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Judges' Consideration on Decision 451 K/Tun/2019 in Issuing Certificate of Proprietary Rights Without Objects

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ABSTRACT: Considerations of Judges Decision 451 K/TUN/2019 In Issuing Certificates of Ownership Without Objects, raises a problem, namely how are judges' considerations in deciding cases of certificates of ownership issued without objects in the Makassar State Administrative Court decision number 49/G/2018/PTUN.Mks, Makassar State Administrative High Court decision number 20/B/2019/PTTUN.Mks. and legal protection for owners of land rights SHM No. 22142/Gunung Sari, with an area of 10,065 M2 in the name of Haji Muhammad Zikir which has been revoked and crossed out from the register book of the Makassar City Land Office based on Supreme Court decision number 451 K/TUN/2019. The results of the analysis are that it is a weakness of our justice system, especially the state administrative court institutions that do not review the object of the dispute. Judges' considerations in deciding cases of property rights certificates are issued without objects. first, courts of appeal and courts of cassation. Legal protection for certificate holders without land objects is given the right to sue the PTUN against BPN, and the holder is only given rights protection in line with the form of protection for certificate owners which is part of the 1945 Constitution article 1 (paragraph) 3 relating to the rule of law, as well as Government Regulation No. 24 of 1997 article 4.

KEYWORDS: judge's consideration, certificate, without object.

PRELIMINARY

Land is an inseparable part of human life, because most human activities are on land, including living. Soil as an element supporting everyday life for humans and other living things. The role of land that is so big for human life makes everyone vying for land rights.

At this time land cases are increasing, bearing in mind the needs of the government and the community for land parcels which are increasing in number. Land is very closely related to everyday human life, it can even be said that every time humans come into contact with land. Everyone needs land not only during their lifetime, but when someone dies they are still in contact with land. Therefore land is a vital human need.

Whether you realize it or not, land as a "permanent" object (can't increase) causes a lot of problems when it comes to the ever-increasing population growth. All that is done to meet the needs of life continues to increase. Even though soil is an inanimate object, it remains in its original state or cannot develop.

The existence of land in human life has meaning and at the same time has a dual function, namely as a social asset and a capital asset. As a social asset, land is a means of binding social unity among the people to live and live, while as a capital asset, land is a capital factor in development and has grown as a very important economic object as well as a commercial material and an object of speculation..[1]

Considering that the needs of the community and government for land continue to increase, causing the position of land to become very important, especially regarding ownership, control and cultivation of land. Therefore, it is the government's responsibility to create an agrarian system that can increase people's prosperity.

One of the efforts to overcome problems in the land sector is to provide legal certainty for areas of land law, whether owned or controlled by individuals or legal entities. So that the person or legal entity that owns the land cannot be contested by the person or legal entity unless the law determines otherwise.

[1] Achmad Rubaie, Hukum Pengadaan Tanah Untuk Kepentingan Umum, Cetakan Pertama, Bayu Media Publishing, Malang, 2007, h. 1.

In the interests of the nation and state, land is part of natural resources, this is constitutionally implied in Article 33 paragraph (3) of the 1945 Constitution (hereinafter referred to as the 1945 Constitution) which states that "Earth and water and natural resources contained therein shall be controlled by the state and used for the greatest prosperity of the people".

Interpreting the statement in the constitution, the prosperity of the people is the main objective in the utilization of natural resources, including land. Given the important and strategic role of land so that it gives rise to various elements of interest in it, the state as an organization of the power of all the people must be able to regulate and manage it properly so as not to cause problems in its implementation.

The guarantee of legal certainty in the land sector requires the availability of written legal instruments, which are complete and clear and implemented consistently. In addition, it is also necessary to carry out effective land registration.[2]

Through the availability of written legal regulations, anyone with an interest will be able to easily find out about the various possibilities available to interested parties in the context of the necessary control and use of land, how to obtain it, the rights and obligations that must be fulfilled as the party that controls the land. As well as it can also be known regarding the prohibitions that exist in controlling land with certain rights, what sanctions must be faced if they ignore the provisions in question, along with other matters related to the control and use of land owned.

In its development, the problem of land management has become increasingly complicated, this occurs because the condition of the land is fixed while population growth continues to increase. Indonesia's population growth which has continuously increased has made conditions in Indonesia increasingly denser. In addition, the phenomenon of increasing population while not increasing land area has the potential to cause conflict within the community. Therefore, regulations are needed regarding the validity of the status of rights over land parcels so as not to cause conflict in the community.

The role of the government in overcoming land rights problems that continue to occur in society is manifested in Article 33 paragraph (3) of the 1945 Constitution, the government has promulgated Law Number 5 of 1960 concerning Basic Agrarian Regulations, better known as the Basic Agrarian Law. Agrarian Law (UUPA). Article 6 of the UUPA, states that "All land rights have a social function". In the general explanation, it is explained that the social function of land rights means any land rights owned by a person, so it is not justified that the land will be used solely for personal gain, especially if it can cause harm to society.[3] The use of land must be adapted to its circumstances and characteristics, so that it is beneficial for the welfare and happiness of the community and the state.

However, the Basic Agrarian Law does not only pay attention to or prioritize public interests but also pay attention to individual interests and the interests of society. Individual interests and those in society must be balanced so that the main goals of prosperity, justice and happiness for the people as a whole are achieved.

To realize one of the goals in the UUPA is to lay the foundations to provide guarantees of legal certainty regarding land rights for all Indonesian people, so that land registration is held as stated in Article 19 paragraph (1) of the UUPA namely "To guarantee legal certainty by the government land registration is carried out throughout the territory of the Republic of Indonesia according to the provisions stipulated by Government Regulations." Article 19 UUPA is an instruction to the government so that throughout the territory of the Republic of Indonesia a cadastral recht is held, while the implementation of land registration in the framework of a cadastral recht aims to provide legal certainty and legal protection to holders of land rights, with evidence that will later be produced. in the form of a land book and a land certificate consisting of a copy of the land book and measurement certificate.[4]

The Government Regulation referred to in Article 19 paragraph (1) of the UUPA is Government Regulation (PP) Number 24 of 1997 concerning Land Registration as a refinement of PP Number 10 of 1961 which in the course of time for approximately 36 (thirty six) years has been deemed not provide satisfactory results in the implementation of land registration. For this reason, referring to Article 3 of Government Regulation Number 24 of 1997, land registration aims to:

a. To provide legal certainty and legal protection to holders of rights over a parcel of land, apartment units and other registered rights so that they can easily prove themselves as holders of the rights in question;

b. To provide information to interested parties, including the Government, so that they can easily obtain the necessary data in carrying out legal actions regarding registered land parcels and apartment units, for the implementation of orderly land administration.

Implementation of land registration includes activities for land registration for the first time and maintenance of land registration data regulated in Article 11 PP Number 24 of 1997, activities for land registration for the first time include collecting and processing physical data; proving rights and opening them, issuing certificates, presenting physical data and juridical data, keeping public registers and documents. Physical data collection and processing activities include measurement and mapping

[2] Boedi Harsono, Hukum Agraria Indonesia Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi Dan Pelaksanaannya, Djambatan, Jakarta, 2005, h. 69.

[3] Boedi Harsono, *Ibid*, h. 34.

[4] Adrian Sutedi, Peralihan Hak Atas Tanah dan Pendaftarannya, Cetakan Pertama, Sinar Grafika, Jakarta, 2007, h. 112.

activities, including the preparation of registration base maps, determination of boundaries of land parcels, measurement and mapping of land parcels and preparation of registration maps, preparation of land registers, and preparation of Measurement Letters. The measurement and mapping in question is carried out field by sector by village/kelurahan area unit. Before the measurement is carried out, the boundaries of the land must be marked with boundary signs and the boundaries are determined through the principle of contradictoire delimitatie.[5]

Then, the maintenance of land registration data includes: registration of changes and assignment of rights; registration of changes in other land registration data. Of the series of land registration processes above, the measurement stage is the most important stage in the land registration process. However, before the measurement process is carried out, it must first be ensured that the boundary marks between the land whose rights will be pledged and the land next to it have been attached to each corner of the land parcel to be measured, as it is known that in the installation stage of the boundary marks the land owner is obliged to maintain. This is intended to avoid disputes or disputes regarding land boundaries with adjacent landowners. The boundary determination is carried out by landowners and landowners who are bordering on a contradictory basis or in theory it is called the principle of contradictoire delimitatie.

In the stage of placing the boundary markers, it must be witnessed by an official or apparatus who knows or has data on the owners of the bordering land. This data is owned by the village or sub-district head, therefore the implementation of this principle must be witnessed by village or sub-district officials. The principle of contradictoire delimitatie is proven by a statement signed by the land owner who is directly adjacent and completed with the signature of the village or sub-district head. In addition, the owners of the land directly adjacent to it also signed the Form 201 which was obtained from the Land Office. These two pieces of evidence are a requirement to be able to submit an application for measurement to the Land Office as an initial stage in the process of land registration and transfer of rights. Without these two conditions which are the initial process in land registration, the land office will not carry out the measurement. So, the principle of contradictoire delimitatie is very important for a land owner who wants to submit a land registration process.

