Submission of a lawsuit is carried out through the state administrative court if the party being sued is a State Public Agency. (2) Submission of a lawsuit is carried out through a district court if the person being sued is a Public Agency other than the State Public Agency as referred to in section (1).”

From the description above, it can be understood that there are differences between Article 47 of [Law No. 14 of 2008](#) with construction [Law No. 51 of 2009](#). In this case, more emphasis is placed on legal actions related to government affairs even though the subject is not part of an agency or state administrative officer. On the other hand, there are specific prerequisites or criteria to become a legal subject or defendant in a dispute at the State Administrative Court.

[Lotulung \(2013\)](#) explained that government affairs conducted by subjects not part of the government do not automatically qualify all of their decisions to fall into State Administrative Decisions. Therefore, it is optional for certain parties who wish to submit a lawsuit against subjects who carry out government affairs to be decided in the State Administrative Court. In this case, each plaintiff must ensure that the decisions made by the defendant can qualify as State Administrative Decisions.

On the other hand, we can see that there are still many problems where there are disputes over the results of decisions from administrators of government affairs. However, the decision-making subject is subject other than an agency or state administrative officer. One example is positioning the Selection Team as the defendant at the State Administrative Court. In this case, the Selection Team of Members of the Provincial General Election Commission and the Regency/Municipal General Election Commission (hereinafter referred to as Selection Team).

While it can be understood that the Selection Team is a legal subject formed ad hoc by the General Election

Di sisi lain, terdapat perbedaan atau inkonsistensi dalam menjelaskan pejabat tata usaha negara dalam peraturan perundang-undangan lainnya. Misalnya, Pasal 1 angka 3 UU No. 14 Tahun 2008 menjelaskan bahwa:

“Badan Publik adalah lembaga eksekutif, legislatif, yudikatif, dan badan lain yang fungsi dan tugas pokoknya berkaitan dengan penyelenggaraan negara, yang sebagian atau seluruh dananya bersumber dari Anggaran Pendapatan dan Belanja Negara dan/atau Anggaran Pendapatan dan Belanja Daerah, atau organisasi nonpemerintah sepanjang sebagian atau seluruh dananya bersumber dari Anggaran Pendapatan dan Belanja Negara dan/atau Anggaran Pendapatan dan Belanja Daerah, sumbangan masyarakat, dan/atau luar negeri.”

Selanjutnya, Pasal 47 UU No. 14 Tahun 2008 mengatur bahwa:

“(1) Pengajuan gugatan dilakukan melalui pengadilan tata usaha negara apabila yang digugat adalah Badan Publik negara. (2) Pengajuan gugatan dilakukan melalui pengadilan negeri apabila yang digugat adalah Badan Publik selain Badan Publik negara sebagaimana dimaksud pada ayat (1).”

Dari uraian di atas, dapat dipahami bahwa terdapat perbedaan antara Pasal 47 UU No. 14 Tahun 2008 dengan konstruksi UU No. 51 Tahun 2009. Dalam hal ini, lebih ditekankan pada perbuatan hukum yang berkaitan dengan urusan pemerintahan meskipun subyek bukan merupakan bagian dari badan atau pejabat tata usaha negara. Di sisi lain, ada syarat atau kriteria tertentu untuk menjadi subjek hukum atau tergugat dalam sengketa di Pengadilan Tata Usaha Negara (PTUN).

[Lotulung](#) menjelaskan bahwa urusan pemerintahan yang dilakukan oleh subyek yang bukan bagian dari pemerintahan tidak serta merta membuat semua keputusannya jatuh ke dalam keputusan tata usaha negara (KTUN). Oleh karena itu, pihak tertentu yang ingin mengajukan gugatan terhadap subyek yang menjalankan urusan pemerintahan bersifat opsional untuk diputuskan di PTUN. Dalam hal ini, setiap penggugat harus memastikan bahwa keputusan yang dibuat oleh tergugat dapat dikualifikasikan sebagai KTUN.

Di sisi lain, kita dapat melihat bahwa masih banyak permasalahan dimana terjadi perselisihan hasil keputusan dari penyelenggara urusan pemerintahan. Namun subjek pengambil keputusan adalah subjek selain lembaga atau pejabat tata usaha negara. Salah satu contohnya adalah memposisikan Tim Seleksi sebagai pihak tergugat di PTUN. Dalam hal ini, Tim Seleksi Anggota KPU Provinsi dan KPU Kabupaten/Kota (selanjutnya disebut Tim Seleksi).

Sementara dapat dipahami bahwa Tim Seleksi adalah subjek hukum yang dibentuk secara *ad hoc* oleh

Commission of the Republic of Indonesia to select candidate members at the Provincial or Regency/Municipal levels (Fuadi, 2016). Furthermore, the Selection Team only determines candidate members who have completed the administrative requirements. Based on Article 20 section (4) of [General Election Commission Regulation No. 3 of 2021](#) regulates that:

“The Selection Team announces the results of the Administrative Review for the Candidate of Members of the Provincial General Election Commission and the Regency/Municipal General Election Commission 1 (one) day after the determination of the results of the Administrative Review as referred to in section (3).”

Meanwhile, the General Election Commission of the Republic of Indonesia, which has the authority to determine Members of the Provincial and Regency/Municipal levels, as based on Article 30 section (3) of [General Election Commission Regulation No. 3 of 2021](#), which regulates that:

“Determination of the elected Members of the Provincial General Election Commission and the Regency/Municipal General Election Commission, as referred to in section (2), is determined by the Decree of the General Election Commission.”

