LEGAL STANDING OF PUBLIC LEGAL ENTITY AS PLAINTIFF IN JUDICIAL ADMINISTRATION OF STATE

(Study Decision Number 96/G/2019/PTUN-JKT)

Thesis

Apply to meet the requirements for obtaining a law degree (SH)

By:

Khairul Imam

NIM: 17230049

CONSTITUTIONAL LAW DEPARTMENT (SIYASAH)

FACULTY OF SHARIA

ISLAMIC STATE UNIVERSITY MAULANA MALIK IBRAHIM MALANG

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2021

STATEMENT

By Allah,

With the awareness and sense of responsibility for scientific development, the author states that the thesis with the title:

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6.	Jumat, 16 April 2021	Revisi Abstrak	
7.	Kamis, 10 Juni 2021	ACC Abstrak, Bab I, II, III, dan IV	

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MOTTO

Tidak seorang pun membiarkan sesuatu karena Allah kemudian merasakan tidak adanya rasa keadilan .

(Hakim Agung Syuraih bin al-Harits al-Kindi)

FOREWORD

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيم

By saying Alhamdulillah, all thanks be to Allah SWT, for the abundance of His grace and gifts, this thesis entitled "Legal Standing of Public Legal Entities as Plaintiffs in the State Administrative Court (Study of Decision Number 96/G/2019/PTUN-JKT)" can be solved. May prayers and greetings continue to be poured out to our lord Prophet Muhammad SAW who always provides guidance for us from the dark ages to the bright path. May we always be among the believers and receive intercession on the Day of Resurrection. Amen.

We thank to:

1. Prof. Dr. H. M. Zainuddin, M.A, as Chancellor of the State Islamic University of Maulana Malik Ibrahim Malang.

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4. Nur Jannani, S.HI., M.H as the author's supervisor while studying at the Syari'ah Faculty, Maulana Malik Ibrahim State Islamic University, Malang. The authors thank him for giving the time, suggestions, and support to complete this research.

5. Dra. Jundiani, SH., M. Hum, as the author's guardian lecturer while studying at the Syari'ah Faculty of the State Islamic University of Maulana Malik Ibrahim Malang. The authors thank him for giving his time, advice, and motivation during his lectures at the State Islamic University of Maulana Malik Ibrahim Malang

6. The entire staff of lecturers at the Sharia Faculty of the State Islamic University of Maulana Malik Ibrahim Malang.

7. The author's parents who always support and pray for their children.

We realize that this research report is still far from perfect, therefore the authors welcome constructive criticism and suggestions to make it better in the future. Hopefully this report can develop knowledge and be useful for readers.

TRANSLITERATION GUIDELINES

Transliteration is the transfer of the Arabic script into Indonesian (Latin) writing, not translating Arabic into Indonesian. Included in this category are the Arabic names of the Arabs, while the Arabic names of the Arabs are written as the national language spelling, or as written in the book that is the reference. Writing book titles in *footnotes* and bibliography still uses transliteration provisions.

The transliteration used by the Sharia Faculty of the State Islamic University of Maulana Malik Ibrahim Malang uses EYD plus, which is transliteration based on the Joint Decree (SKB) of the Minister of Religion, Education and Culture of the Republic of Indonesia, January 22, 1998, No. 159/1987 and 0543.b / U / 1987, as stated in the book Pedomana Arabic Transliteration *(Sebuat Panduan Transliterasi Arab)*, INIS Fellow 1992. In this study there are several terms or sentences that come from Arabic, but are written in Latin . The writing is based on the following rules:

A. The consonant

ا = not denoted	ص = Sh
ب = B	ض = dl
ت = T	ط = th
ث = Ta	ظ = dh
ج = J	ع = '(face up)
ح = H	غ = gh
خ = Kh	ف = f
د = D	ق = q
ذ = Dz	ك = k
ر = R	ل = l
ز = Z	م = m
س = S	ن = n
ش = Sy	و = w
	ه = h
	ي = y

Hamzah (ء) which is often denoted by alif, if it is located at the beginning of the word then in transliteration it follows the vowel, not symbolized, but if it is in the middle or at the end of a word, it is denoted by a comma above ('), reversed with a comma (') to replace the symbol ع.

B. Vowels, Lengths, and Diphthongs

Every writing in Arabic is written in Latin form, thevowel is *fathah* written as "a", *kasrah* with "i", *dhammah* with "u", while the long reading is written in the following way:

vowel	Long	Diftong
a = fathah i = kasrah u = dhammah	Â î û	قال becomes qâla قيل becomes qîla دون becomes dûna

Especially for reading ya 'nisbat, it cannot be replaced by “i”, but it is still written as “iy” so that it can describe ya' nisbat at the end. Likewise for the sounds of diphthong, wawu and ya 'after *fathah are* written with "aw" and "ay". Consider the following example:

Diphthong	Example
aw = و ay = ي	قول becomes qawlun خير becomes khayrun

C. Ta 'marbûthah ()

Ta' marbûthah (ة) is transliterated with “jika” if it is in the middle of a sentence, but if ta 'marbûthah is at the end of a sentence, it is transliterated using “h” for example الرسلة اللمدرسة becomes *al-risala li- mudarrissah,* or if it is in the middle of a sentence consisting of *mudlaf* and *mudlaf ilayh arrangements,* it is transliterated using "t" which is connected with the following sentence, for example في رحمة الله becomes *fi rahmatillâh.*

D. Words of Clothing and Lafadh al-Jalâlah

The article in the form of "al" (ال) in lafadh jalâlah which is in the middle of the leaning sentence *(idhafah) is* then removed. Consider the following examples:

1. Al-Imâm al-Bukhâriy said .....
2. Al-Bukhâriy in the muqaddimah of his book explains .....
3. *Masyâ'Allah kânâ wa mâlam yasyâ lam yakun*
4. *Billâh 'azza wa jalla*

E. Hamza

Hamzah is transliterated with an apostrophe. However, that only applies to the hamza which is located in the middle and at the end of the word. When it is located at the beginning of the word, hamzah is not represented, because in Arabic it is alif.

Example: شيء - syai'un أمرت - umirtu

النون - an-nau'un تأ خذون - ta 'khudzûna

F. Writing Words

Basically every word, whether *fi'il* (verb), *isim* or *letter, is* written separately. Only certain words that are written in Arabic letters are usually coupled with other words, because there are Arabic letters or vowels that are omitted, so in this transliteration the writing of the word is also linked with other words that follow it.

Example: وان الله لهو خير الرازقين - wa innalillâha lahuwa khairar-râziqîn.

Although in the Arabic writing system the capital letters are not recognized, they are used in this transliteration as well. The use of capital letters as applicable in EYD, including capital letters are used to write the article, then what is written in capital letters is still the beginning of the personal name, not the beginning of the word surname.