The implementation of land registration also depends on the publicity system used in the implementation of land registration in the country concerned, the publicity system, namely the announcement system from the registers. In connection with the purpose of land registration, namely to provide legal certainty to holders of land rights, there are generally 2 (two) types of publications, namely:

a. Positive Publication System

The positive publication system always uses a rights registration system so that there must be a land register or book as a form of storage and presentation of juridical data and a certificate as proof of rights. The land register or book presented in this positive publication system is guaranteed to be true by the state.[6]

b. Negative Publication System

The negative publication system means that the state does not guarantee the correctness of the data presented in the certificate, therefore it is not certain that someone whose name has been written on the certificate is absolutely the owner..[7] In the negative publication system, the state only passively accepts what is stated by the party requesting registration, so that at any time it can be sued by those who feel they have more rights over the land.[8]

The national land law adheres to a negative publication system but is not purely negative, but instead contains a positive element or is often referred to as a negative publication system with a positive tendency. This can be seen from the provisions of the UUPA Article paragraph (2) letter c which states that "the provision of letters of proof of rights, which are valid as a strong means of proof." This statement was later also stated in PP Number 24 of 1997 Article 32 paragraph (1) "A certificate is a letter of proof of rights that applies as a strong means of proof regarding the physical data and juridical data contained therein, as long as the physical data and juridical data are in accordance with the data contained in the measurement certificate and land title book concerned.

The provisions in Article 32 paragraph (1) PP No. 24 of 1997 are not contained in the land registration regulations in countries that adhere to a pure negative or pure positive publication system. Meanwhile, the main feature of this negative system with a positive tendency is that land registration does not guarantee that the names registered are the real owners. The name of the previous right holder from which the applicant for the right obtained the land to be registered is a link in the chain of legal actions

[5] Widhi Handoko, Kebijakan Hukum Pertanahan "Sebuah Refleksi Keadilan Hukum Progresif", Cetakan Pertama, Thafa Media, Yogyakarta, 2014, h. 242.

[6] Boedi Harsono, Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya, Jilid 1, Edisi Revisi, Cetakan Keduabelas, Djambatan, Jakarta, 2008, h. 80.

[7] Muhammad Yamin Lubis dan And. Rahim Lubis, Hukum Pendaftaran Tanah, Edisi Revisi, Cetakan Kedua, CV. Mandar Maju, Bandung, 2010, h. 172.

[8] Urip Santoso, Pendaftaran dan Peralihan Hak Atas Tanah, Cetakan Kedua, Kencana Prenada Media Group, Jakarta, 2011, h. 266.

in the registration of land rights.[9] The provisions in the UUPA are then confirmed in Article 32 paragraph (2) PP 24 of 1997 which reads:

"In the event that a land parcel has been legally issued a certificate in the name of a person or legal entity who has acquired said land in good faith and actually controls it, then other parties who feel they have rights over said land can no longer demand the implementation of said rights if within the time 5 (five) years since the issuance of the certificate has not filed a written objection to the certificate holder and the Head of the Land Office concerned or has not filed a lawsuit with the Court regarding land tenure or issuance of the certificate.

Based on the provisions above, Irawan Soerodjo stated that after the expiration of the 5 (five) year period after issuance, the land certificate cannot be sued again, so this will relatively provide legal certainty and legal protection.[10] If one examines the material in the provisions of Article 32 paragraph (2) PP 24 of 1997 above, it can also be interpreted that land title certificates apply a negative system with a positive tendency, which applies negatively when land rights certificates are less than 5 (five) years old and applies positively when the certificate of land rights is at least 5 (five) years old.

Dispute breeds conflict. Conflicts that often occur regarding land are conflicts that involve each party who feels they have an interest in the land. The emergence of land conflicts is caused because the person does not comply with the law of the land, conflicts arise due to boundary disputes, ignoring government regulations where previously there was an order for conversion but no conversion was carried out and most fundamentally because they do not have a certificate or the certificate has been changed with the aim of each other's interests.[11] The land conflicts that will be discussed in connection with this research study will focus on the causes of the issuance of certificates that have no object, or more accurately referred to as certificates issued without an object.

If one looks closely, the land conflicts that have occurred so far have broad dimensions, both horizontal conflicts and vertical conflicts.[12] The most dominant vertical conflict is between the community and the government, state-owned companies and private companies. One of the cases that occurred was the recognition of a plot of land or reclaiming. Meanwhile, the most frequent horizontal conflict is the problem of multiple certificates or the ownership of several certificates on a plot of land.[13]

Article 19 paragraph (2) letter c of the Basic Agrarian Law confirms that letters of proof of rights act as strong evidence. Thus the Indonesian land registration system adheres to a negative system, in which the government does not guarantee the correctness of the data presented as long as there are no parties who object fully to it. The aim is to protect the real landowners, so that there is an opportunity for real landowners to prove their ownership.[14]

The BAL statement that certificates are a product of land registration is strong evidence indicating that if a land dispute occurs, this dispute must first be resolved in a general court, namely a district court which is a place where a person can make legal efforts to fight for or claim rights or defend rights. by presenting the evidence you have. In court, the parties to the dispute or anyone can dispute the veracity of a person's certificate. If he can prove the wrongness of the land rights, the certificate can be requested for cancellation. Article 10 of Law Number 4 of 2004 concerning Judicial Powers states that the administration of judicial powers is carried out by a Supreme Court and judicial bodies under it, and by a Constitutional Court. The judicial bodies under the Supreme Court include (1) general courts, (2) religious courts, (3) military courts, and (4) state administrative courts.

Seeing the specifications of the existing courts in Indonesia, land ownership disputes are handled by the general court. But objections to the issuance of certificates issued by the Land Office were submitted to the state administrative court (PTUN). This is regulated in Article 1 paragraph (4) and paragraph (6) of Law Number 5 of 1986 concerning State Administrative Court. A person can file a lawsuit at the local Administrative Court because of an objection to the State Administrative Decree, in this case the Decision of the Head of the Land Office.[15]

With regard to case studies, this research focuses on the legal domain that occurs in the state administrative court where the case filed is a case of canceling a state administrative decision in the form of canceling land certificates and the power of judges carried out by the state administrative court and the high state administrative court which culminating with the Supreme Court in accordance with the principles stipulated by Law Number 4 of 2004 concerning Judicial Powers.

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[9] A.P. Parlindungan, Pendaftaran Tanah dan Konversi Hak-Hak Atas Tanah Menurut UUPA, Cetakan Pertama, Alumni, Bandung, 1985, h. 37.

[10] Irawan Soerodjo, Kepastian Hukum Hak Atas Tanah Di Indonesia, Cetakan Kedua, Arkola, Surabaya, 2003, h. 187.

[11] Muhammad Yamin dan Abd. Rahim Lubis, Beberapa Masalah Aktual Hukum Agraria, Pustaka Bangsa, Medan, 2004, h. 130-131.

[12] Bernhard Limbong, Konflik Pertanahan, Margareta Pustaka, Jakarta, 2012, h. 2.

[13] Angga B. Ch Eman, Penyelesaian Sertifikat Ganda Oleh Badan Pertanahan Nasional, Jurnal Lex et Societatis, Volume I/No. 5/September/2013, h. 31.

[14] Elza Syarief, Pensertifikatan Tanah Bekas Hak Eigendom, Gramedia, Jakarta, 2014, h. 74.

[15] Indroharto, Usaha Memahami Undang-Undang Peradilan Tata Usaha Negara, Pustaka Sinar Harapan, Jakarta, 1991, h. 383-384.

Judges' Consideration on Decision 451 K/Tun/2019 in Issuing Certificate of Proprietary Rights Without Objects

As for a brief description of the case that occurred in Makassar or is in the jurisdiction of the Makassar State Administrative Court. Based on the decision of case Number 49/G/2018/PTUN.Mks between Murni Djafar, Bachelor of Law (Plaintiff) against the Head of the Land Office of Makassar City (Defendant) and Muhammad Zikir (Defendant Second Intervention), where the decision of the case reached the cassation level Number 451 K/TUN/2019.

As a benchmark, in the decision No. 49/G/2018/PTUN.Mks, the object of the lawsuit is the Certificate of Property Rights No. 21536/Gunung Sari issued on January 8, 1993, Measurement Letter No. 02189/2004, November 1, 2004, area 4,091 M2 , in the name of Mr. Andi Dahri and Certificate of Property Rights Number 22142/Gunung Sari, issued on July 28, 1992, Measurement Letter Number 03011/2005, dated 03-10-2005, area 10,065 M2, in the name of Haji Muhammad Zikir, where the new Plaintiff filed the lawsuit on July 4 2018, so that the timeframe is 26 (twenty six) years since the certificate of ownership was issued. So that land objectum litis certificate of ownership no. 21536/Gunung Sari Measurement Letter No. 02189/2004, dated November 1 2004, in the name of Mr. Andi Dahri, and the land objectum litis certificate of ownership no. 22142/Gunung Sari, Measurement Letter No. 03011/2005, in the name of Haji Muhammad Zikir, there is no longer an object or it is more accurately called the term published without an object; Thus the issuance of certificate of ownership no. 21536/Gunung Sari, January 8, 1993, Measurement Letter No. 02189/2004, dated November 1, 2004, area 4,091 M2, in the name of Mr. Andi Dahri, and certificate of ownership no. 22142/Gunung Sari dated 28 July 1992, Measurement Letter No. 03011/2005, dated October 3, 2005, area 10,065 M2, in the name of Haji Muhammad Zikir, actually and visibly violated PP No. 10 of 1961 junto PP No. 24 of 1997 concerning Land Registration, regarding Land Registration namely Article 12 paragraph (1), Article 14 paragraph (1) and (2), Article 17 paragraph (1) and (2), Article 18 paragraph (1) to paragraph (5)), Article 19 paragraph (1) and (5), and Article 26 paragraph (1) and (2) PP No. 24 of 1997 concerning Land Registration, because the Defendant has never carried out the collection and processing of the physical land data for which the certificate was requested, has never made an announcement, has not received approval from the adjacent landowners;

So that at the Administrative Court level, the judge granted the Plaintiff's lawsuit in part by the Makassar State Administrative Court with decision Number 49/G/2018/PTUN.Mks dated November 29 2018, namely canceling the certificate of ownership no. 22142/Gunung Sari, published on July 28, 1992, Measurement Letter No. 03011/2005, dated 03-10-2005, area 10,065 M2, in the name of Haji Muhammad Zikir and required the Defendant Head of Land Office of Makassar City to revoke and cross out from the registration book of Land Office of Makassar City, State Administrative Decree in the form of Property Rights Certificate No. . 22142/Gunung Sari, published on July 28, 1992, Measurement Letter No. 03011/2005, dated 03-10-2005, area 10,065 M2, in the name of Haji Muhammad Zikir.