On the other hand, Judges have diverse views in assessing the status and position of the Selection Team at the State Administrative Court. Some of the Judges' decisions accepted lawsuits from the plaintiffs because of the argument that the Selection Team was a state administrative officer and legally classified as the defendant. For example, in the [Decision No. 28/G/2018/PTUN.JPR](#), which considers that:

“The Selection Team I to candidates for the General Election Commission members ... Period 2018-2023 is an agency or state administrative officer carrying out government affairs so that the defendants have fulfilled the elements as legal subjects in a quo dispute.”

In contrast, some of the Judges' decisions rejected lawsuits from the plaintiffs. For example, in the [Decision No. 125/G/2018/PTUN.SMG](#), which considers that:

“Based on Articles 38A and 38B of Regulation of General Election Commission of the Republic of Indonesia Number 25 of 2018 on Amendment to Regulation of General Election Commission Number 7 of 2018 on the Selection of Members of the Provincial General Election Commission and the Regency/Municipal General Election Commission, if there is a lawsuit that results in a dispute over a State Administration decision issued by the Selection Team to candidates for the General Election Commission members ...,”

KPU RI untuk memilih calon anggota di tingkat Provinsi atau Kabupaten/Kota. Selanjutnya, Tim Seleksi hanya menetapkan calon anggota yang telah melengkapi persyaratan administrasi. Berdasarkan Pasal 20 ayat (4) Peraturan KPU No. 3 of 2021 mengatur bahwa:

“Tim Seleksi mengumumkan hasil Penelitian Administrasi calon anggota KPU Provinsi dan KPU Kabupaten/Kota 1 (satu) hari setelah penetapan hasil Penelitian Administrasi sebagaimana dimaksud pada ayat (3).”

Sedangkan KPU RI yang berwenang menetapkan Anggota di tingkat Provinsi dan Kabupaten/Kota, sebagaimana berdasarkan Pasal 30 ayat (3) Peraturan KPU No. 3 Tahun 2021, yang mengatur bahwa:

“Penetapan anggota KPU Provinsi dan KPU Kabupaten/Kota terpilih sebagaimana dimaksud pada ayat (2) ditetapkan dengan Keputusan KPU.”

Di sisi lain, Hakim memiliki pandangan yang beragam dalam menilai status dan kedudukan Tim Seleksi di PTUN. Beberapa putusan Majelis Hakim menerima gugatan dari para penggugat karena dalil Tim Seleksi adalah pejabat tata usaha negara dan secara hukum diklasifikasikan sebagai tergugat. Misalnya dalam Putusan No. 28/G/2018/PTUN.JPR, yang menimbang bahwa:

“Tim Seleksi I Calon Anggota Komisi Pemilihan Umum ... Periode 2018-2023 adalah badan atau pejabat tata usaha negara yang menyelenggarakan urusan pemerintahan sehingga para tergugat telah memenuhi unsur-unsur sebagai subjek hukum dalam sengketa a quo.”

Sebaliknya, beberapa putusan Majelis Hakim menolak gugatan dari para penggugat. Misalnya dalam Putusan No. 125/G/2018/PTUN.SMG, yang menimbang bahwa:

“Berdasarkan Pasal 38A dan 38B Peraturan Komisi Pemilihan Umum Republik Indonesia Nomor 25 Tahun 2018 tentang Perubahan Peraturan Komisi Pemilihan Umum Nomor 7 Tahun 2018 tentang Seleksi Anggota Komisi Pemilihan Umum Provinsi dan Komisi Pemilihan Umum Kabupaten/Kota, jika ada gugatan yang mengakibatkan sengketa keputusan Tata Usaha Negara yang diterbitkan oleh Tim Seleksi calon anggota Komisi Pemilihan Umum ...,”

then the one who must be positioned as the defendant is the General Election Commission of the Republic of Indonesia domiciled in Jakarta. So the plaintiffs' petition to position the Head of the Central Java Selection Team IV as the defendant ... has no legal basis."

From the Decision of the State Administrative Court above, it can be understood that there are differences or inconsistencies in assessing the status and position of the Selection Team at the State Administrative Court. Therefore, this study aims to describe the status and position of the Selection Team at the State Administrative Court. In addition, this study also aims to examine and analyze dispute resolution procedures for determining the selection of members of the General Election Commission within the scope of the General Election Commission administration.

METHOD

This study uses a normative juridical method with a statute approach (Qamar, 2021). The approach analyzes legal problems by referring to and originating from legal norms (Sampara & Husen, 2016). The types of data used are legal materials, including:

1. Primary legal materials include [Law No. 51 of 2009](#), [Law No. 30 of 2014](#), [General Election Commission Regulation No. 3 of 2021](#), and other laws and regulations;
2. Secondary legal materials that explain primary legal include books, articles, and online materials that discuss disputes on the determination of Members of the General Election Commission; and
3. Tertiary legal materials are legal materials that provide instructions and explanations for primary and secondary legal materials. The tertiary legal material used by the author is the Big Indonesian Dictionary and related legal dictionaries.

The collection of primary, secondary, and tertiary legal materials is carried out using literature study techniques. The collected legal material is then analyzed using qualitative data analysis methods with a statute approach to describe the problem and answer study purposes (Qamar & Rezah, 2020).