Example: وما محمد إلا رسول = wa maâ Muhammadun illâ Rasûl

ان اول بيت وضع للدرس = inna Awwala baitin wu dli'a linnâsi

The use of capital letters for Allah only applies if in Arabic writing it is so complete and if the writing is combined with other words so that there are letters or vowels omitted, then the capital letters are not used.

Example: نصر من الله وفتح قريب = nasrun minallâhi wa fathun qarîb

الله الامرو جميعا = lillâhi al-amru jami'an

For those who want fluency in reading, transliteration guidelines are an integral part of the science of recitation.

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ABSTRACT

Khairul Imam, 17230049, 2021. **" *Legal Standing Of Public Legal Entity As Plaintiff In Judicial Administration Of State (Study Decision Number 96/G/2019/Ptun-Jkt)"*.** Thesis, Constitutional Law Department, Sharia Faculty, Maulana Malik Ibrahim State Islamic University Malang. Advisor: Nur Jannani, S.HI., M.H.

Keywords : Legal Standing, Public Legal Entity, Plaintiff

Article 53 Paragraph (1) of Law no. 51 of 2009 concerning the Second Amendment to Law no. 5 of 1986 concerning the State Administrative Court states that the subject of the Administrative Court is a person or civil legal entity who feels that his interests have been harmed by a State Administrative Decree. However, in the decision Number 96/G/2019/PTUN-JKT the judge accepted a public legal entity as the plaintiff, namely the Malang Regency Government which according to the law has no legal standing. The dispute occurred between the Malang Regency Government and the Minister of PUPR. The object of the dispute is the Decree of the Minister of PUPR Number: 928/KPTS/M/2018 concerning the Granting of a Water Resource Concession Permit to a Regional Drinking Water Company in Malang City for Drinking Water Business at Wendit 3 Springs Malang City, East Java Province.

The purpose of this study is to (1) find out how the legal standing of a public legal entity as a plaintiff according to Article 53 Paragraph (1) of Law no. 51 of 2009 concerning the State Administrative Court against Decision No. 96/G/2019/PTUN-JKT. (2) find out how the Siyasah Qadhaiyyah concept views the legal standing of public legal entities in the State Administrative Court in Decision No. 96/G/2019/PTUN-JKT.

This research is a juridical-normative research, which uses two approaches, namely the statute approach and the conceptual approach. The results of this study (1) that the dispute that occurs between public legal entities against public legal entities in the state administrative court is something that is not regulated in the Administrative Court Law, but in the decision the judge accepts the legal standing of public legal entities as plaintiffs in the administrative court. the state's effort to achieve a sense of justice for those who feel their interests have been harmed in this case is the Malang district government. (2) that in the decision no. 96/G/2019/PTUN-JKT judges have

decided cases related to the legal standing of public legal entities as plaintiffs in accordance with the Siyasah Qadhaiyyah concept which guarantees equal status before the law. The judge has completed and resolved the case fairly in accordance with the concept of justice in the Qur'an and Al-Sunnah.

ABSTRAK

Khairul Imam, 17230049, 2021. **"Legal Standing Of Public Legal Entity As Plaintiff In Judicial Administration Of State (Study Decision Number 96/G/2019/Ptun-Jkt)".** Thesis, Constitutional Law Department, Sharia Faculty, Maulana Malik Ibrahim State Islamic University Malang. Advisor: Nur Jannani, S.HI., M.H.

Keywords : *Legal Standing*, Badan Hukum Publik, Penggugat

Pasal 53 Ayat (1) Undang-Undang No. 51 Tahun 2009 tentang Perubahan Kedua atas Undang-Undang No. 5 Tahun 1986 tentang Peradilan Tata Usaha Negara menyebutkan bahwa subjek PTUN adalah seseorang atau badan hukum perdata yang merasa kepentingannya dirugikan oleh suatu Keputusan Tata Usaha Negara. Akan tetapi di dalam putusan Nomor 96/G/2019/PTUN-JKT hakim menerima badan hukum publik sebagai penggugat yaitu Pemerintah Daerah Kabupaten Malang yang menurut undang-undang tersebut tidak mempunyai kedudukan hukum. Sengketa terjadi antara Pemerintah Kabupaten Malang melawan Menteri PUPR. Objek sengketa adalah adalah Keputusan Menteri PUPR Nomor: 928/KPTS/M/2018 tentang Pemberian Izin Pengusahaan Sumber Daya Air Kepada Perusahaan Daerah Air Minum Kota Malang Untuk Usaha Air Minum Di Mata Air Sumber Wendit 3 Kota Malang Provinsi Jawa Timur.

Tujuan penelitian ini adalah untuk (1) mengetahui bagaimana *legal standing* badan hukum publik sebagai penggugat menurut pasal 53 Ayat (1) Undang-Undang No. 51 Tahun 2009 tentang Peradilan Tata Usaha Negara terhadap Putusan No. 96/G/2019/PTUN-JKT. (2) mengetahui bagaimana pandangan konsep Siyasah Qadhaiyyah terhadap *legal standing* badan hukum publik di Peradilan Tata Usaha Negara dalam Putusan No. 96/G/2019/PTUN-JKT.

Penelitian ini merupakan penelitian yuridis-normatif, yang menggunakan dua pendekatan, yakni pendekatan undang-undang *(statute approach)* dan pendekatan konseptual *(conceptual approach).* Hasil dari penelitian ini (1) bahwa sengketa yang terjadi antara badan hukum publik melawan badan hukum publik di peradilan tata usaha negara adalah sesuatu yang tidak diatur di dalam UU PTUN, akan tetapi dalam putusan hakim menerima *legal standing* badan hukum publik sebagai penggugat di pengadilan tata usaha negara untuk mencapai rasa keadilan bagi yang merasa

kepentingannya dirugikan dalam hal ini adalah pemerintah kabupaten malang. (2) bahwa dalam putusan No. 96/G/2019/PTUN-JKT hakim telah memutuskan perkara terkait status *legal standing* badan hukum publik sebagai penggugat sesuai dengan konsep Siyasah Qadhaiyyah yang menjamin adanya kesamaan status di hadapan hukum. Hakim telah menyelesaikan dan menuntaskan perkara dengan adil yang sesuai dengan konsep keadilan di dalam Al-qur'an dan Al-sunnah.