Then at the appeal level at the State Administrative High Court, the judge annulled the decision of the Makassar State Administrative Court Number 49/G/2018/PTUN.MKs dated 29 November 2018 through the decision of the Makassar State Administrative High Court Number 20/B/2019/PTTUN. Mks on April 9 2019. Meanwhile at the cassation level at the Supreme Court the judge actually granted the cassation request from the cassation applicant Hj. Murni Djafar, SH. and annul the decision of the Administrative High Court of Makassar Number 20/B/2019/PTTUN.Mks dated 9 April 2019, which in the cassation decision still declared null and void the ownership certificate Number 22142/Gunung Sari, dated 28 July 1992, Measurement Letter No. 03011/2005, dated 03-10-2005, area 10,065 M2, in the name of Haji Muhammad Zikir and required the Defendant Head of Land Office of Makassar City to revoke and cross out from the registration book of Land Office of Makassar City, State Administrative Decree in the form of Property Rights Certificate No. . 22142/Gunung Sari, published on July 28, 1992, Measurement Letter No. 03011/2005, dated 03-10-2005, area 10,065 M2, in the name of Haji Muhammad Zikir.

Based on the background described above, this research will focus on the research title, namely "Considerations of Judges Decision 451 K/TUN/2019 in Issuing Certificates of Property without Objects." Seeing the background above, the authors take the limitations of this research asformulated in the formulation of the problem as follows: What are the considerations of judges in deciding cases of certificates of ownership rights issued without objects in the Makassar State Administrative Court decision number 49/G/2018/PTUN.Mks, Makassar State Administrative High Court decision number 20/B/ 2019/PTTUN.Mks, and Supreme Court decision number 451 K/TUN/2019?

DISCUSSION

A. Considerations of Judges Canceling the Makassar State Administrative Court Decision Number 49/G/2018/PTUN.Mks

The rule of law concept is basically divided into two types, namely the rule of law state in Continental European law known as Rechtsstaat, and the rule of law concept in Anglosaxon countries known as the Rule of Law. The characteristics of the two concepts of rule of law are basically not much different, as stated by Friedrich Julius Stahl.[16] whereas the characteristics of a rule of law state in Continental European law countries are that there is protection of human rights, the government is implemented based on regulations (wetmatigheid van bestuur) and there is administrative justice in disputes. The characteristics of a rule of law in Anglo-Saxon countries are the existence of the rule of law in the sense that there should be no arbitrariness so that a person may

[16] Seno Aji, Peradilan Bebas Negara Hukum, Erlangga, Jakarta, 1980, h. 15.

only be punished if he violates the law, there is equal standing before the law for both ordinary people and officials (equality before the law). , the guarantee of human rights by laws and court decisions.

Judicial power can be said to occupy a strategic position in a rule of law state. This is in accordance with what is confirmed by the 1945 Constitution which reads "The State of Indonesia is based on law (rechtsstaat) and not based on mere power (machtstaat)..[17]

Realizing law enforcement in the field of judicial power that is free, independent and independent is one of the objectives to be achieved within the framework of a rule of law and democracy. This is universally affirmed in the "Basic Principles On The Independence Of Judiciary" proposed as the General Resolution of the United Nations (UN) number 40 dated 29 November 1985. The resolution affirms that "a free, independent and independent judicial power is a judicial process that is free from any restrictions, undue influence, incitement and pressure or direct and indirect interference with the judicial process".

Law number 4 of 2004 in conjunction with Law number 48 of 2009 concerning Judicial Power in Indonesia has provided a foundation for judicial power to uphold justice. However, legal facts generally show that there is public distrust in judicial power because one of the main factors is the judge's decision which does not yet reflect the value of justice coveted by justice seekers. This also applies to the judge's decision at the State Administrative Court.

Judicial Power in the State Administrative Court environment is carried out in 3 (three) levels of justice, namely:

1. Supreme Court; as the highest court in judicial power, whose function is to examine at the cassation level cases that have been decided by the court at the lower level. The Supreme Court has its domicile in the State Capital of Indonesia, namely Jakarta.

2. State Administrative High Court; who has the duties as stated in Article 51 Law number 5 of 1986, namely:

1) The State Administrative High Court has the duty and authority to examine and decide on state administrative disputes at the appellate level.

2) The State Administrative High Court also has the duty and authority to examine and decide at the first and final levels disputes on the authority to adjudicate between the State Administrative Courts within their jurisdiction.

3) The State Administrative High Court has the duty and authority to examine, decide and resolve at the first level the State administrative dispute as referred to in Article 48.

4) Against the decision of the State Administrative High Court as referred to in paragraph (3) an application for cassation may be submitted.

3. The State Administrative Court has the task of exercising judicial power for people seeking justice for State Administrative disputes.

The State Administrative Court has the duty and authority to examine, decide and resolve state administrative disputes at the first level, domiciled at the district level, but not all districts in Indonesia have a State Administrative Court. The State Administrative Courts were formed based on a Presidential Decree, the first to be formed based on Presidential Decree number 52 of 1990 were the Jakarta, Medan, Palembang, Surabaya and Ujung Pandang State Administrative Courts. Furthermore, those formed based on Presidential Decree number 16 of 1992 were the State Administrative Courts of Semarang, Bandung and Padang. The State Administrative High Court is domiciled at the provincial level established by law. The State Administrative High Courts that were first formed under Law number 10 of 1990 were the Jakarta, Medan and Ujung Pandang State Administrative High Courts.

The Institute for the Study and Advocacy of Judicial Independence in Indonesia, particularly regarding judicial power reform in Indonesia, emphasizes that what must be the core of reform in the judicial power sector are: First, realizing the judicial power as an independent institution; Second, to restore the essential function of the judicial power to realize justice and legal certainty; Third, carry out the function of checks and balances for other state institutions; Fourth, encouraging and facilitating and upholding the principles of a democratic rule of law in order to realize people's sovereignty; Fifth, protecting human dignity in its most concrete form.[18]

In the provisions of Article 1 Point 11 of the Administrative Court Law, what is meant by a lawsuit is an application that contains a claim against a state administrative body or official and is submitted to the court to obtain a decision. Furthermore, Article 1 Point 12 of the Administrative Court Law, what is meant by Defendant is a State administrative body or official who issues a decision based on the authority vested in him or delegated to him which is being sued by a civil person or legal entity.

Based on the provisions of this article, in relation to the PTUN subject, what is included in the PTUN subject are as follows:

[17] Fence M. Wantu, *Idee Des Recht*: Kepastian Hukum, Keadilan, Kemanfaatan (Implementasi Dalam Proses Peradilan Perdata), Pustaka Pelajar, Yogyakarta, 2011, h. 6.

[18] Lembaga Kajian dan Advokasi Independensi Peradilan, Menuju Independensi Peradilan, ICEL, Jakarta, 1999, h. 12-75.

1. The plaintiff, who can become the plaintiff in a case at the State Administrative Court, is any legal subject, person or civil legal entity who feels his interests have been harmed by the issuance of a State Administrative decision by a State Administrative Agency or Official at the Central or Regional level.

2. The Defendant is a State Administrative Agency or Official who issues a decision based on the authority vested in him or delegated to him.

3. Interested third parties, in the provisions of Article 83 of the Administrative Court Law it reads that while the examination is in progress, anyone who has an interest in another party's dispute being examined by the Court, either on his own initiative by submitting an application, or on the judge's initiative may enter into a dispute State Administration, and act as: a party defending their rights; or participants joining one of the disputing parties. Furthermore, Article 118 paragraph (1) of the Administrative Court Law states that if a third party has never participated or been included during the time of examining the dispute in question, the third party has the right to file a lawsuit against the implementation of the court decision to the court adjudicating the dispute at the first level. .

While the object of dispute in PTUN is a written decision by a State administration official (beschikking). Based on the provisions of Article 53 paragraph (1) in conjunction with Article 1 number 4 in conjunction with Article 3 of Law number 5 of 1986, it can be concluded that the objects of claim in State Administrative disputes are:

1. State Administrative Decisions “a written determination issued by a State Administrative Agency or Official which contains a State Administrative Law action based on applicable laws and regulations that are concrete, individual and final in nature which creates legal consequences for a person or Legal Entity Civil." (Article 1 number 3 of Law number 5 of 1986).

2. What is equated with the State Administrative Decision referred to above is as referred to in the provisions of Article 3 Law number 5 of 1986, namely first, if the State Administrative Agency or Officer does not issue a decision, while this matter becomes an obligation, then this is equated with a State Administrative Decree. Second, if a State Administrative Agency or Official does not issue the decision requested while the time period specified in the said legislation has passed, the said State Administrative Agency or Official is deemed to have refused to issue the intended decision. Third, in the event that the relevant laws and regulations do not specify the time period referred to in paragraph (2): "then after the expiration of 4 (four) months after receiving the application, the relevant State Administrative Agency or Official is deemed to have issued a Rejection Decision. ”

Schrode and Voich stated that the term system has two important meanings to recognize, even though in conversation the two are often used interchangeably. The first understanding, the system as a type of rule that has a certain order. The particular order here refers to a structure made up of parts. Second, the system as a plan, method, procedure for doing something.[19] Based on this opinion it can be said that the system is complex. This is based on the reason that the understanding given by each expert depends on which side the expert sees the meaning of the system itself.