RESULTS AND DISCUSSION

Several things influence and determine dispute resolution procedures on the determination of Members of the General Election Commission at the State Administrative Court (Husen et al., 2022). First, this is related to the State Administrative Justice system. Second, this is related to the alignment between the dispute settlement time and the working period of the Selection Team. Third, this is related to the construction of administrative effort policies based on the [Law No. 30 of 2014](#).

maka yang harus diposisikan sebagai tergugat adalah Komisi Pemilihan Umum Republik Indonesia yang berkedudukan di Jakarta. Jadi permohonan penggugat untuk memposisikan Ketua Tim Seleksi Jawa Tengah IV sebagai tergugat ... tidaklah beralasan hukum."

Dari Putusan PTUN tersebut di atas, dapat dipahami bahwa terdapat perbedaan atau inkonsistensi dalam menilai status dan kedudukan Tim Seleksi di PTUN. Oleh karena itu, penelitian ini bertujuan untuk mendeskripsikan status dan kedudukan Tim Seleksi di PTUN. Selain itu, penelitian ini juga bertujuan untuk mengkaji dan menganalisis prosedur penyelesaian perselisihan penetapan seleksi anggota KPU dalam lingkup administrasi KPU.

METODE

Penelitian ini menggunakan metode yuridis normatif dengan pendekatan undang-undang. Pendekatan tersebut menganalisis permasalahan hukum dengan mengacu dan bersumber dari norma hukum. Jenis data yang digunakan adalah bahan hukum, antara lain:

1. Bahan hukum primer antara lain UU No. 51 Tahun 2009, UU No. 30 Tahun 2014, Peraturan KPU No. 3 Tahun 2021, dan peraturan perundang-undangan lainnya;
2. Bahan hukum sekunder yang menjelaskan hukum primer antara lain buku, artikel, dan bahan-bahan online yang membahas tentang perselisihan penetapan anggota KPU; dan
3. Bahan hukum tersier adalah bahan hukum yang memberikan petunjuk dan penjelasan terhadap bahan hukum primer dan sekunder. Bahan hukum tersier yang digunakan penulis adalah Kamus Besar Bahasa Indonesia dan kamus hukum terkait.

Pengumpulan bahan hukum primer, sekunder, dan tersier dilakukan dengan teknik studi literatur. Bahan hukum yang terkumpul kemudian dianalisis menggunakan metode analisis data kualitatif dengan pendekatan undang-undang untuk mendeskripsikan masalah dan menjawab tujuan penelitian.

HASIL DAN PEMBAHASAN

Beberapa hal yang mempengaruhi dan menentukan tata cara penyelesaian perselisihan terhadap penetapan Anggota KPU di PTUN. Pertama, terkait dengan sistem Peradilan Tata Usaha Negara. Kedua, terkait dengan keselarasan antara waktu penyelesaian perselisihan dengan masa kerja Tim Seleksi. Ketiga, terkait dengan konstruksi kebijakan upaya administratif berdasarkan UU No. 30 Tahun 2014.

The State Administrative Justice System

The justice system has regulated court power for every court in Indonesia. Power of the State Administrative Court, as based on Article 47 of [Law No. 51 of 2009](#) regulates that:

“The court has the duty and authority to examine, decide and resolve State Administration disputes.”

The authority referred to in the provision above is also referred to as the competence of the State Administrative Justice System to adjudicate ([Suherman, 2019](#)). Furthermore, the State Administrative Court is competent to resolve State Administration disputes of the first instance. The State Administrative High Court resolves disputes of appeal level. Meanwhile, the Supreme Court resolves disputes at cassation and reconsideration levels.

In contrast, if the plaintiff does not carry out an administrative resolution effort and immediately submits a lawsuit to the State Administrative Court while the dispute must be resolved through administrative effort so that the Court's decision is null and void by law. In this case, Article 48 of [Law No. 51 of 2009](#) regulates that:

“(1) In the event that an Agency or State Administrative Officer is authorized by or based on laws and regulations to administratively resolve certain State Administrative disputes, then it is null or void, with or without available compensation and/or administrative claims. (2) The Court will have the authority to examine, decide and resolve State Administration disputes as referred to in section (1) if all administrative efforts by those concerned have been used.”

On the other hand, the authority over the judicial body to adjudicate a case can be distinguished by absolute and relative competence ([Pedju, 2017](#)). Absolute competence is the authority of a judicial body to examine specific cases that are impossible for other judicial bodies to carry out ([Arato, 2012](#)). In contrast, relative competence is the judicial body's authority in examining specific cases related to a court's jurisdiction ([Fauzi, 2018](#)).

Furthermore, absolute competence for the State Administrative Justice, as based on Article 1 point 10 of [Law No. 51 of 2009](#) which explains that:

“State Administration disputes are disputes that arise in the field of State Administration between person or civil legal entities with agency or state administrative officers, both at the central and regional levels, as a result of the issuance of State Administrative Decisions, including officialdom disputes based on applicable laws and regulations.”

Sistem Peradilan Tata Usaha Negara

Sistem peradilan telah mengatur kekuasaan pengadilan untuk setiap pengadilan di Indonesia. Kekuasaan PTUN, berdasarkan Pasal 47 UU No. 51 Tahun 2009 mengatur bahwa:

“Pengadilan bertugas dan berwenang memeriksa, memutus, dan menyelesaikan sengketa Tata Usaha Negara.”