مستخلص البحث

خير الإمام ، 17230049 ، 2021. "الوضع القانوني للكيان القانوني العام كمدعي في الإدارة القضائية أطروحة ، قسم القانون الدستوري ، كلية ."(Ptun-Jkt / 2019 / G / قرار دراسة رقم 96) للدولة الشريعة ، مولانا مالك إبراهيم الدولة الإسلامية جامعة مالانج. المستشار: نور جناني ، ماجستير في القانون

في المادة 53 فقرة (1) من القانون رقم. قانون رقم 51 لسنة 2009 بالتعديل الثاني للقانون رقم. ينص هو شخص أو كيان PTUN القانون رقم 5 لعام 1986 بشأن المحكمة الإدارية للولاية ، على أن موضوع G / قانوني مدني يشعر أن مصالحه قد تضررت بموجب مرسوم إداري للدولة. ومع ذلك ، فإن القرار رقم 96 ينطوي على كيان قانوني عام بصفته المدعي ، وليس له مكانة قانونية في الأحكام PTUN-JKT / 2019 / القانونية. وقع النزاع بين حكومة مالانج ريجنسي ووزير الأشغال العامة والإسكان العام. موضوع النزاع هو بشأن منح تصريح امتياز KPTS / M / 2018 / قرار وزير الأشغال العامة والإسكان العام رقم: 928 موارد المياه لشركة مياه الشرب الإقليمية في مدينة مالانج لأعمال مياه الشرب في ويندبت 3 سبرينغز ، مدينة .مالانج ، مقاطعة جاوة الشرقية

الغرض من هذه الدراسة هو (1) معرفة الوضع القانوني لكيان قانوني عام كمدعي وفقًا للمادة 53 الفقرة (1) من القانون رقم. قانون رقم 51 لسنة 2009 في شأن محكمة الدولة الإدارية ضد القرار رقم 51 لسنة 2009. معرفة كيف ينظر مفهوم السياسة القضائية إلى المكانة القانونية (2) .PTUN-JKT / 2019 / G / 96 للهيئات الاعتبارية العامة في المحكمة الإدارية للدولة في القرار رقم (10). 96 / G / 2019 / PTUN-JKT.

هذا البحث هو بحث قانوني معياري يستخدم طريقتين هما: المنهج التشريعي والنهج المفاهيمي. نتائج هذه الدراسة (1) أن المنازعات التي تحدث بين الكيانات الاعتبارية العامة ضد الكيانات الاعتبارية العامة في المحكمة الإدارية للدولة هي أمر لا ينظمه قانون المحكمة الإدارية ، ولكن في القرار يقبل القاضي الصفة القانونية العامة كيانات كمدّعين في المحكمة الإدارية.جهود الدولة لتحقيق إحساس بالعدالة لأولئك الذين يشعرون بأن مصالحهم قد تضررت في هذه القضية هي حكومة مقاطعة مالانج. (2) أنه في القرار رقم. قرر القضايا المتعلقة بالوضع القانوني للكيانات القانونية العامة JKT / 2019 / G / 96 PTUN-JKT قضاة كمدعين وفقًا لمفهوم سياسة القضاء الذي يضمن المساواة أمام القانون. انتهى القاضي من القضية وحسمها ..بعدل وفق مفهوم العدل في القرآن والسنة

CHAPTER I

INTRODUCTION

A. Background of the problem

The term public legal entity as an applicant at the state administrative court in the Procedural Law for State Administrative Courts, hereinafter referred to as Administrative Court Procedure Law, is something that is not mentioned in Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts. Described in Article 53 Paragraph (1) of Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts, namely; A person or a civil legal entity who feels that his interests have been harmed by a State Administrative Decree can file a written suit to the competent court containing a demand that the disputed State Administrative Decree be declared null and void, with or without a claim for compensation and or rehabilitation.[1] According to Article 1 Paragraph (7) of Law Number 30 of 2014 concerning Government Administration, namely; Government Administration Decrees which are also called State Administration Decrees or State Administration Decisions, hereinafter

[1] Pasal 53 ayat (1) Ayat (1) Undang-Undang No. 5 Tahun 1986 tentang Peradilan Tata Usaha Negara.

referred to as Decisions, are written decrees issued by Government Agencies and / or Officials in the administration of government.

Based on the explanation in Article 53 Paragraph (1) of Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts that if the interests of a person or civil legal entity are harmed by a state administrative decision, they can file a lawsuit at the state administrative court, but there is no mention of the public legal entity that is the focus of this research. Seeing the fact that it is not only a person or civil legal entity that has the potential to harm their interests due to the issuance of a state administrative decision, but public legal entities also have the same potential. This potential arises because the state administrative decision as a stipulation or decision will have an impact in the realm of state administration.

Disputes in the State Administrative Court arise because of losses arising from the issuance of a State Administrative Decree. State Administrative Decree based on Article 1 Number 9 Law Number 51 of 2009 concerning State Administrative Courts is a written stipulation issued by a State Administration agency or official containing legal actions for State Administration based on the prevailing laws and regulations are concrete, individual and final which give rise to legal consequences for a person or civil

legal entity.[2] Judging from the explanation above, if the written stipulation is not concrete, individual and final, then it is not included in the State Administrative Decree according to the Law. The legal consequences resulting from the decision have an impact on a person or civil legal entity.

Meanwhile, the definition of a State Administrative Dispute based on Article 1 Paragraph (10) of Law 51/2009 concerning Government Administration is a dispute arising in the field of state administration between a person or civil legal entity and a state administrative body or official, both at the central and regional levels. as a result of the issuance of state administrative decisions, including personnel disputes based on the prevailing laws and regulations. Based on the definition of State Administrative Disputes from the Law, we can understand that State Administrative Disputes only occur between state administration officials and a person or civil legal entity, thus public legal entities are not included in it.

So far, the party that is litigating as a plaintiff in the State Administrative Court is a person or a civil legal entity as described in Article 53 Paragraph (1) of Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts that the plaintiff in the procedural law of the state administrative court

[2] Pasal 1 Angka 9 Undang-Undang No 51 Tahun 2009 tentang Peradilan Tata Usaha Negara

is a person or civil legal entity who feels that his interests have been harmed by a state administrative decision.[3] Based on this article, the plaintiff in state administrative court practice is a person or civil legal entity. Public legal entities are not included under this article. However, in the practice of government administration by issuing state administrative decisions, sometimes the ones who are disadvantaged are not only individuals or civil legal entities, public legal entities such as government agencies in some cases also feel aggrieved by the issuance of a state administrative decision by a government official. As happened in the case Number 96/G/2019/PTUN-JKT) regarding the dispute over wendit water sources between the Malang city district government and the PUPR Minister as a state official who issued a state administrative decision that was the object of the dispute. According to A. Siti Soetami, regarding the definition of a Civil Legal Entity there are several problems. In the daily reality that the general government which consists of various organizations and agencies has the authority according to public law also has independence according to civil law, such as territorial agencies, state, province, city, and so on.

The consequences of their position as legal entities are:

- They can have material rights;

[3] Pasal 53 ayat (1) Ayat (1) Undang-Undang Republik Indonesia Nomor 5 Tahun 1986 tentang Peradilan Tata Usaha Negara.