Hart stated that the hallmark of a legal system is a dual set of primary rules and secondary rules. Primary rules are norms of behavior, while secondary rules are norms about how to decide if something is valid and how to treat it. Both primary regulations and secondary regulations are the output of a legal system when viewed crosswise. The parties to the litigation behave on the basis of substance which results in the estimates they respond to.[20]

In various legal literature, it has become common practice that the legal system in the world is divided into two parts or what some experts call the legal poles, namely civil law and common law. In subsequent developments, the legal system in the world is divided into three parts, namely civil law, common law and socialist law.

According to M. Tahir Azhary, the various existing legal systems can be grouped into several sections of the legal system, namely first, Islamic nomocracy, namely the legal system that has developed in countries that adhere to Islam. Second, rechstaat, namely the legal system applied in Continental European countries. Third, the rule of law, namely the legal system applied in Angloxason countries. Fourth, socialist legality, namely the legal system that applies in communist countries. Fifth, the legal system of the Pancasila state, namely the legal system that applies in the State of Indonesia.[21]

Zweigert and Kotz, as quoted by Peter de Cruz, the classification of the legal system is also called family law. The legal classification or legal family is described as a representation of a family that groups a number of laws. He further stated the dangers and problems that would be faced when the comparatives wanted to reach a certain consensus, regarding the criteria that had to be used in order to classify various legal systems into legal families or according to certain legal traditions..[22]

The justice system does not fully function because there are regulations that are not implemented properly and there are those that require sanctions to further guarantee the freedom of judges in carrying out their duties. Public trust in the judiciary must be

[19] Satjipto Rahardjo, Ilmu Hukum, Citra Aditya Bakti, Bandung, 1996, h. 48.

[20] Lawrence Friedman, *The Legal System: A Social Science Perspective*, Russell Sage Foundation, New York, 2009, h. 16.

[21] M. Tahir Azhary, Negara Hukum Suatu Studi Tentang Prinsip-Prinsipnya Dilihat Dari Segi Hukum Islam, Implementasinya Pada Periode Negara Madinah Dan Masa Kini, Bulan Bintang, Jakarta, 1992, h. 63-67.

[22] Peter De Crucz, Perbandingan Sistem Hukum: *Common Law*, *Civil Law* dan *Socialist Law*, Nusa Media, Bandung, 2010, h. 47.

restored. To strengthen the justice system, judges need to have their freedom guaranteed. Human resources need to be improved both in integrity and mastery of knowledge (material and formal law). Modernization of the administration of justice will further facilitate the running of the judiciary which will regenerate trust in the judiciary.

With regard to the judicial system that applies in Indonesia, of course it is also influenced by the legal system adopted in Indonesia. Indonesia itself is a former colony of the Netherlands, the legal system that applies is civil law with the European Continental justice system. In general, in the world there are two kinds of positive law systems, namely the common law system with the Anglosaxson justice system and the civil law system with the Continental European justice system.

In the Anglosaxson system, the source of positive law for judges in the judicial process is the habits that arise in judicial practice, therefore in this common law system, judges are bound by the decision of the previous judge in a similar case (the binding force of precedent or stare decisis). et quita non mevere). Judges in the angloxason justice system are bound by stare decisis and res judicata.

Meanwhile, in the Continental European justice system, especially the Indonesian justice system, basically judges are accustomed to using deductive thinking methods, namely thinking from general rules to be applied to cases in concrete terms. In the Indonesian justice system, judges are less able to think freely, meaning they are always bound by law.

Judges in being accountable for decisions often also seek support from jurisprudence and science. Seeking support for jurisprudence does not mean that judges are bound by or must follow decisions regarding similar cases that have been handed down by the Supreme Court and High Courts, or have been decided by themselves.[23]

In applying the law, judges often face obstacles or many problems. Judges in practice at court still have weaknesses, so there are still many unsatisfactory decisions. According to Fuady, the obstacles faced by the judge were as follows:

1) Judges are still dependent on documents in court and have never seen what actually happened, so differences are inevitable;
2) The judge has never conducted an investigation into the field to seek the truth;
3) Judges have feelings, emotions, interests, and subjective views so that it is impossible to be neutral in making decisions;
4) Justice sought by judges has no real meaning;
5) Justice and truth are actually relative;
6) In general, in Continental European law, especially in the field of civil procedural law, judges only seek formal truth;
7) Sometimes there is competition between justice and legal certainty in a court decision;
8) Justice is closely related to emotional elements, so that there is a general sentiment towards justice;
9) Judges cannot be wise because generally judges only deal with concrete matters in cases.

In fact, upholding judicial power cannot be separated from the justice system that develops in a country. For this reason, whatever model is chosen in a justice system, it is ultimately determined by how far law enforcement officers in court carry out law and justice in accordance with what they aspire to.

Embryonically, the idea of a rule of law state originates from Plato, when he introduced the concept of nomoi, as the third written work made in his old age. This idea of Plato.[24] supported by Aristotle in his Politica. The definition of a rule of law state according to Aristotle is associated with the meaning and formulation that is still attached to "polis".[25] In a policy, all state affairs are carried out by deliberation (ecclesia), in which all citizens take part in state administration affairs.[26]

Therefore, even though the rule of law concept adheres to a universal concept,[27] However, at the level of implementation, it turns out that it is influenced by the various characteristics of the country and its people. On that basis, historically and practically the concept of a rule of law state is based on the Al-Quran, Pancasila, and the 1945 Constitution in Indonesia, where Article 1 paragraph (3) of the 1945 Constitution expressly states that the state of Indonesia is a state of law, as understood by rechtsstaat according to Continental Europe and rule of law according to Anglo Saxon.

The process of enforcing administrative law in state administrative courts often confronts judges with the dilemma of the goals to be achieved from the legal disputes that are being presented before them. The tug-of-war between legal goals between orientations to achieve legal certainty, legal justice, or legal benefits has always been a dialectical one and has generated debate. Gustav Radbruch, initially stated that the goal of legal certainty was ranked at the top among other legal objectives. However, after World War II, Gustav finally corrected his theory by placing the goal of justice above other goals.[28]

It is true that justice is the first and foremost goal of law, because this is in accordance with the nature or ontology of law itself. The law is made to create order through fair regulations, namely the arrangement of conflicting interests in a balanced way

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[23] Fence M. Mutia Ch Thalib, Suwitno Y. Imran, Wantu, Cara Cepat Belajar Hukum Acara Perdata, Reviva Cendekia, Yogyakarta, 2010, h. 185

[24] Plato, *The Law of Plato*, ed. Thomas L. Pange, The University of Chicago Press, Chicago and London, 1998, h. 85.

[25] Aristotle, *Politics*, ed. C.D.C. Reeve, Hackett Publishing Company, Indianapolis, 1998, h. 65.

[26] *Ibid*, h. 40.

[27] Francis G. Jacobs, *The Sovereignty of Law: The European Way*, Cambridge University Press, Cambridge, 2007, h. 7.

[28] Irvam Mawardi, Paradigma Baru PTUN Respon Peradilan Administrasi Terhadap Demokrasi, Thafa Media, Yogyakarta, 2016, h. 29.

so that everyone gets as much as possible what is his share.[29] Justice cannot be upheld and run perfectly if the ideals of justice are not filled with concrete things. The actual value of justice and finality requires certainty. However, there may be friction between justice and legal certainty. Legal certainty is desired by equality before the law, so it tends to require static law. This is not the case with justice, which has a dynamic nature so that the application of law must always look at the context of events and the society in which these events occur.[30]

Philosophically and historically, law enforcement that is oriented towards achieving the value of legal certainty is quite heavily influenced by positive thinking and legal practice. Positivik was originally inspired by the ideas of August Comte and John Austin as early thinkers of the legal positivism style. According to Austin, law is detached from matters of justice and apart from matters of good and evil. Therefore, the task of law science is only to analyze the elements that actually exist in the modern legal system. The science of law only deals with positive law, namely law that is accepted regardless of its goodness or badness.

The absence of the values of justice in law enforcement in Indonesia today has pushed some people to feel frustrated and pessimistic about the existence of law. Public logic in general understands that the law must be fair. Justice in public language is the existence of an order that is able to protect and protect the weak and has the courage to firmly sanction the interests of the strong. Law is one of the pillars of the nation which is responsible for presenting values in society.

Justice is the glue of the order of civilized social life. The law was created so that each individual member of society and state administrators take an action that is necessary to maintain social ties and achieve the goals of life together or vice versa so as not to take an action that can undermine the order of justice. To restore orderly social life, justice must be upheld. Each violation will receive sanctions according to the violation.

Justice is indeed an abstract concept. However, in the concept of justice sometimes the meaning of protection of rights, equality and standing before the law, as well as the principle of proportionality between individual interests and social interests. The abstract nature of justice is because justice cannot always be born from rationality, but is also determined by the social atmosphere which is influenced by other values and norms in society. Therefore, justice also has a dynamic nature which sometimes cannot be accommodated in positive law.[31]

The main philosophy of the nature of law is justice, without legal justice it is not worthy of being called law. The reality of law in society is sometimes different from what is aspired to which causes the law to further distance itself from its essence.[32] Justice is a jargon, not yet animating all legal aspects. The tug-of-war between justice, legal certainty and order has become an important issue in the development of law. This important issue then becomes a major problem when implementing law enforcement. Law enforcement by law bearers faces a dilemma of choosing between justice, certainty and order. The dilemma of choice is very complicated because of the impact, where there will be sacrifices from one or two legal ideals when the choice has been made. If the Judge decides to give priority to legal certainty, then the two ideals of law, namely justice and expediency, will be set aside.[33]

The tug-of-war between legal certainty, justice, and usability as the goal of law, as Gustav Radbruch stated, often arises in law enforcement efforts in Indonesia. At this point, justice and legal benefits are lacking, because what is important for the value of certainty is the regulation itself. Concerning whether the regulation has fulfilled a sense of justice and is useful for society is beyond prioritizing the value of legal certainty. Likewise, if we are more inclined to hold on to the value of utility, then as a value it will shift the value of legal certainty and the value of justice, because justice is not tied to legal certainty or the value of use, because something that is considered fair is not necessarily in accordance with the value of use and legal certainty.[34]

The thoughts of Gustav Radbruch in his theory known as spannungsverhaltnis (standard priority) have been adopted by the Supreme Court in positive law through SEMA number 1/2017, which confirms that the main purpose of the procedural law of the state administrative court is in order to harmonize rechtmatigheid beginsel[35] and *doelmatigheid beginsel*[36]toward the ultimate goal of material truth.