Kewenangan sebagaimana dimaksud dalam ketentuan di atas disebut juga sebagai kompetensi Sistem Peradilan Tata Usaha Negara untuk mengadili. Selanjutnya, PTUN berwenang menyelesaikan sengketa Tata Usaha Negara tingkat pertama. Pengadilan Tinggi Tata Usaha Negara (PT TUN) untuk menyelesaikan sengketa tingkat banding. Sementara itu, Mahkamah Agung (MA) menyelesaikan sengketa tingkat kasasi dan peninjauan kembali.

Sebaliknya, jika penggugat tidak melakukan upaya penyelesaian secara administratif dan langsung mengajukan gugatan ke PTUN. Sedangkan perselisihan harus diselesaikan melalui upaya administratif, maka putusan Pengadilan batal demi hukum. Dalam hal ini, Pasal 48 UU No. 51 Tahun 2009 mengatur bahwa:

“(1) Dalam hal suatu Badan atau Pejabat Tata Usaha Negara diberi wewenang oleh atau berdasarkan peraturan perundang-undangan untuk menyelesaikan secara administratif sengketa Tata Usaha Negara tertentu, maka batal atau tidak sah, dengan atau tanpa disertai tuntutan ganti rugi dan/atau administratif yang tersedia. (2) Pengadilan baru berwenang memeriksa, memutus, dan menyelesaikan sengketa Tata Usaha Negara sebagaimana dimaksud dalam ayat (1) jika seluruh upaya administratif yang bersangkutan telah digunakan.”

Di sisi lain, kewenangan badan peradilan untuk mengadili suatu perkara dapat dibedakan berdasarkan kompetensi absolut dan relatif. Kompetensi absolut adalah kewenangan suatu badan peradilan untuk memeriksa perkara tertentu yang tidak mungkin dilakukan oleh badan peradilan lainnya. Sebaliknya, kompetensi relatif adalah kewenangan badan peradilan dalam memeriksa jenis perkara tertentu yang berkaitan dengan yurisdiksi suatu pengadilan.

Selanjutnya, kompetensi absolut untuk Peradilan Tata Usaha Negara, sebagaimana berdasarkan Pasal 1 angka 10 UU No. 51 Tahun 2009 menjelaskan bahwa:

“Sengketa Tata Usaha Negara adalah sengketa yang timbul dalam bidang tata usaha negara antara orang atau badan hukum perdata dengan badan atau pejabat tata usaha negara, baik di pusat maupun di daerah, sebagai akibat dikeluarkannya keputusan tata usaha negara, termasuk sengketa kepegawaian berdasarkan peraturan perundang-undangan yang berlaku.”

Meanwhile, the decision as based on Article 1 point 9 of [Law No. 51 of 2009](#) explains that:

“State Administrative Decision is a written decision issued by an agency or state administrative officer which contains state administrative legal actions based on applicable laws and regulations, which are concretely, individually, and finally, which cause legal consequences for a person or civil legal entity.”

From the provisions above, it can be understood that there are six elements or objects to qualify as a State Administrative decision, including: 1. A written decision; 2. Issued by an agency or state administrative officer; 3. Contains state administrative legal actions; 4. Based on applicable laws and regulations; 5. Concretely, individually, and finally; and 6. Cause legal consequences for a person or civil legal entity.

The six elements above are cumulative. In this case, all elements must be fulfilled if the plaintiff wishes to submit a lawsuit to the state administrative court. In addition, the Judge must declare that the Court has no authority to adjudicate disputes as based on Article 77 section (1) of [Law No. 51 of 2009](#), which regulates that:

“An exception regarding the absolute authority of the Court can be submitted at any time during the examination, and although there is no exception regarding the absolute authority of the Court, if the Judge knows about it, because of his/her position, he/she must declare that the Court has no authority to adjudicate disputes concerned.”

From the description above and related to the position of the Selection Team, it can be understood that the Selection Team does not meet the requirements as the legal subject of the defendant at the State Administrative Court ([Safitri & Kusdarini, 2019](#)). In this case, the decisions issued by the Selection Team have yet to be concretely and finally as regulated in Article 20 section (4) of [General Election Commission Regulation No. 3 of 2021](#).

In contrast, the decision of the General Election Commission has been concretely and finally as regulated in Article 30 section (3) of [General Election Commission Regulation No. 3 of 2021](#). Therefore, the Commissioner of the General Election Commission is a more appropriate party as a defendant in the State Administrative Court. In this case, the status and position of the Commissioner of the General Election Commission are in line with Article 1 point 9 and point 10 of [Law No. 51 of 2009](#).

This construction is one of the Judges' considerations in the [Decision No. 125/G/2018/PTUN.SMG](#). Thus, the Head of the Selection Team cannot have the status

Sedangkan keputusan sebagaimana berdasarkan Pasal 1 angka 9 UU No. 51 Tahun 2009 menjelaskan bahwa:

“Keputusan Tata Usaha Negara adalah suatu penetapan tertulis yang dikeluarkan oleh badan atau pejabat tata usaha negara yang berisi tindakan hukum tata usaha negara yang berdasarkan peraturan perundang-undangan yang berlaku, yang bersifat konkret, individual, dan final, yang menimbulkan akibat hukum bagi seseorang atau badan hukum perdata.”