- They can be parties to civil proceedings.

So that if it is questioned, can the organization or agency mentioned above as civil law also file a lawsuit against the District Administrator? Logically, of course you can. However, because the person being sued must always be the State Administration Agency or Position, this possibility is very rare.[4] According to this opinion, because public legal entities have independence in civil matters, logically public legal entities can also become plaintiffs in the state administration court.

The problem started when a water utilization permit or in Bahasa *surat izin pemanfaatan air* (SIPA) was issued. Based on the water utilization permit (SIPA) issued by the Ministry of Public Works and Public Housing in Bahasa *Kementerian Pekerjaan Umum dan Perumahan Rakyat* (PUPR), the Malang City Government (hereinafter referred to as Malang City Government) received a permit to manage the wendit water resources with a water resources management service fee in bahasa *biaya jasa pengelolaan sumber daya air* (hereinafter referred to as BJPSDA) Wendit in the amount of Rp 133 per cubic meter. In the previous cooperation agreement, it was IDR 88 per cubic meter. The Malang Regency Government also objected to the decision. The Malang Regency Government wants the Wendit BJPSDA to be Rp. 615 per cubic

[4] A. Siti Soetami, *HUKUM ACARA PERADILAN TATA USAHA NEGARA*, (Bandung: Refika Aditama, 2019) , 6.

meter. Feeling aggrieved by the decision, Malang Regency Government as a third party filed a lawsuit at the Jakarta state administrative court. In the petitum Malang Regency Government hopes that the court will grant his lawsuit demanding the cancellation of the decision. [5]

Reflecting on the explanation above, the researcher in this study will examine the legal standing of public legal entities in the State Administrative Court against Decision Number 96/G/2019/PTUN-JKT) regarding the wendit water source dispute between the Malang city district government and the PUPR Minister as a state official who issues a state administrative decision that is the object of the dispute. This research will be conducted with an inverted pyramid model. Models that use deductive logic describe things that are general in nature (theory) followed by specific things (specific data / cases). As for matters of a general nature (theory) what is meant is the theory *Siyasah Qadhaiyyah*.

The theory of Siyasah Qadhaiyyah is a subclassification of state administration in Islam which is very close to the analysis of the judicial system. Because Siyasah Qadhaiyyah is a judicial institution that is responsible for resolving cases by referring to Islamic law, namely God's law through the Qur'an and Hadith from the Prophet Muhammad. The legal vacuum regarding the status of public institutions in State Administration cases will really need to be evaluated by looking at the legal consequences

[5] Pipit Anggraeni, "Pemkot Malang Banding, Polemik Sumber Air Wendit Masih Bergulir," *Malang Times*,08 Desember 2019, diakses 15 Oktober 2020, https://malangtimes.com/baca/46944/20191208/163200/index.html.

after the Siyasah Qadhaiyyah analysis which contains cross-dimensional legal values, and is oriented to the benefit and justice of the general public.

What is meant by special matters is specific data / cases regarding the dispute over wendit water sources that occurred between the Malang Regency Government and the PUPR Minister.

B. Formulation of the Problem

1. What is the legal standing of a public legal entity according to Article 53 Paragraph (1) of Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts against Decision Number 96/G/2019/PTUN-JKT)?
2. What is the view of the Siyasah Qadhaiyyah concept on the legal standing of public legal entities in the State Administrative Court in Decision Number 96/G/2019/PTUN-JKT)?

C. Research Purposes

Like writing scientific papers in general, this scientific paper also has several research objectives. The objectives of the research are:

1. To find out how the legal standing of a public legal entity according to Article 53 Paragraph (1) of Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts against Decision Number 96/G/2019/PTUN-JKT)!
2. To find out how the concept of Siyasah Qadhaiyyah views the legal standing of public legal entities in the State Administrative Court in Decision Number 96/G/2019/PTUN-JKT)!

D. Research Benefits

1. The results of this study are expected to contribute to the application of legal standing of public legal entities as plaintiffs in the State Administrative Procedure Court.
2. The results of this study are expected to be a reference for academics and researchers who will conduct further research on the legal standing of public legal entities as plaintiffs in the State Administrative Court.

E. Operational Definition

1. The legal standing applicant'sis the applicant's right to submit his application to the court.
2. Public legal entity (publiekrecht) is a legal entity created according to public law or a legal entity that regulates the relationship between the state and / or its apparatus and citizens with regard to public or public interests.
3. The plaintiff is a person or civil legal entity who feels that his interests have been harmed by a state administrative decision. In this case, the plaintiff is Malang Regency Government.

4. Defendant is a State Administration Agency or official who issues a decision based on the authority that is in it or delegated to it, who is being sued by a civil legal person or entity. In this case the defendant is the Minister of PUPR.
5. State Administrative Court is a judicial environment under the Supreme Court that exercises judicial power for people seeking justice for State Administrative disputes.
6. Siyasah Qadhaiyyah is the administration of government in a judicial institution for justice seekers who need to seek justice based on Islamic law.

F. Previous Research

There are several previous studies that also examined the topic of the status of Legal Standing. This previous research reinforces the fact that research onhas previously been carried out Legal Standing, which means that this research is not the first to be conducted.

The research conducted by Defi Permata Sari with the title LEGAL STANDING *PARA PIHAK DALAM PENYELESAIAN SENGKETA WANPRESTASI AGEN PENJUALAN TIKET DITINJAU ASAS KEPASTIAN HUKUM DAN KEADILAN*. In this first study, the focus of his research is on legal considerations determining the legal standing of the parties and the legal

basis for determining the Lega Standing in case Number 201 / Pdt.G / 2014 / PN.Plg. The results of the research are 1. Based on article 4 paragraph (2) this Agency Transfer Agreement is the only agreement between the agent and IATA-BSP relating to Agency Management, which replaces all existing Agency Agreements before. that with the emergence of a new legal relationship, the Plaintiff does not have the Legal standing to file a lawsuit against the Defendant (vide evidence P-25 jo P-41 / T-01), therefore if the Palembang District Court Judge is not mistaken sufficient for evidence P-25 jo P-41 / T-01, then it is appropriate for the Palembang District Court Judges to reject the lawsuit filed by the Plaintiff (now being appealed). 2. Based on the decision of Cassation Number Decision 1240 / K / Pdt / 2017 related to the case of PT. Garuda (Persero), Tbk. with PT, Musita that in ensuring legal certainty and justice in legal standing there is an agency agreement between PT. Garuda (Persero), Tbk. with PT. Musita through the International Air Transport Association (IATA) that the Plaintiff in his lawsuit should have mentioned or involved or included IATA (International Air Transport Association) in his lawsuit against the Defendant (PT Musita Tour & Travel), but the Plaintiff did not mention or did not involve and include the IATA (International Air Transport Association) and have not implemented justice for PT. Garuda Indonesia, in this case a request from PT. Garuda Indonesia because according to the judges' judgment, the Supreme Court rejected the cassation of PT. Garuda Indonesia Whereas with the mandate delegation from

PT. Garuda Indonesia to the Co-Defendants to receive deposits from IATA. PT. Garuda Indonesia with PT. Musita no longer has a legal relationship. However, the panel of judges at the Supreme Court ruled out a direct agreement between PT. Garuda Indonesia and PT. Musita.