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[29] Van Apeldoorn, *Inleiding Tot De Studie van Get Nederlanse Recht* (Versi Terjemahan), Pradnya Paramita, Jakarta, 1985, h. 23.

[30] Mahfud MD, Penegakkan Hukum dan Tata Kelola Pemerintahan Yang Baik, Bahan Dalam Acara Seminar Nasional yang diselenggarakan oleh DPP Partai Hanura, Jakarta, 8 Januari 2009, h. 3.

[31] *Ibid*, h. 8.

[32] Bahder Johan Nasution, Kajian Filosofis Tentang Hukum dan Keadilan dari Pemikiran Klasik Sampai Pemikiran Modern, Jurnal Yustisia UNS Vol. 3, No. 2 Mei-Agustus 2014, h. 18.

[33] Anthon F. Susanto, Ilmu Hukum Non Sistematik: Fondasi Filsafat Pengembangan Ilmu Hukum Indonesia, Genta Publishing, Yogyakarta, 2010, h. 138.

[34] Satjipto Rahardjo, Ilmu Hukum, Alumni, Bandung, 1986, h. 21.

[35] Philipus M. Hadjon menyatakan bahwa "prinsip penyelenggaraan pemerintah adalah berdasarkan prinsip negara hukum dengan prinsip dasar legalitas, apabila penetapan keputusan tata usaha negara sudah sesuai dengan hukum, keputusan tata usaha negara tersebut dianggap sah dan sebaliknya". Dalam Philipus M. Hadjon, Hukum Administrasi dan *Good Governance*, Universitas Trisakti, Jakarta, 2010, h. 20.

The Supreme Court is also of the opinion that Gustav Radbruch's theory, namely spannungsverhaltnis (standard priority) must be used by judges by looking at the function of formal law or procedural law is to enforce or maintain material law rules, not to impede the achievement of justice. Furthermore, the Supreme Court also emphasized that the spannungsverhaltnis theory (standard priority) is also in line with the legal principle of Una Via where Judges must choose a branch of law that is more in favor of justice..[37]

Based on the description above, it is clear that judges have an important role in realizing what is the legal purpose of all administrative law disputes before the state administrative court, including those related to formal issues relating to the time period for filing a lawsuit with the state administrative court. . The time limit for submitting a lawsuit to the state administrative court is a real thing because Article 55 of the Act on the State Administrative Court is still valid, in fact it was upheld by the Constitutional Court, but there is the role of the judge in the state administrative court which will be the difference.

As instructed by the Supreme Court to all state administrative court judges in SEMA number 1/2017, state administrative court judges must see how to bring justice to the administrative law disputes they are examining even if the lawsuit they are examining turns out to have passed the timeframe for submitting a lawsuit to court. state Administration. Judges must be able to see that the disputes they examine case by case are applied casuistically, by looking at a sense of justice that is not always born from articles and rationality, but is also determined by the social atmosphere which is influenced by other values and norms in society.

In fact, the Supreme Court openly asked the judges at the state administrative court to agree with Gustav Radbruch's idea of favoring legal justice, rather than legal benefits or legal certainty. Furthermore, the Supreme Court requested that judges at the state administrative court be able to see that the function of formal law or procedural law is to uphold or maintain material or substantive legal principles, not to impede the achievement of justice. If this is applied to the application of Article 55 of the Law on the State Administrative Court, it has a legal breakthrough, in which the judge has the authority to be able to continue examining a case, even if the case does not meet the requirements for filing a lawsuit at the state administrative court, with the reason to find and realize justice. Judges must have the courage to examine and decide cases if a state administrative decision which has clearly been issued unlawfully and/or violates the general principles of good government, is canceled by the state administrative court, even though the state administrative decision has been protected. behind the expiration of the time period for filing a lawsuit. Judges at the state administrative court must have the courage to go out of shortcuts to end cases with unacceptable decisions (niet ontvankelijk verklaard) when faced with the main objective of examining cases at the state administrative court is to achieve justice.

Judges at the state administrative court are also equipped with the authority to play an active role in finding substantive justice because judges should not allow and maintain the validity of a state administrative decision that has clearly violated the law and the principles of good governance, just because only formal things.[38]

The principle of activeness of judges (dominus litis) is one of the principles that underlies and reflects the specific character of procedural law in state administrative courts, based on which, judges can determine what must be proven, the burden of proof along with the assessment of evidence, and for valid proof it is necessary at least at least 2 (two) pieces of evidence based on the conviction of the judge.[39] The principle of the activeness of judges in principle gives broad authority to judges of the state administrative court in the process of examining disputes from the state administrative court including the consequences of enabling the application of the ultra petita principle which was first set forth in the Supreme Court decision number 5 K/TUN/1992 where judges in the state administrative court wants to improve or complete the formal matters of the object of dispute submitted by the parties to it.

Another term that is often used for the grace period (beroeptermijn) is bezwaartermijn, verzoek termijn or klaagtermijn. The time limit is very important to know because the process for filing an administrative lawsuit is relatively short. The lawsuit deadline is a form of protection for the rights of a person or civil legal entity (plaintiff) to file a lawsuit in accordance with the grace period determined by laws and regulations, and if that grace period is not used, then the plaintiff's claim is declared inadmissible.

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[36] Philipus M. Hadjon menyatakan bahwa "prinsip negara hukum dalam prosedur utamanya berkaitan dengan perlindungan terhadap hak-hak dasar manusia. Prinsip demokratis dalam prosedur berkenaan dengan prinsip keterbukaan dalam penyelenggaraan pemerintahan. Sehingga memungkinkan masyarakat untuk turut serta berperan dalam pengambilan keputusan dengan prinsip instrumental yaitu efisiensi (*doelmatigheid* atau kedayagunaan). Dalam Philipus M. Hadjon, Fungsi Normatif Hukum Administrasi Dalam Mewujudkan Pemerintahan Yang Bersih, Pidato diucapkan pada peresmian penerimaan jabatan Guru Besar dalam Ilmu Hukum pada Fakultas Hukum Universitas Airlangga tanggal 10 Oktober 1994, h. 7.

[37] *Ibid*, SEMA Republik Indonesia nomor 1 tahun 2017.

[38] S.F. Marbun, Peradilan Administrasi Negara dan Upaya Administrasi di Indonesia, Liberty, Yogyakarta, 1997, h. 303.

[39] Pasal 107 dari Undang-Undang Pengadilan Tata Usaha Negara.

To find out the grace period for how long a person or civil legal entity (plaintiff) can file a lawsuit, it is necessary to know the beginning and end of the specified term. The due date is often used as a starting point for calculating it. All parties are very interested in the terms of the lawsuit.

The state administrative body that issues a state administrative decision letter requires a legal certainty, that the issued state administrative decision letter, after the stipulated grace period has passed, will no longer be contested, either by the receiving party or a third party who feels aggrieved. by the decree. Likewise for a person or civil legal entity who receives a decision letter. After the stipulated grace period has passed, legal certainty will be obtained that the decision will no longer be contested by the state administrative body or third parties who feel aggrieved by the decision.

In the context of carrying out government tasks properly, state administrative bodies also need certainty that the decrees issued will not be withdrawn. In fact, a decision letter of a state administrative body must be deemed correct according to law, unless there is a party who sues and the decision letter of state administration is then decided by the court to be revoked.

Usually a state administrative decision letter issued by a state administrative agency is often accompanied by a clause which in state administrative law is known as a "veiligheidclausule" which reads "if in the future it turns out that there is an error in this decree, it will be reviewed accordingly". A state administrative decree issued, in principle, is not to be reviewed. Because the administrative decision letter must be considered according to law and will only be reviewed if the state administrative court decides to revoke it. Basically, whether or not a state administrative decision can be withdrawn does not depend on whether there is a "veiligheidclausule". The safety clause is not a determining element for the recall of a state administrative decision. What if there is an element of fraud (bedrog), coercion (dwang), or misrepresentation (dwaling) while the clause is in existence, even though a state administrative decision may not contain these elements.

One of the exceptions presented by the intervening Defendant II which has been grouped by the Panel of Judges is the exception regarding the lawsuit being overdue. That the plaintiff in filing his lawsuit has expired as stipulated in Article 55 Law number 5 of 1986 because the Plaintiff has just filed a lawsuit against the object of the dispute which has been published since 1992 and in 2015 a talking board has also been installed so that legally the Plaintiff already knows the object dispute since at least 2015.

Whereas regarding the dimensions of calculating the grace period as referred to in Article 55 of Law number 5 of 1986 concerning the State Administrative Court jo. Law number 9 of 2004 jo. Law number 51 of 2009, universally known in the procedural law system are two principles, namely the principle of action perpetua, namely the principle that does not recognize a time limit in filing a lawsuit and the principle of actio temporalis, namely the principle that recognizes time limits in filing a lawsuit and how long the grace period is. the time given depends on the legislators taking into account the legal politics to be achieved.