Dari ketentuan di atas, dapat dipahami bahwa ada enam unsur atau objek yang dikualifikasikan sebagai KTUN, antara lain: 1. Penetapan tertulis; 2. Dikeluarkan oleh badan atau pejabat tata usaha negara; 3. Berisi tindakan hukum tata usaha negara; 4. Berdasarkan peraturan perundang-undangan yang berlaku; 5. Bersifat konkret, individual, dan final; dan 6. Menimbulkan akibat hukum bagi seseorang atau badan hukum perdata.

Keenam unsur di atas bersifat kumulatif. Dalam hal ini, semua unsur harus dipenuhi jika penggugat ingin mengajukan gugatan ke PTUN. Selain itu, Hakim harus menyatakan bahwa Pengadilan tidak berwenang mengadili perselisihan sebagaimana berdasarkan Pasal 77 ayat (1) UU No. 51 Tahun 2009, yang mengatur bahwa:

“Eksepsi tentang kewenangan absolut Pengadilan dapat diajukan setiap waktu selama pemeriksaan, dan meskipun tidak ada eksepsi tentang kewenangan absolut Pengadilan apabila Hakim mengetahui hal itu, ia karena jabatannya wajib menyatakan bahwa Pengadilan tidak berwenang mengadili sengketa yang bersangkutan.”

Dari uraian di atas dan terkait dengan kedudukan Tim Seleksi, dapat dipahami bahwa Tim Seleksi tidak memenuhi persyaratan sebagai subjek hukum tergugat di PTUN. Dalam hal ini, keputusan yang dikeluarkan oleh Tim Seleksi belum bersifat konkret dan final sebagaimana diatur dalam Pasal 20 ayat (4) Peraturan KPU No. 3 Tahun 2021.

Sebaliknya, keputusan KPU telah bersifat konkret dan final sebagaimana diatur dalam Pasal 30 ayat (3) Peraturan KPU No. 3 Tahun 2021. Oleh karena itu, Komisioner KPU merupakan pihak yang lebih tepat sebagai tergugat di PTUN. Dalam hal ini, status dan kedudukan Komisioner KPU sejalan dengan Pasal 1 angka 9 dan angka 10 UU No. 51 Tahun 2009.

Konstruksi ini menjadi salah satu pertimbangan Majelis Hakim dalam Putusan No. 125/G/2018/PTUN.SMG. Dengan demikian, Ketua Tim Seleksi tidak

and position of a defendant. Another consideration from the Judge was the normative framework for dispute resolution as regulated in the [General Election Commission Regulation No. 3 of 2021](#). In this case, Article 38A section (1) of the [General Election Commission Regulation No. 3 of 2021](#) regulates that:

"In the event of a lawsuit against the results of the selection of members of the Provincial General Election Commission and the Regency/Municipal General Election Commission, the General Election Commission can: a. request and/or present the Selection Team to provide information in court; and/or b. request the Selection Team to provide the documents needed during the lawsuit resolution process."

From the provisions above, it can be understood that the status and position of the Selection Team is as a witness in the process of dispute resolution at the State Administrative Court.

Deadlines for Dispute Resolution

The type of dispute resolution regulated in [Law No. 51 of 2009](#) consists of three examination processes: examination by ordinary procedure, examination by expedited procedure, and examination by short procedure. Meanwhile, the cases submitted by the plaintiff were mainly resolved by examination by ordinary procedure ([Sari, 2016](#)). A similar process also applies to dispute resolution on the determination of Members of the General Election Commission at the State Administrative Court.

From the description above, it can be understood that legal issues will arise when the Selection Team is positioned as the defendant. In this case, the examination by ordinary procedure requires a maximum of five months to complete, while the working period of the Selection Team is only three months. On the other hand, if the plaintiff submits a lawsuit against the Selection Team as a defendant, at the same time, they only have one month's remaining working period. Thus, it can be ensured that the defendant is no longer on the Selection Team in the dispute resolution process at the State Administrative Court.

The legal problem referred to above is the emergence of legal uncertainty. In this case, the defendant is no longer an agency or officer who carries out state administrative action. The absence of legal certainty in examining cases also impacts legal uncertainty for plaintiffs or seekers of justice at the State Administrative Court ([Permana, 2015](#)). Apart from that, dispute resolution procedures at the State Administrative Court do not meet the elements as regulated in Article 1 point 10 of [Law No. 51 of 2009](#).

Therefore, the plaintiff positions the Commissioner of the General Election Commission as the defendant in his lawsuit to achieve legal objectives: certainty, utility, and legal justice. The object of the lawsuit by the plaintiffs is also not limited to the results of the Administrative

bisa berstatus dan berkedudukan sebagai tergugat. Pertimbangan lain dari Hakim adalah kerangka normatif penyelesaian perselisihan sebagaimana diatur Peraturan KPU No. 3 Tahun 2021. Dalam hal ini, Pasal 38A ayat (1) Peraturan KPU No. 3 Tahun 2021 mengatur bahwa:

"Dalam hal terdapat gugatan hukum terhadap hasil seleksi anggota KPU Provinsi dan KPU Kabupaten/Kota, KPU dapat: a. meminta dan/atau menghadirkan Tim Seleksi untuk memberikan keterangan dalam persidangan; dan/atau b. meminta Tim Seleksi untuk menyediakan dokumen yang dibutuhkan selama proses penyelesaian gugatan hukum."

Dari ketentuan di atas dapat dipahami bahwa status dan kedudukan Tim Seleksi adalah sebagai saksi dalam proses penyelesaian sengketa di PTUN.