The second research was carried out by Rihal Amel Aulia Haqi with the title LEGAL STANDING *PIHAK KETIKA YANG BERKEPENTINGAN DALAM PERMOHONAN PRAPERADILAN TINDAK PIDANA KORUPSI*. In this second study, the focus of his research is on the definition and limitations of third parties with an interest "in filing pretrial applications for the termination of investigations or prosecutors for criminal acts of corruption when viewed from statutory regulations and doctrine. The results of the research are 1." interested third parties ". formulated in article 80 of the Criminal Procedure Code, contains abroad termor unclear meaning (unplain meaning). applies and also the doctrine that develops in the community. In Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption, it is not clearly regulated regarding the definition and boundaries of "interested third parties". However, in Law Number 31 of 1999, there are provisions regarding the participation of the public to actively participate in the prevention and eradication of corruption. Furthermore, in article 1 paragraph (1) Government Regulation Number 71 of 2000 concerning Procedures for Implementing Community Participation and

Giving Awards in the Prevention and Eradication of Corruption, it is stated that community participation is the active role of individuals, community organizations, or non-governmental organizations in prevention. and eradicating criminal acts of corruption, which are interpreted by many parties as the basis for the legitimate rights of the community, NGOs and OrMas to submit pretrial applications for the termination of investigations or prosecution of criminal acts of corruption, as "interested third parties". According to the doctrine, namely the opinion of M. Yahya Harahap in a book entitled Discussion of Problems and Application of the Criminal Procedure Code: Trial Examination, Appeal, Cassation, and Review, Second edition, fifth edition, acknowledges that the wider community can be considered as victims of criminal acts of corruption. so that they can be identified as interested third parties represented by NGOs or CSOs.

The obstacle faced by "interested third parties" in submitting pretrial applications for the termination of investigations or prosecution of corruption crimes is the absence oflegal recognition and legal recognitionof the position of "interested third parties" in the Law concerning Corruption Eradication. So that often pretrial requests filed by "interested third parties" are perceived by the Respondent (Attorney General of the Republic of Indonesia) and also rejected by District Court Judges, for example, the pretrial petition filed by

ICW on the Texmaco case, which the Respondent (RI Attorney General) then excludes. and rejected by the Judge of the South Jakarta District Court.

The mechanisms for filing a lawsuit / petition that can be used by "interested third parties" in submitting pretrial applications for the termination of investigations or prosecution of corruption crimes are the organization's legal standing and the right to sue / petition citizens (Citizen Lawsuits / Actio popularis). This is based on the interpretation of Law Number 31 of 1999 and Government Regulation Number 71 of 2000, which essentially provides opportunities for NGOs / OrMas and every citizen to actively participate in the prevention of corruption eradication and is also based on the two cases that the authors have analyzed, namely the Soeharto case (Decision of the South Jakarta District Court on Pre-trial Application with Case Register Number9 / Pid.Prap / 2006 /PN.Jak.Sel,Number10/Pid.Prap/2006/PN.Jak.Sel. and Number 11 / Pid.Prap / 2006 / PN.Jak.Sel. Dated 12 June 2006). and the case of Sjamsul Nursalim (Decision of the South Jakarta District Court Number 04 / Pid.Prap /2008/PN.Jak.Sel dated 6 May 2008). In both cases, the Judge, in his decision, gave the opportunity to NGOs / OrMas and every citizen (community) to file a pretrial in the capacity as a "third party with an interest" by using themechanismlegal standingorganization'sand the right to sue the right to sue / Request Citizen(CitizenLawsuits / ActioPopularis).

The third research was conducted by Teti Adrillah with the title TINJAUAN YURIDIS *LEGAL STANDING* PEMOHON DALAM PERKARA PERSELISIHAN HASIL PEMILU DI MAHKAMAH KONSTITUSI. In this third study, the focus of her research is on the dispute over election results in the Constitutional Court and legallegal analysis standing in the petition for dispute over election results by the Constitutional Court. The results of his research are 1. The process of resolving election disputes is regulated in Article 74 to Article 79 of Law Number 24 of 2003 concerning the Constitutional Court, Constitutional Court Regulation Number 16 of 2009 concerning Guidelines for proceeding in disputes over the results of general elections for members of DPR, DPD and DPRD, Constitutional Court Regulation Number 17 of 2009 concerning Guidelines for proceeding in disputes over the election results of the President and Vice President. This process includes submission of requests by election participants as interested parties, preliminary examinations, trial examinations, and decisions. 2. Legal standing is an absolute prerequisite for an applicant to submit a petition to the Constitutional Court. The Petitioner is a legal subject who meets the requirements according to law to submit constitutional cases to the Constitutional Court. Legal standing accepted in requests for dispute over election results is a request from a political party through the General Chairperson or Secretary General of each political party. Political parties are

the only applicants who can submit disputes over election results in the Constitutional Court.

The differences between this study and previous studies will be discussed in more detail in the following table:

Number	Name / College / Year of	Research Result	Title of thesis	Equation of	Difference	Elements of renewal
1.	Defi Permata Sari / UIN MALIKI MALANG / 2019	1. Based on article 4 paragraph (2) this agency transfer agreement is the only agreement between the agent and IATA-BSP which relates to Agency Management, which replaces all existing Agency Agreements. that with the emergence of a new legal relationship, the Plaintiff does not have the Legal standing to file a lawsuit	LEGAL STANDING *PARA PIHAK DALAM PENYELESAIAN SENGKETA WANPRESTASI AGEN PENJUALAN TIKET*	- Yuridis normative -Legal Standing	- Research is focused on Legal standing the parties in dispute resolutiontort	elementreform in this research is Legal standing in question is the Legal standing public legal entities

		against the Defendant (vide evidence P-25 jo P-41 / T-01), therefore if the Palembang District Court Judge is not mistaken sufficient for evidence P-25 jo P-41 / T-01, then it is appropriate for the Palembang District Court Judges to reject the lawsuit filed by the Plaintiff (now being appealed). 2. Based on the decision of Cassation Number Decision 1240 / K / Pdt / 2017 related to the case of PT. Garuda (Persero), Tbk. with PT, Musita that in ensuring legal certainty and justice in legal standing there is an agency agreement between PT. Garuda (Persero), Tbk. with PT. Musita through the International Air Transport Association	*DITINJAU ASAS KEPASTIAN HUKUM DAN KEADILAN*			in the Administrative Court Procedure