Whereas of these two principles the actio temporalis principle is the principle upheld in the procedural law of state administrative courts which is stated in Article 55 of Law number 5 of 1986 concerning State Administrative Court jo. Law number 9 of 2004 jo. Law number 51 of 2009, stated that a lawsuit can be filed only within a period of ninety days from the time the decision of the state administration body or official is received or announced. It is further explained in the elucidation, what is meant by a grace period of 90 (ninety) days calculated from the day the administrative decision being sued is received, whereas in terms of the basic regulations stipulating that the decision must be announced, then the grace period of 90 (ninety) days is calculated from the day the announcement.

Whereas the plaintiff is not the party addressed by the state administration decision as the object of the a quo dispute but feels his interests have been harmed and knows that there has been a state administration decision which harmed his interests, so based on the jurisprudence of the Supreme Court number 5K/TUN/1992 dated 21 January 1993 jo. Supreme Court decision number 41K/TUN/1994 dated 10 November 1994 jo. Supreme Court decision number 270K/TUN/2001 dated May 4 2002, from the three jurisprudence mentioned above there is a rule of law which states that in terms of the deadline for filing a lawsuit for a third party who is not addressed directly by the state administrative decision who does not accept or does not know the existence of a decision of the body/official issuing the decision as referred to in Article 55 of Law number 5 of 1986, is calculated on a casuistry basis since the third party knows and feels the interests of being harmed by the adverse state administrative decision.

Whereas thus referring to the legal principles contained in the jurisprudence of the Supreme Court decisions mentioned above, the panel of judges is of the opinion that the calculation of the grace period in an in litis dispute is calculated casuistically using the veremings theory, namely since the plaintiff knows the object certificate aquo disputes. According to Zakiyah, the theory of knowledge in an agreement means that the agreement is born when the contents of an acceptance answer are known by the offerer. This theory is the theory that best fits the principle that agreements are born on the basis of a meeting of two expressed wills. The objection to the theory of knowledge is that if the recipient of the letter (who offers) leaves the letter just like that and doesn't open it, will there never be an agreement born.[40]

[40] Zakiyah, Hukum Perjanjian Teori dan Perkembangannya, Cetakan II, Lentera Kreasindo, Yogyakarta, 2017, h. 39-40

Whereas according to the argument of the plaintiff's lawsuit, states that the plaintiff only found out about the issuance of the object of the dispute on April 9 2018, namely when the defendant submitted letter number 938/4-73.71/IV/2018, April 4 2018, to the plaintiff in response to the plaintiff's letter dated August 9 2017, regarding the clarity of the status of the land on the Makassar shady shining road covering an area of 15,000 M2.

Whereas the Defendant and the Intervening Defendant II denied the plaintiff's argument that the plaintiff should have known at least since 2015 by installing a talking board declaring that the land belonged to Haji Sikir Sewai. From the arguments of the plaintiff, defendant and defendant II of the intervention, the Panel of Judges was of the opinion that the argument of the defendant and defendant II of the intervention stated that the plaintiff had known since there was a speaking board installed at the location of the object of land in dispute, there was not sufficient evidence to strengthen their argument. -the argument for rebuttal so that the plaintiff's argument cannot be refuted in real terms by the intervening defendant and defendant II, so that it has sufficient legal grounds to state that the exception of the defendant and intervening defendant II regarding the plaintiff's lawsuit is past time to be rejected.

B. Judge's Considerations Canceled the Makassar State Administrative High Court Decision Number 20/B/2019/PTTUN.Mks

Whereas in the decision of the Panel of Judges of First Instance on page 44, the fifth paragraph stated "that from the arguments of the Plaintiff, Defendant and Intervening Defendant II which stated that the Plaintiff had known since the Talking Board was installed at the location of the object of the dispute, there was not sufficient evidence

to strengthen the rebuttal arguments so that the Plaintiff's arguments cannot be refuted in reality by the Defendant and Intervening Defendant II, so that there are sufficient legal grounds to state that the Exception of Defendant and Intervening Defendant II regarding the Plaintiff's lawsuit is past time to be rejected."

Whereas from the argument posita lawsuit on page 5 and from the argument posita number 4 basically stated that the facts of acknowledgment of knowledge of the Plaintiff's previous appeal/comparator time limit regarding the decision of the object of dispute a quo argued that he knew on April 9 2018 based on the Defendant's Comparative/Appeal Letter Number 938/4-73.71/IV/2018, April 4 2018 (vide evidence P-6), that is, for reasons around 2015, one of the guards said the objectum litis land on it had a Talking Board which read this land belonged to H.M. Sikir Sewai according to SHM Number 2776, Year 1992, Area 16,691 M2, then the Appellant/Comparator formerly the Plaintiff on August 9 2017 sent a letter to the Comparator or Appellant formerly the Defendant requesting clarification on the Land Status on Jalan Teduh Bersinar Makassar covering an area of 15,000 M2 (see Exhibit P -5) which was answered by the Defendant's previous Comparison/Appeal Letter Number 938/4-73.71/IV/2018, April 4 2018 (vide Evidence P-6).

Whereas on the argument of the recognition of the Appellant/Comparator previously the Plaintiff stated that he knew the decision of the object of the a quo dispute on April 9 2018 based on letter number 938/4-73.71/IV/2018, April 4 2018 (vide Evidence P-6) which was assessed by the Panel of Judges of First Instance in its consideration stating that "The Plaintiff has known since the Talking Board was installed at the location of the disputed land object, there is not sufficient evidence to strengthen the arguments of the objection so that the Plaintiff's argument cannot be refuted in real terms by the Defendant and Intervening Defendant II, so that there is sufficient legal reason to declare the Exception of the Defendant and Intervening Defendant II concerning the Plaintiff's lawsuit is past time to be rejected".

Whereas therefore according to the Opinion of the Panel of Judges of Appeal that the Decision of the Panel of Judges of First Instance regarding the Exception of the Overdue Lawsuit is a consideration that is legally wrong and inappropriate because it is only based on testing the absence or absence of sufficient evidence to strengthen the arguments of rebuttal .

Whereas on the contrary, according to law, it has been strictly regulated that the requirements for the party to whom the decision is not addressed can file a claim for a state administration dispute as of knowing the decision as stipulated in the provisions of Article 55 Law Number 5 of 1986 juncto Circular Letter of the Supreme Court of the Republic of Indonesia Number 2 1991, so that the Appellant/Comparator used to be the Plaintiff within a grace period of 90 (ninety) days from the time he became aware of the Certificate of Property Rights Number 2776, Year 1992 on behalf of H.M. According to Sikir, according to the argument for his lawsuit, around 2015 he should have filed a lawsuit.

That in connection with the provisions of Article 100 (1) letter d of Law Number 5 of 1986 it is clearly regulated that the confessions of the parties are evidence, therefore the Plaintiff's previous Appeal/Comparation Letter dated 9 August 2017 (vide Evidence P-5) who asked for clarification on the status of the land and Letter of Answer Number 938/4-73.71/IV/2018, April 4 2018 (vide Evidence P-6) proved by legal fact that the Letter referred to was an attempt to deviate or avoid the requirements for the party to whom the decision was not addressed. submit a claim for a state administrative dispute within a period of 90 (ninety) days from the date of knowing the decision.

Whereas based on the description of the legal considerations mentioned above, therefore it has been proven that the Exceptions of the Appellant/Appellant formerly the Defendant and the Appellant/Appellant formerly Defendant II Intervention

regarding the Lawsuit Past Due are sufficiently grounded to be declared accepted and the lawsuit filed by the Appellant/Comparator formerly the Plaintiff according to law must be declared rejected.

Whereas therefore the Makassar State Administrative Court Decision Number 49/G/2018/PTUN.Mks dated 29 November 2018 for which the appeal was requested has sufficient legal grounds to be declared annulled and the Panel of Appeal Judges will try it alone and decide this case with the verdict as stated at the end of this judgment.

Whereas therefore the Appellant/Appellant was previously declared the plaintiff as the losing party, based on Article 110 of Law Number 5 of 1986 concerning State Administrative Court which has been amended by Law Number 9 of 2004 and finally by Law Number 51 of 2009 then to the Appellant/Appellant first the Plaintiff must be sentenced to pay court fees incurred at both levels of court which for the appellate court the amount will be determined It's like that in this ruling.

Whereas the reasons for cassation submitted through the Cassation Memorandum submitted by the Cassation Appellant, and the Cassation Respondent I were originally Defendant/Comparator/Appealed and Cassation Respondent II was originally Intervening/Comparator/Appeal Defendant II had filed a Counter Cassation Memorandum, in essence to reject the petition cassation from the Cassation Appellant, the Supreme Court is of the opinion that the reasons can be justified because the Judex Facti of the Makassar State Administrative High Court, was wrong and wrong in applying the law.

Whereas the Defendant's action of issuing the two certificates of ownership clearly did not meet the legal requirements and procedures, because the objectum litis land, which belonged to Intje Komala, was transferred or sold to Hj. Murni Djafar, S.H. in casu the Plaintiff, according to the Deed of Sale and Purchase number 322/TL/VI/PPAT-B/1996, dated 16 June 1996, on behalf of Hj. Murni Djafar, S.H. and mastered until now.

Whereas the origin of the two certificates is in the form of details for each Persil number 8 SI 9I CI, and Persil number 29 SI, Kohir number 643 CI, the object is located or located in another place, namely located on the certificate which has been separated several times from the certificate of origin, because the land objectum litis is recorded in the Detailed book with Persil 29 SII Kohir number 132 CI, so it can be concluded that the area of the land title certificate number 2920/Mangasa is in the name of Mallo Daeng Todaeng, and the property title certificate number 2776/Mangasa is in the name Andi Nuraini Mallombasang, has been exhausted after being separated several times, so that the objectum litis land title certificate number 21536/Gunung Sari, measurement letter number 02189/2004, dated November 1 2004, in the name of Mr. Andi Fahri, and the objectum litis land title certificate number 221412/Gunung Sari , measurement letter 03011/2005, dated October 3, 2005, in the name of Haji Muhammad Zikir, there is no object anymore or it is more accurately called the term published without an object.