Batas Waktu Penyelesaian Sengketa

Jenis penyelesaian sengketa yang diatur dalam UU No. 51 Tahun 2009 terdiri dari tiga proses pemeriksaan yaitu pemeriksaan dengan acara biasa, pemeriksaan dengan acara cepat, dan pemeriksaan dengan acara singkat. Sedangkan perkara yang diajukan penggugat sebagian besar diselesaikan dengan pemeriksaan dengan acara biasa. Proses yang sama juga berlaku untuk penyelesaian sengketa penetapan Anggota KPU di PTUN.

Dari uraian di atas, dapat dipahami bahwa persoalan hukum akan muncul ketika Tim Seleksi diposisikan sebagai pihak tergugat. Dalam hal ini, pemeriksaan dengan acara biasa membutuhkan waktu maksimal lima bulan, sedangkan masa kerja Tim Seleksi hanya tiga bulan. Sebaliknya, jika penggugat mengajukan gugatan kepada Tim Seleksi sebagai tergugat, pada saat yang sama, mereka hanya memiliki sisa masa kerja satu bulan. Dengan demikian, dapat dipastikan bahwa tergugat tidak lagi menjadi Tim Seleksi dalam proses penyelesaian sengketa di PTUN.

Masalah hukum yang dimaksud di atas adalah munculnya ketidakpastian hukum. Dalam hal ini, tergugat bukan lagi merupakan badan atau pejabat yang melakukan tindakan tata usaha negara. Tidak adanya kepastian hukum dalam pemeriksaan perkara juga berdampak pada ketidakpastian hukum bagi penggugat atau pencari keadilan di PTUN. Selain itu, prosedur penyelesaian sengketa di PTUN tidak memenuhi unsur sebagaimana diatur dalam Pasal 1 angka 10 UU No. 51 Tahun 2009.

Oleh karena itu, penggugat mendudukan Komisioner KPU sebagai tergugat dalam gugatannya untuk mencapai tujuan hukum: kepastian, kemanfaatan, dan keadilan hukum. Objek gugatan para penggugat

Review for the Candidate of Members of the Provincial General Election Commission and the Regency/Municipal General Election Commission. However, the object of the lawsuit at the State Administrative Court is a series of procedures resulting in the determination of Members of the General Election Commission.

In addition, the plaintiff will also get legal certainty regarding the dispute resolution process even though it is carried out with an examination by ordinary procedure (Tobing, 2018). In this case, the term of office of the Commissioner of the General Election Commission is five years. Even the plaintiff will still get legal certainty even though the examination of the dispute is resolved at the State Administrative High Court up to the Supreme Court.

Administrative Effort

Considerations related to whether the plaintiff made administrative efforts are also one of the criteria for the authority of the State Administrative Justice to adjudicate a particular case (Jaelani, 2019). Philosophically, administrative efforts are regulated to implement legal resolutions with non-litigation before legal resolutions in court (Firdausy & Mahanani, 2021). Even though Indonesia is normatively constitutive as a law-based state, the noble philosophical values inherent in Indonesia's character are based on kinship, deliberation, and consensus principles (Szablowski, 2019). In addition, the current development of modern law, especially administrative law, seeks to strengthen the basis for legal resolution with a more dialogical and deliberative approach by making litigation resolution a last resort.

The non-litigation-based administrative law resolution paradigm was strengthened by establishing Law No. 30 of 2014. The administrative dispute resolution framework with the Administrative Effort model has been regulated in Article 48 of Law No. 51 of 2009 but is still optional. In contrast, the provision in Law No. 30 of 2014 changed the Administrative Effort framework to be imperative. In this case, Article 1 point 16 of Law No. 30 of 2014 explains that:

“Administrative Efforts are dispute resolution processes carried out within the scope of Government Administration as a result of issuing decisions and/or actions that are detrimental.”

Furthermore, disputes over all types of decisions must first be resolved within the scope of their respective agencies. In this case, Article 75 section (1) of Law No. 30 of 2014 regulates that:

“Community Citizens who are detrimental against Decisions and/or Actions can submit Administrative Efforts to Government Officials or Superior Officials who determine and/or carry out Decisions and/or Actions.”

juga tidak terbatas pada hasil Penelitian Administrasi calon anggota KPU Provinsi dan KPU Kabupaten/Kota. Namun, objek gugatan di PTUN adalah serangkaian prosedur yang menghasilkan penetapan Anggota KPU.

Selain itu, pihak penggugat juga akan mendapatkan kepastian hukum mengenai proses penyelesaian sengketa meskipun dilakukan dengan pemeriksaan dengan acara biasa. Dalam hal ini, masa jabatan Komisioner KPU adalah lima tahun. Bahkan pihak penggugat akan tetap mendapatkan kepastian hukum meskipun pemeriksaan sengketa tersebut diselesaikan di PT TUN hingga MA.

Upaya Administratif

Pertimbangan terkait apakah penggugat telah melakukan upaya administratif juga menjadi salah satu kriteria kewenangan Peradilan Tata Usaha Negara untuk mengadili suatu perkara tertentu. Secara filosofis, upaya administratif diatur untuk melaksanakan penyelesaian hukum dengan non litigasi sebelum penyelesaian hukum di pengadilan. Meskipun Indonesia secara normatif konstitutif sebagai negara hukum, namun nilai-nilai filosofis leluhur yang melekat pada karakter Indonesia didasarkan pada asas kekeluargaan, musyawarah, dan mufakat. Selain itu, perkembangan hukum modern saat ini, khususnya hukum administrasi, berupaya memperkuat dasar penyelesaian hukum dengan pendekatan yang lebih dialogis dan deliberatif dengan menjadikan penyelesaian litigasi sebagai upaya terakhir.