		(IATA) that the Plaintiff in his lawsuit should have mentioned or involved or included IATA (International Air Transport Association) in his lawsuit against the Defendant (PT Musita Tour & Travel), but the Plaintiff did not mention or did not involve and include the IATA (International Air Transport Association) and have not implemented justice for PT. Garuda Indonesia, in this case a request from PT. Garuda Indonesia because according to the judges' judgment, the Supreme Court rejected the cassation of PT. Garuda Indonesia Whereas with the mandate delegation from PT. Garuda Indonesia to the Co-Defendants to				

		receive deposits from IATA. PT. Garuda Indonesia with PT. Musita no longer has a legal relationship. However, the panel of judges at the Supreme Court ruled out a direct agreement between PT. Garuda Indonesia and PT. Musita				
2.	Regarding Amel Aulia Haqi / Universitas Indonesia / 2008	1. "interested third parties" as formulated in article 80 of the Criminal Procedure Code, contain abroad termor lack of clear meaning (unplain meaning). Therefore, to determine the definition and definition of "third parties with an interest" in the criminal act of corruption, it must be extracted from the prevailing laws and regulations as well as the doctrines developed in the community. Law	LEGAL STANDING *PIHAK KETIKA YANG BERKEPENTINGAN DALAM PERMOHONAN PRAPERADILAN TINDAK PIDANA KORUPSI*	- Normative Juridical -Legal Standing	This research focuses on the legal standing of parties with an interest in the pretrial applic	The element of renewal in the research carried out is legal standing in question is legal standing of

		Number 31 Year 1999 Concerning the Eradication of Corruption Crime is not clearly regulated regarding the definition and definition of "third parties with an interest". However, Law Number 31 Year 1999 contains provisions regarding the role of the public to actively participate in the prevention and eradication of corruption. Furthermore, in article 1 paragraph (1) of Government Regulation Number 71 of 2000 concerning Procedures for Implementing Community Participation and Giving Awards in the Prevention and Eradication of Corruption, it is stated			ation for corrup tion.	public legal entities. in Admini strative Proced ure Law

		that community participation is the active role of individuals, community organizations, or non-governmental organizations in prevention and eradication asanas of corruption, which are interpreted by many parties as the basis for the legitimate rights of the public, NGOs and OrMas to file a pretrial request for the termination of investigations or prosecution of criminal acts of corruption, as "interested third parties". According to the doctrine, namely the opinion of M. Yahya Harahap in a book entitled Discussion of Problems and Application of the				

		Criminal Procedure Code: Trial Examination, Appeal, Cassation, and Review, Second edition, fifth edition, acknowledges that the wider community can be considered as victims of criminal acts of corruption. so that they can be identified as interested third parties represented by NGOs or CSOs. 2. The obstacle faced by "interested third parties" in submitting a pretrial application for the termination of an investigation or prosecution of a criminal act of corruption is the absence oflegal recognition and legal recognitionof the position of the "interested third party"				

		as stated in the Law. Law on Corruption Eradication. So that often pretrial requests filed by "interested third parties" are perceived by the Respondent (Attorney General of the Republic of Indonesia) and also rejected by District Court Judges, for example, the pretrial petition filed by ICW on the Texmaco case, which the Respondent (RI Attorney General) then excludes. and rejected by the Judge of the South Jakarta District Court. 3. Mechanisms for filing a lawsuit / petition that can be used by "interested third parties" in submitting pretrial applications for the termination of investigations or				

		prosecution of corruption crimes are the organization's legal standing and the right to sue / petition citizens (Citizen Lawsuits / Actio popularis).). This is based on the interpretation of Law Number 31 of 1999 and Government Regulation Number 71 of 2000, which essentially provides opportunities for NGOs / OrMas and every citizen to actively participate in the prevention of corruption eradication and is also based on the two cases that the authors have analyzed, namely the Soeharto case (Decision of the South Jakarta District Court on Pre-trial Application with Case Register Number9 / Pid.Prap / 2006				

		/PN.Jak.Sel,Number10/ Pid.Prap/2006/PN.Jak.Sel. and Number 11 / Pid.Prap / 2006 / PN.Jak.Sel. Dated 12 June 2006). and the case of Sjamsul Nursalim (Decision of the South Jakarta District Court Number 04 / Pid.Prap /2008/PN.Jak.Sel dated May 6, 2008). In both cases, the Judge, in his decision, gave the opportunity to NGOs / OrMas and every citizen (community) to file a pretrial in the capacity as a "third party with an interest" by using themechanismlegal standingorganization'sand the right to sue the right to sue / Request Citizen(CitizenLawsuits / ActioPopularis).				

3.	Teti Adrillah / FACULTY OF LAW REGULAR MANDIRI ANDALAS PADANG UNIVERSITY / 2011	1. The process for resolving election disputes is regulated in Article 74 to Article 79 of Law Number 24 of 2003 concerning the Constitutional Court, Constitutional Court Regulation Number 16 of 2009 concerning Guidelines for proceeding in disputes over the results of general elections for members of DPR, DPD and DPRD, Constitutional Court Regulation Number 17 of 2009 concerning Guidelines for proceeding in disputes over the election results of the President and Vice President. This process includes submission of requests by election participants as interested parties, preliminary	*TINJAUAN YURIDIS* LEGAL STANDING *PEMOHON DALAM PERKARA PERSELISIHAN HASIL PEMILU DI MAHKAMAH KONSTITUSI*	-Legal Standing	This study focused on the legal standing of the petitioners at the Constitutional Court	Elements renewal in research is Legal standing question is the legal standing of a public legal entity under the Criminal Procedure PTUN

		examinations, trial examinations, and decisions. 2. Legal standing is an absolute prerequisite for an applicant to submit a petition to the Constitutional Court. The Petitioner is a legal subject who meets the requirements according to law to submit constitutional cases to the Constitutional Court. Legal standing accepted in requests for dispute over election results is a request from a political party through the General Chairperson or Secretary General of each political party. Political parties are the only applicants who can submit disputes over election results in the Constitutional Court.				

There is a novelty about why this research is interesting to do and book. Whereas it has been mentioned above, there is no identical research that has touched the realm of the State Administrative Court. Moreover, the problem is formulated by case-based researchers, who do not have legal standing in the laws and regulations of the State Administrative Court in Indonesia.