C. Consideration of the Supreme Court Judge on the Cassation Decision of the Supreme Court decision number 451 K/TUN/2019

Whereas based on these considerations, according to the Supreme Court there are sufficient reasons to grant the request for cassation without the need to consider other reasons for cassation. Therefore, the decision of the Makassar Administrative High Court number 20/B/2019/PTTUN.MKs, April 9 2019, which canceled the Makassar Administrative Court decision number 49/G/2018/PTUN.MKs, November 29 2018, cannot be maintained and must be cancelled. Furthermore, the Supreme Court tried this case itself as referred to in this decision.

That the Panel of Supreme Court Justices had read and studied the answers to the cassation memorandum, but found nothing that could undermine the reasons for the cassation of the Cassation Petitioners. That with the granting of the cassation request, and as the losing parties, the Respondent on Cassation I and the Respondent on Cassation II were sentenced to pay court costs at all levels of the court.

That the Supreme Court granted the cassation request from the Cassation Petitioner Hj. Murni Djafar, S.H; canceled the decision of the Makassar State Administrative High Court number 20/B/2019/PTTUN.Mks, April 9 2019, which canceled the Makassar State Administrative Court decision number 49/G/2018/PTUN.Mks, November 29 2018

Whereas the Supreme Court tried itself in rejecting the exceptions filed by the Defendant and Intervening Defendant II. In the principal case granting the Plaintiff's claim in part; declaring the cancellation of the title certificate number 22142/Gunung Sari, dated 28 July 1992, measurement letter number 03011/2005, dated 3 October 2005, area 10,065 M2, in the name of Haji Muhammad Zikir; oblige the Defendant Head of Land Office of Makassar City to revoke and cross out from the register book of Land Office of Makassar City, State Administrative Decree in the form of title certificate number 22142/Gunung Sari, dated 28 July 1992, measurement letter number 03011/2005, dated 3 October 2005 , area of 10,065 M2, in the name of Haji Muhammad Zikir; reject the Plaintiff's claim for the rest; sentenced the Respondent to Cassation I and the Respondent to Cassation II to pay court costs at all court levels, which at the cassation level was set at Rp. 500,000.00 (five hundred thousand rupiah).

The judge's decision was based on the trial process held at the Makassar high administrative court based on the memorandum of appeal filed by the defendant in a case held at the Makassar State Administrative Court with the following position cases: In the case between H. Muhammad Zikir, Indonesian citizenship , place of residence: Jalan Teduh Bersinar Blok E Number 1, Gunung Sari sub-district, Rappocini sub-district, Makassar city, self-employed. In this case, he was represented by his attorney based on a special power of attorney dated August 29 2018 named H. Syamsul Kamar, SH. Advocate/lawyer occupation,

Indonesian citizenship, residence on Jalan Veteran Selatan number 248-250, Mamajang Dalam sub-district, Mamajang District, Makassar City. Hereinafter referred to as the Comparator/Appellant formerly Intervening Defendant II. Furthermore, the position name of the head of the Makassar city land office, domicile, Jalan AP. Pettarani number 8 Makassar city. In this case, he was represented by his attorney based on power of attorney number 1171/SK-73.71/VII/2018, dated July 18 2018 named: 1. Asih lestari, SH., MKn. Head of the section on land management and control; 2. Nugroho Hasan Putera, SH., head of sub-section handling disputes, conflicts and cases; 3. Arfianty Satyaningsih, SH., MH. head of control sub-section in land affairs; 4. Yuyun Novisal, section staff of the handling of land problems and control; 5. Irwan, section staff handling land problems and control.

Cases of Position and Sitting Cases

Observing and accepting the circumstances regarding the case as described in the decision of the Makassar State Administrative Court, number 49/G/2018/PTUN Mks, November 29 2018 in a case between the two parties whose verdict reads as follows:

Tried: In Exception: Rejecting the Defendant's Exception and Defendant II intervention in their entirety in the main case, namely: 1. Granted the plaintiff's claim in part; 2. Declare the cancellation of the ownership certificate number 22142/ gunung sari, issued on 28 July 1992, measurement letter number 03011/2005, dated 03-10-2005, area 10.05 M2, in the name of Haji Muhammad Zikir; 3. Required the Defendant, the head of the Makassar city land office, to revoke and cross out the Makassar city land office register book, the State Administration Decree in the form of a certificate of ownership number 2214/ gunung sari, issued on July 28, 1992, measurement letter number 03011/2005, date 03-05-2005, area 10.05 M2 in the name of Haji Muhammad Zikir; 4. Punish the Defendant and Defendant II intervention to pay the costs of the case arising from this dispute jointly and severally in the amount of Rp. 3,232,000.- (three million two hundred and thirty two thousand rupiah).

Several Appeal Judge Considerations

Considering, that the decision was pronounced in a hearing which was open to the public on Thursday 29 November 2018 in the presence of the plaintiff's attorney and without the presence of the defendant's attorney and the interventionist attorney for Defendant II.

Considering, that both the defendant and the second intervention defendant were informed by the Makassar State Administrative Court clerks about the contents of the decision in accordance with the decision notification letter number 49/G/2018/PTUN MKs. November 29, 2018;

Considering that based on this decision, Defendant II intervened through his attorney named H. Syamsul Kamar, SH. Has submitted a letter of appeal dated December 4 2018 which was received by the clerk of the Makassar state administrative court as stated in the deed of appeal number 49/G/2018/PTUN MKs. December 5, 2018.

Considering, that against the appeal of Defendant II of the intervention, the clerk of the Makassar State Administrative Court had notified the plaintiff and the defendant in accordance with the notice of appeal on December 6, 2018;

Considering, that Defendant II intervened in his appeal request that had submitted a memorandum of appeal which was received by the clerk of the Makassar State Administrative Court in accordance with the receipt of the memorandum of appeal number 49/G/2018/PTUN Mks., December 17 2018, which essentially submitted reasons for objections to legal considerations the decision of the court of first instance and request annulment of said decision with the full reasons as contained in the memory of said appeal;

Considering that against the memory of the appeal of Defendant II of the intervention by the clerk of the Makassar State Administrative Court has been notified and submitted a copy to the plaintiff and the defendant in accordance with the letter of notification and submission of the memorandum of appeal dated 18 December 2018;

Considering that on the appeal memory of Defendant II the intervention, the plaintiff has filed a rebuttal contained in the counter memorandum of appeal dated February 4 2019 which was received by the clerk of the Makassar State Administrative Court as well as the receipt of the counter memorandum of appeal dated February 4 2019 and the clerk has also been notified and a copy was submitted to the intervening Defendant II and the Defendant in accordance with the letter of notification and submission of counter appeal memorandum dated 4 February 2019;

Considering whereas the defendant also submitted an appeal dated December 10, 2018 which was signed by his attorney named Yuyun Nivisal, which was accepted by the clerk of the Makassar state administrative court as stated in the deed of appeal number 49/G/2018/PTUN Mks. dated December 10 2018;

Considering, that against the defendant's appeal, the clerk of the Makassar state administrative court has notified the plaintiff and the interventionist II in accordance with letter of appeal notification number 49/G/2018/PTUN Mks, December 11 2018;

Considering that the defendant in his appeal had filed a memorandum of appeal which was received by the clerk of the Makassar State Administrative Court in accordance with the receipt of the memorandum of appeal number 49/G/2018/PTUN Mks., dated December 18 2018, which essentially submitted reasons for objections to the legal considerations of the first court's decision and request to cancel the decision with the full reasons as contained in the memory of the appeal;

Considering that against the memory of the defendant's appeal, the clerk of the Makassar state administrative court has notified and submitted a copy to the plaintiff and the interventionist II as referred to in the letter of notification and submission of the memory of appeal dated 18 December 2018;

Considering, that on the memory of the defendant's appeal, the plaintiff has filed a rebuttal contained in the counter memory of appeal dated February 4 2019 which has been received by the clerk of the Makassar State Administrative Court as well as the receipt of the counter memory of appeal dated February 4 2019 by the clerk has also been notified and copies were handed over to the defendant and the intervening Defendant II in accordance with the letter of notification and submission of counter appeal memorandum dated 4 February 2019;

Considering that this is also the case for the decision of the court of first instance, the plaintiff also submitted a letter of appeal dated 11 December 2018 which was signed by his attorney named Muh. Ompo Massa, SH., which was received by the clerk of the Makassar state administrative court as stated in the deed of appeal number 49/G/2018/PTUN Mks., December 11, 2018;

Considering that the clerk of the Makassar State Administrative Court has notified the defendant and the interventionist II in accordance with the notice of appeal dated December 13, 2018;

Considering that the plaintiff in his appeal has filed a memorandum of appeal which was received by the clerk of the Makassar state administrative court according to the receipt of the memorandum of appeal number 49/G/2018/PTUN Mks. December 21, 2018, essentially submitting reasons for objections to the legal considerations of the court's decision of first instance and requesting annulment of the decision, the full reasons of which are contained in the memorandum of appeal;

Considering that against the memory of the plaintiff's appeal the clerk of the Makassar state administrative court has notified and submitted a copy of each to the defendant and the interventionist II as referred to in the letter of notification and submission of the memorandum of appeal dated 27 December 2018;

Considering, that on the plaintiff's memory of appeal, neither the defendant nor the interventionist II intervened to submit a counter-memorandum of appeal as the statement letter did not file a counter-memorandum of appeal dated January 30, 2019;

Considering that before the appeal case file was sent to the Makassar State Administrative High Court to the plaintiff, the defendant and intervening Defendant II had been given the opportunity to view and study the case file (inzage) according to a notification letter viewing the case file dated 10 January 2019.