Paradigma penyelesaian hukum administrasi berbasis non litigasi diperkuat dengan pembentukan UU No. 30 Tahun 2014. Kerangka penyelesaian perselisihan administrasi dengan model Upaya Administratif telah diatur dalam Pasal 48 UU No. 51 Tahun 2009 namun masih bersifat opsional. Sebaliknya, ketentuan dalam UU No. 30 Tahun 2014 mengubah kerangka Upaya Administratif menjadi imperatif. Dalam hal ini, Pasal 1 angka 16 UU No. 30 Tahun 2014 menjelaskan bahwa:

“Upaya Administratif adalah proses penyelesaian sengketa yang dilakukan dalam lingkungan Administrasi Pemerintahan sebagai akibat dikeluarkannya Keputusan dan/atau Tindakan yang merugikan.”

Selanjutnya, perselisihan atas semua jenis keputusan harus terlebih dahulu diselesaikan dalam lingkup instansi masing-masing. Dalam hal ini, Pasal 75 ayat (1) UU No. 30 Tahun 2014 mengatur bahwa:

“Warga Masyarakat yang dirugikan terhadap Keputusan dan/atau Tindakan dapat mengajukan Upaya Administratif kepada Pejabat Pemerintahan atau Atasan Pejabat yang menetapkan dan/atau melakukan Keputusan dan/atau Tindakan.”

Article 75 section (2) of [Law No. 30 of 2014](#) regulates that:

“Administrative Efforts, as referred to in section (1), consist of: a. objection; and b. appeal.”

Implementing these Administrative Efforts in its development is increasingly imperative, more emphasized, and detailed based on [Supreme Court Regulation No. 6 of 2018](#). In this case, Article 3 section (2) of [Supreme Court Regulation No. 6 of 2018](#) regulates that:

“In the event that the basic regulations for issuing decisions and/or actions do not regulate administrative efforts, the Court uses the regulated provisions in Law Number 30 of 2014 on Government Administration.”

From the provisions above, it can be understood that Community Citizens who are detrimental to decisions or actions from agencies or state administrative officers can settle their claims within the scope of Government Administration, based on the construction of [Law No. 30 of 2014](#) and [Supreme Court Regulation No. 6 of 2018](#). In this case, before the plaintiff submits a lawsuit with the State Administrative Court, Community Citizens must also understand that the State Administrative Court adjudicates cases and resolves disputes after they have undergone administrative efforts.

From the description above and related to the position of the Selection Team, it can be understood that if the plaintiff wants to obtain legal certainty, then they must go through administrative efforts. The plaintiff submitted an objection to the General Election Commission regarding the results of the Administrative Review issued by the Selection Team. In this case, Article 36 section (3) of the [General Election Commission Regulation No. 3 of 2021](#) regulates that:

“In the event that there are reports from the public or findings from the supervision of the General Election Commission regarding violations in implementing the Selection, the General Election Commission forms a team to carry out clarification and verification to the Selection Team and parties involved in the Selection process.”

From the provisions above, it is understood that the General Election Commission has regulated dispute resolution procedures on the determination of the results of the Administrative Review. Therefore, if the plaintiff's objection is not accepted, they can still make an appeal effort within the scope of the General Election Commission.

On the other hand, the General Election Commission has yet to regulate dispute resolution deadlines related to the Selection Team's results. Meanwhile, arrangements related to deadlines for dispute resolution are also considered important to

Pasal 75 ayat (2) UU No. 30 Tahun 2014 mengatur bahwa:

“Upaya Administratif sebagaimana dimaksud pada ayat (1) terdiri atas: a. keberatan; dan b. banding.”

Pelaksanaan Upaya Administratif tersebut dalam perkembangannya semakin imperatif, dipertegas, dan terperinci berdasarkan Perma No. 6 Tahun 2018. Dalam hal ini, Pasal 3 ayat (2) Perma No. 6 Tahun 2018 mengatur bahwa:

“Dalam hal peraturan dasar penerbitan keputusan dan/atau tindakan tidak mengatur upaya administratif, Pengadilan menggunakan ketentuan yang diatur dalam Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan.”

Dari ketentuan di atas, dapat dipahami bahwa Warga Masyarakat yang dirugikan atas keputusan atau tindakan dari badan atau pejabat tata usaha negara dapat menyelesaikan gugatannya dalam lingkup Administrasi Pemerintahan, berdasarkan konstruksi UU No. 30 Tahun 2014 dan Perma No. 6 Tahun 2018. Dalam hal ini, sebelum penggugat mengajukan gugatan ke PTUN, Warga Masyarakat juga harus memahami bahwa PTUN mengadili perkara dan penyelesaian perselisihan setelah mereka menjalani upaya administratif.