G. Research Methods

Research law is a scientific activity based on methods, systematics, and certain thoughts, which have the aim of studying one or several phenomena of certain laws.[6] A legal researcher must be able to understand legal issues and legal research methods that will be used to systematically analyze the data obtained to reveal or provide conclusions from the results of his research. In this research, research methods and techniques are used which include:

1. Type of research

This research is classified as library research whose data sources are obtained from books related to the selected legal issues. Referring to the background and problem formulations taken, this research is categorized as a normative juridical research. Normative legal research is literature law research.[7] The normative juridical research method is literature law research which is carried out by examining library materials or mere secondary data.[8] The normative juridical approach is an approach that is carried out based on

[6] Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI Press, 2007), 43.

[7] Soejono soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat* (Jakarta: PT Raja Grafindo Persada, 2004), 23-24.

[8] Soerjono Soekanto dan Sri Mahmudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2003), 13.

main legal materials by examining theories, concepts, legal principles and laws and regulations related to this research, namely regarding the legal standing of public legal entities as plaintiffs in the State Administrative Court. . This approach is also known as the literature approach, namely by studying books, laws and regulations and other documents related to the legal standing of a public legal entity as a plaintiff in the State Administrative Court. Normative Juridical Research is a legal research method that is carried out by examining library materials or mere secondary materials.

2. Research Approach

The approach method used in this research is the statute approach and the case approach. This statute approach is an approach that is carried out by examining all laws and regulations related to the legal issue that is being handled.[9] In a normative legal research, it is supposed to use a statutory approach, this is because the problems to be studied are the focus and central theme of this research are various legal rules. So that researchers must see the law as a closed system that has the following properties.[10]

- Comprehensive, meaning that the legal norms in it are logically related to one another. Steps to be taken are searching for and analyzing legal

[9] Peter Mahmud Marzuki, *Penelitian Hukum*, 133.
[10] Jonaedi Efendi, Johnny Ibrahim, *Metode Penelitian Hukum Normatif dan Empiris* (Depok: Prenadamedia Group, 2018), 132.

norms relating to Article 53 Paragraph (1) of Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts.

- All-inclusive, that the collection of legal norms is sufficiently capable of accommodating existing legal problems, so that there will be no legal shortages. Researchers will seek and analyze legal norms relating to Article 53 Paragraph (1) of Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts and will conclude whether the article is able to accommodate legal problems so that there is no legal shortage in it.
- Systematic, that the legal norms, apart from being intertwined with one another, are also arranged hierarchically. Researchers will seek and analyze legal norms relating to Article 53 Paragraph (1) of Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts. Furthermore, the researcher will conclude whether the existing norms are interrelated with each other, and are also systematically arranged.

The Case Approach is carried out by examining cases that have become court decisions, either district or religious courts, which have permanent legal force. In this case the researcher will conduct research with acase approach to the wendit water source dispute case that occurred between

the Malang Regency Government and the PUPR Minister based on the decision of the PTUN (State Administrative Court and PTTUN (State Administrative High Court) which has permanent legal force. .

3. Source material law

Type of legal materials can be divided into three, namely primary legal materials, secondary law, legal materials tertiary. In this study, the authors used a source of law, namely:

a. Legal materials primary

Legal materials primer used consisted of legislation , official records, minutes on the making of legislation and judge decisions. In this study the primary legal materials used are as follows:

1. The Constitution of the Republic of Indonesia in year 1945
2. Law Number 5 of 1986 concerning State Administrative Courts
3. Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Court
4. Decision Number 96/G/2019/PTUN-JKT)

b. Secondary Legal

Materials The main secondary legal material is a book because the book contains basic principles of legal science and the views of experts in the

field of legal science. In this research, the secondary legal materials used are as follows;

1. Scientific books in the field of law

The books in question such as the Procedure for State Administrative Courts (Transformation & Reflection) by Enrico Simanjuntak, Procedure for State Administrative Courts in Indonesia by Dr. H. Zulkarnaen and Dewi Mayaningsih, State Administrative Court Procedure by A. Siti Soetami, and several other books which can be seen in the Bibliography at the end.

2. Scientific papers in the field of legal science

The papers referred to are the Existence of the Makassar State Administrative Court (Study of Islamic State Administration Law) by SukirNumber

3. Scientific journals in the field of legal science

The scientific journal referred to is *PERBEDAAN BADAN HUKUM PUBLIK DAN BADAN HUKUM PRIVAT* by AA Gede DH Santosa, Law of Selling Voting Rights in Pemilukada in the Perspective of Fiqh Siyasi by M. Hasbi Umar.

4. Scientific articles in the field of legal science

The scientific articles referred to as the *MODUL HUKUM ACARA TATA USAHA NEGARA* by the Preparation Team of the Indonesian Attorney's Education and Training Body Module

c. Tertiary Legal

Tertiary legal materials are legal materials that provide instructions and explanations for primary and secondary legal materials. In this research, the tertiary legal materials used include;

1. *Kamus Besar Bahasa Indonesia*
2. Legal Dictionary
3. Internet sites related to the legal standing of public legal entities as plaintiffs in state administrative courts.

4. Methods of Collection of Legal Materials

The technique of collecting legal materials is intended to obtain legal material in research. The technique of collecting legal materials that supports and is related to the presentation of this research is document study (literature study). Document study is a means of collecting legal materials through written legal materials using content analysis. This technique is useful for obtaining a theoretical basis by studying and studying books, laws and

regulations, documents, reports, archives and other research results, both printed and electronic, related to the legal standing of public legal entities as plaintiffs in state administrative courts.

The method of collecting legal materials to be used is to determine legal materials, inventory of legal materials related to research, and study of legal materials.

5. Legal Material Processing Techniques

In this study, the technique used for processing legal materials is editing, namely re-examination of legal materials obtained, especially from their completeness, clarity of meaning, suitability, and relevance to one another. Some of the legal materials that will be processed usingtechniques editing are Law Number 5 of 1986 concerning State Administrative Courts, Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning State Administrative Courts, Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts, and others. After editing. The next step is Systematization, that is, the author will select the legal material, then classify the legal material according to the legal material classification and compile the research data systematically and logically, meaning that there is a relationship and linkage between one legal material and another. Description,

that is, the writer will describe the results of his research based on the legal material obtained and then analyze it.

6. Methods of Analysis of Legal Materials

Secondary data containing legal materials are then analyzed and reviewed which then draws a conclusion on the results of the study. The method of analysis of legal materials used in this research is descriptive and prescriptive.

a. Descriptive

This descriptive analysis is intended to provide an overview or explanation of the legal standing of public legal entities in terms of Article 53 Paragraph (1) of Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts against case Number 96/G/2019/PTUN-JKT) according to the results of the research conducted.

b. Perspective

Analysis of this perspective is intended to provide arguments for the results of the research that has been done. This argument is to provide a perspective or an assessment of knowing right or wrong according to the law from the results of the research. The perspective used is Siyasah Qadhaiyyah. This is considered relevant, because this perspective works to analyze the mechanisms and objectives of the judiciary.