Analysis of Legal Considerations

Considering that the decision of the Makassar state administrative court number 49/G/2018/PTUN Mks. This was said in a hearing that was open to the public on Thursday 29 November 2018 in the presence of the plaintiff's attorney and without the presence of the defendant's attorney and the interventionist attorney for Defendant II;

Considering that the legal facts are based on the decision notification letter number 49/G/2018/PTUN Mks. November 29, 2018 signed by the clerk of the Makassar State Administrative Court, because the defendant and Defendant II intervened were not present at the trial to pronounce the decision, so according to the law the Defendant and Defendant II intervened legally notified the contents of the decision;

Considering that the provisions regarding the deadline for filing an appeal based on Article 123 Paragraph (1) of Law number 5 of 1986 which was last amended by Law number 51 of 2009 stipulates that an appeal is submitted in writing by the applicant or his attorney to the administrative court the state that rendered the decision within a period of 14 (fourteen) days after the decision was legally notified to it; Considering that the provisions of the legislation in question do not explain the meaning of valid notification, according to the panel of judges on appeal that because the defendant and Defendant II intervened were not present at the time of the trial to pronounce the decision on November 29 2018, so that the notification was legally given to the Defendant and Defendant II intervention, namely based on a letter from the member the decision number 49/G/2018/PTUN Mks. On November 29, 2018,

Considering, that the legal facts were that on December 11, 2018 the plaintiff had filed an appeal according to the deed of appeal on December 11, 2018, thus the plaintiff's appeal according to law was proven not to have passed the grace period of 14 (fourteen) days, therefore the appeal the plaintiff has fulfilled the deadline for submitting an appeal as stipulated in Article 123 Paragraph (1) of Law number 5 of 1986 as last amended by law number 51 of 2009, then the appeal is officially declared accepted;

Considering, that because the appeal of Defendant II intervened and the defendant as well as the plaintiff's formal appeal had been declared accepted, in this examination of the appeal level case the position of Defendant II intervened and the defendant was determined and referred to as the appellate party as well as the position of the appellant, while the position of the plaintiff was determined and referred to as the appealed party also serves as the comparator;

Considering, that after the panel of judges at the appellate level has carefully studied the decision being filed for appeal, memorandum of appeal, counter memorandum of appeal, evidence of the parties and other documents, unanimously, they have adopted a position and opinion in the following balance;

Considering, that in the exceptions filed by the comparator/appellant formerly the defendant and the comparator/appellant formerly Defendant II the intervention, namely regarding absolute authority, regarding the lawsuit having expired, regarding the plaintiff's claim is obscuur libel, regarding the plaintiff having no interest (legal standing), the court of first instance in its decision stated that it rejected the exception of the defendant and Defendant II who intervened in its entirety;

Considering, that in the decision of the panel of judges of first instance on page 44, fifth paragraph stated that from the arguments of the plaintiff, defendant and defendant II of the intervention the panel of judges was of the opinion, the argument of the defendant and defendant II of the intervention stated that the plaintiff had known since there was a talking board installed in location of the land object of the dispute, there is not sufficient evidence to strengthen the arguments of the rebuttal so that the plaintiff's argument cannot be refuted in real terms by the defendant and the intervening Defendant II, so that there is sufficient legal reason to state the exception of the Defendant and Defendant II the intervention regarding the plaintiff's lawsuit has overdue for rejection;

Considering that from the argument posita on page 5 and from the argument posita number 4, it basically states that the facts of the knowledge acknowledgment of the plaintiff's prior comparison/comparator time limit regarding the decision of the object of dispute a quo argued that he knew on April 9, 2018 based on the letter of comparison/first appeal Defendant number 938/4-73.71/IV/2018, April 4 2018 (vide evidence P-6), that is, for reasons around 2015, one of the guards said that the objectum litis land on it had a talking board that said this land belongs to HM. Sikir Sewai according to SHM. Number 2776, 1992, area 16,691 M2, then the plaintiff's comparator/comparison formerly on August 9 2017 sent a letter to the comparator/compellant formerly the defendant asking for clarification on the status of the land on the shady shining road Makassar with an area of 15,000 M2 (vide Evidence P-5) which answered with the defendant's previous comparison/appeal letter number 938/4-73.71/IV/2018, April 4 2018 (vide Evidence P-6);

Considering that on the argument of the acknowledgment of the appeal/comparator, the plaintiff stated that he knew the decision of the object of the a quo dispute on 9 April 2018 based on letter number 938/4-73.71/IV/2018 dated 4 April 2018 which was assessed by the panel of first-level judges in their consideration which stated that the plaintiff had known since there was a talking board installed at the location of the object of land in dispute, there was not sufficient evidence to strengthen the arguments for the objection so that the plaintiff's argument could not be refuted in real terms by the defendant and defendant II intervention, so it was sufficiently grounded in law to state the exceptions of the Defendant and the Intervening Defendant II concerning the plaintiff's lawsuit that it is past time to be rejected;

Considering that therefore in the opinion of the panel of judges of appeal that the decision of the panel of judges of first instance regarding the exception of the overdue lawsuit is a legal consideration that is wrong and incorrect because it is only based on testing the absence or absence of sufficient evidence to strengthen the arguments of the rebuttal ;

Considering that on the contrary according to law it has been expressly stipulated that the requirements for the party to whom the decision is not addressed may file a claim for a state administration dispute as of knowing the decision as stipulated in the provisions of Article 55 Law Number 5 of 1986 juncto SEMA RI Number 2 of 1991, so that the plaintiff's first appellant/comparator is within the next 90 (ninety) days from the time he finds out the ownership certificate number 2776, 1992 on behalf of HM. Sikir according to the argument for his lawsuit in around 2015 should have filed a lawsuit;

Considering, that in connection with the provisions of Article 100 (1) letter d of Law number 5 of 1986 it is clearly regulated that the confessions of the parties are evidence, therefore the plaintiff's previous appeal/comparison letter dated 9 August 2017 (vide Evidence-P5) who asked for clarity on land status and letter of response number: 938/4-73.1/IV/2018, April 4 2018 (vide Evidence P-6) proved by legal fact that what was intended was an attempt to deviate or avoid the requirements for the party to whom the decision was not addressed may file a claim for a state administrative dispute within a period of 90 (ninety) days from the date the decision is made known;

Considering, that based on the description of the legal considerations mentioned above, therefore it has been proven that the exceptions for the comparator/appellant formerly the defendant and the comparator/appealable formerly Defendant II's intervention regarding the lawsuit having expired are sufficiently reasonable to be declared accepted and against the lawsuit filed against the plaintiff's first appeal/comparison must according to law declared rejected;

Considering, that therefore the decision of the Makassar state administrative court Number 49/G/2018/PTUN Mks., dated 29 November 2018 for which the appeal was requested has sufficient legal grounds to be declared annulled and the panel of appeal judges will try it alone and decide this case with a judgment the decision as stated at the end of this decision;

Considering, that because of this the plaintiff was previously declared as the losing party, based on Article 110 of Law number 5 of 1986 concerning state administrative justice which has been amended by Law number 9 of 2004 and finally by Law number 51 of 2004 2009, the plaintiff must be sentenced to the appellant/appellant first to pay court costs incurred at both levels of court, which for the appellate court the amount will be determined as stated in this ruling; In view of the articles of Law Number 5 of 198 concerning State Administrative Court which have been amended by Law Number 9 of 2004 and most recently by Law Number 51 of 2009, as well as the provisions of other relevant laws and regulations;

Judging

- Receive appeals from the comparator/appellant formerly the defendant and the comparator/appellant formerly the intervening Defendant II;
- Canceled the decision of the Makassar State Administrative court number 49/G/2018/PTUN Mks., November 29 2018 that the appeal was filed for;

Judge Yourself

I. In the Exception: accept the exceptions of the comparison/appeal before the defendant and the comparison/appeal before the Defendant II intervention

II. In the main case, including:

1. Rejecting the plaintiff's first appeal/comparison;
2. Punish the plaintiff's appellate/comparison first to pay court costs at both court levels which for the appellate court is set at Rp. 250,000,- (two hundred and fifty thousand rupiah).

CLOSING

Conclusion

Based on the description as has been analyzed and discussed in the previous chapters, the conclusions are as follows:

Whereas the consideration of the judge in deciding the case of a certificate of ownership rights was issued without an object that canceled the decision Makassar State Administrative Court number 49/G/2018/PTUN.Mks. is a weakness of our judicial system, especially the state administrative court institutions which do not review the object of the dispute. The judge's consideration in deciding the case of a certificate of ownership issued without an object canceling the decision of the Makassar State Administrative High Court number 20/B/2019/PTTUN.Mks, based on the filing of an appeal memory according to the decision of the administrative court of Makassar Number 49/G/2018/PTUN MKS, November 29, 2018. Based on the theory of legal justice of the inequality that occurs between the three levels of justice, namely the first court, appellate court and court cassation.

Suggestion

Suggestions are input for the perfection of the research results written in this study including:

1. It is addressed to the authorities that it is necessary to have regulations made by the authorities to include every trial at the state administrative court, it is necessary to review the object in dispute, if necessary, there are regulatory regulations related to relations between judicial institutions for the settlement of disputes within the scope of state administration.
2. Addressed to judges in the state administrative courts so that there is comprehensive synergy between judges at the level of state administrative courts in order to increase the professionalism of state administrative law enforcement.
3. Addressed to the public so that every ownership of assets must be registered regularly as a check and balance agenda

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