Dari uraian di atas dan terkait dengan kedudukan Tim Seleksi, dapat dipahami bahwa jika penggugat ingin memperoleh kepastian hukum, maka harus melalui upaya administratif. Penggugat mengajukan keberatan kepada KPU atas hasil Penelitian Administrasi yang dikeluarkan oleh Tim Seleksi. Dalam hal ini, Pasal 36 ayat (3) Peraturan KPU No. 3 Tahun 2021 mengatur bahwa:

“Dalam hal terdapat laporan dari masyarakat atau temuan hasil pengawasan KPU terkait dengan pelanggaran pelaksanaan Seleksi, KPU membentuk tim untuk melakukan klarifikasi dan verifikasi kepada Tim Seleksi dan pihak-pihak yang terkait dalam proses Seleksi.”

Dari ketentuan di atas, dapat dipahami bahwa KPU telah mengatur prosedur penyelesaian perselisihan penetapan hasil Penelitian Administrasi. Oleh karena itu, jika keberatan penggugat tidak diterima, mereka masih dapat melakukan upaya banding di lingkup KPU.

Di sisi lain, KPU belum mengatur tenggat waktu penyelesaian perselisihan terkait hasil Tim Seleksi. Sementara itu, pengaturan terkait tenggat waktu penyelesaian perselisihan juga dinilai penting untuk

provide legal certainty for implementing the Selection of Members of the General Election Commission process. Therefore, it is necessary to regulate the process of examination by short procedure. For example, the General Election Commission has issued a decision within a maximum period of 14 days.

Furthermore, if the objection or appeal effort from the plaintiffs has been accepted, the General Election Commission will form a New Selection Team. In this case, Article 36 section (5) of the [General Election Commission Regulation No. 3 of 2021](#) regulates that:

“The new Selection Team as referred to in section (4) point a, is in charge of continuing the Selection process or repeating the Selection process.”

In contrast, if the General Election Commission does not accept the objection and appeal effort from the plaintiffs, then the plaintiff files a lawsuit with the State Administrative Court by placing the Commissioner of the General Election Commission as the defendant.

CONCLUSIONS AND SUGGESTIONS

Based on the results and discussion above, it can be concluded that the status and position of the Selection Team is a witness in the process of dispute resolution at the State Administrative Court. Meanwhile, the defendant in the dispute is the Commissioner of the General Election Commission at the State Administrative Court. Furthermore, the detrimental parties may submit an objection and appeal effort to the General Election Commission regarding the results of the Administrative Review issued by the Selection Team. In this case, administrative dispute resolution has been regulated in [General Election Commission Regulation No. 3 of 2021](#). On the other hand, Judges will only adjudicate cases and resolve disputes at the State Administrative Court after the plaintiff has undergone administrative efforts. Based on the description of these conclusions, it is recommended for the Judge to reject lawsuits from the plaintiffs if the lawsuit positions the Selection Team as the defendant. In addition, it is also recommended that the plaintiff know and understand dispute resolution procedures on the determination of members of the General Election Commission at the State Administrative Court. In contrast, if the plaintiff has undergone administrative effort while the General Election Commission rejects the effort. So to get legal certainty, the plaintiff must submit a lawsuit by positioning the Commissioner of the General Election Commission as the defendant at the State Administrative Court.

memberikan kepastian hukum bagi pelaksanaan proses Seleksi Anggota KPU. Oleh karena itu, perlu diatur proses pemeriksaan dengan acara singkat. Misalnya, KPU sudah mengeluarkan keputusan dalam jangka waktu paling lama 14 hari.

Selanjutnya, jika keberatan atau upaya banding dari para penggugat telah diterima, KPU akan membentuk Tim Seleksi Baru. Dalam hal ini, Pasal 36 ayat (5) Peraturan KPU No. 3 Tahun 2021 mengatur bahwa:

“Tim Seleksi baru sebagaimana dimaksud pada ayat (4) huruf a bertugas melanjutkan proses Seleksi atau mengulang proses Seleksi.”

Sebaliknya, jika KPU tidak menerima upaya keberatan dan banding dari para penggugat, maka penggugat mengajukan gugatan ke PTUN dengan mendudukkan Komisioner KPU sebagai tergugat.

KESIMPULAN DAN SARAN

Berdasarkan hasil dan pembahasan di atas, dapat disimpulkan bahwa status dan kedudukan Tim Seleksi adalah sebagai saksi dalam proses penyelesaian sengketa di PTUN. Sedangkan pihak tergugat dalam sengketa tersebut adalah Komisioner KPU di PTUN. Selanjutnya, pihak yang dirugikan dapat mengajukan upaya keberatan dan banding kepada KPU atas hasil Penelitian Administrasi yang ditetapkan oleh Tim Seleksi. Dalam hal ini, penyelesaian perselisihan administratif telah diatur dalam Peraturan KPU No. 3 Tahun 2021. Di sisi lain, Hakim hanya akan mengadili perkara dan menyelesaikan sengketa di PTUN setelah penggugat menjalani upaya administratif. Berdasarkan uraian kesimpulan tersebut, direkomendasikan kepada Hakim untuk menolak gugatan dari para penggugat jika gugatan tersebut mendudukkan Tim Seleksi sebagai pihak tergugat. Selain itu, direkomendasikan juga agar penggugat mengetahui dan memahami prosedur penyelesaian sengketa penetapan anggota KPU di PTUN. Sebaliknya, jika penggugat telah menjalani upaya administratif sementara KPU menolak upaya tersebut. Maka untuk mendapatkan kepastian hukum, penggugat harus mengajukan gugatan dengan mendudukkan Komisioner KPU sebagai tergugat di PTUN.

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