H. Systematics of the discussion

To get a clear picture of the direction and purpose of writing this thesis, in general, the systematics of this thesis can be described as follows:

CHAPTER I: Introduction which contains a brief description of the contents of the thesis consisting of Background, Problem Limitation, Problem Formulation, Research Objectives, Research Benefits, Operational Definitions, Prior Research, Theoretical Framework, Research Methods and Writing Systematics.

CHAPTER II: Literature Review, it contains the theories used in dissecting research problems. It contains an overview of the State Administrative Court, the Procedural Law of the State Administrative Court, Public Legal Entities, Legal Standing, and Siyasah Qadhaiyyah.

CHAPTER III: Research and Discussion where the author will describe and discuss: 1. the legal standing of public legal entities in terms of Article 53 Paragraph (1) of Law no. 51 of 2009 concerning the Second Amendment to Law no. 5 of 1986 concerning the State Administrative Court on case no. 96/G/2019/PTUN-JKT. 2. The view of the concept of Siyasah Qadhaiyyah on the legal standing of public legal entities in Article 53 Paragraph (1) of Law no. 51 of 2009 concerning the Second Amendment to Law no. 5 of 1986 concerning the State Administrative Court in case no. 96/G/2019/PTUN-JKT.

CHAPTER IV: Closing, which contains conclusions and suggestions related to the problem under study.

CHAPTER II

LITERATURE REVIEW

A. Overview of State Administrative Courts (PTUN)

1. Definition of State Administrative Court Institutions

According to KBBI the judiciary is everything about court cases: legal institutions have the duty to improve.[11] In the state administration in Indonesia, the State Administrative Court Institution (hereinafter referred to as the PTUN Institution) is a judicial institution under the auspices of the Supreme Court domiciled in a Regency or City. In article 1 number 1 Law Number 5 of 1986, as amended for the second time by Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1968 concerning State Administrative Courts, state administration is state administration that carries out functions to carry out government affairs, both at the central and regional levels. As a judicial institution, the PTUN Institution functions to examine and decide on the settlement of state

[11] Kamus Besar Bahasa Indonesia

administration disputes. The PTUN institution was formed based on a Presidential Decree with relative competence covering regencies or cities.[12] The organizational structure in the PTUN Institution consists of the Chairperson (Chairperson and Deputy Chairperson of the PTUN), Member Judges, Registrars, and secretaries. To date, there are 28 PTUN institutions spread throughout Indonesia.[13]

It is explained in Law 5 of 1986 concerning PTUN that the State Administrative Court is one of the executors of judicial power for people seeking justice against State Administrative disputes. Thus it can be seen that the State Administrative Court is a judicial institution that is tasked with resolving cases or disputes related to State Administrative Decrees issued by State Administrative bodies or officials.[14]

2. Legal basis for the PTUN Institution

It is regulated in the 1945 Constitution Article 24 Paragraph (2) that judicial power is exercised by a Supreme Court and judicial bodies under it in the environment of general courts, religious courts, and military courts. State administrative court environment and a constitutional court. The legal basis

[12] Zulkarnain, Dewi Mayaningsih, *HUKUM ACARA PERADILAN TATA USAHA NEGARA DI INDONESIA* (Bandung:PUSTAKA SETIA Bandung, 2018), 2.
[13] Priyan Afandi, *Kewenangan Peradilan Tata Usaha Negara Dalam Sengketa Pemilihan Kepala Daerah Yang Bersifat Administratif*, (Skripsi. Fakultas Hukum Universitas Lampung, 2017).
[14] Sukirno. *Eksistensi Pengadilan Tata Usaha Negara Makassar (Telaah atas Pemikiran Hukum Ketatanegaraan Islam*), (Skripsi.Jurusan Hukum Pidana dan Ketatanegaraan Fakultas Syari‟ah dan Hukum Uin Alauddin Makassar, 2018).

that underlies the existence of a PTUN is Law Number 14 of 1970 concerning the Basic Provisions of Judicial Power jo. Law Number 35 Year 1999 Article 10, namely:

a. General

b. Courts Religious

c. Courts Military

d. Courts State Administrative Courts

Each of these courts has its own authority to examine and adjudicate cases according to its absolute competence and its judicial bodies include first-level judicial bodies and secondly, all of whom support the Supreme Court.

To implement the provisions contained in Article 10 of Law Number 14 of 1970, Law Number 5 of 1986 concerning State Administrative Courts was formed. After the promulgation of the Law, it has not been implemented for 5 years until the issuance of Government Regulation number 7 of 1991 concerning the Application of Law Number 5 of 1986 concerning State Administrative Courts on January 14, 1991.

Law Number 5 of 1986 concerning Administrative Courts The State Enterprises was then amended by Law Number 9 of 2004. The reason for the change was because Law Number 5 of 1986 was no longer in accordance with the development of the legal needs of the community and state administration according to the 1945 Constitution of the Republic of Indonesia and for the

implementation of judicial powers be independent and enforce law and justice [15]. then amended again by Law Number 51 of 2009 for the same reasons.

3. Authority and Functions of the PTUN Institution

The authority of the PTUN Institution can be seen in article 47 of Law Number 5 of 1986 concerning State Administrative Courts which states that: The court has the duty and authority to examine, decide, and resolve State Administrative disputes. From the provisions of this article, it can be concluded that the State Administrative Court has a judicial function.[16]

To be able to carry out the main tasks and authority of the PTUN has several functions, including:

a. Providing judicial technical services and clerkship administration for first-level cases and implementation of decisions (execution)

[15] Wiyono, *Hukum Acara Peradilan Tata Usaha Negara*, (Jakarta: Sinar Grafika, 2014), 6-16.
[16] A. Siti Soetami, *HUKUM ACARA PERADILAN TATA USAHA NEGARA*, (Bandung: Refika Aditama, 2019) , 9.

b. Providing services in the administration of cases of appeal, cassation and review as well as other judicial administration
c. Providing general administrative services to all elements within the State Administrative Court (general, personnel and financial except for court fees)
d. Provide information, considerations and advice on State Administrative Law to Government Agencies in their jurisdiction, if requested as regulated in Law Number 51 of 2009 concerning State Administrative Court
e. Carry out other service tasks such as research / research services and so on.[17]

Because the judiciary has several of these powers, the judiciary is responsible for carrying out its duties properly. as we know in the concept of public law, that legal accountability is closely related to the use of authority, which then gave birth to the principle of "*geen bevoegdheid zonder verantwor-delijkheid*, there is no authority without responsibility,is, there is no authority without that accountability.[18]

The existence of a PTUN is one of the characteristics of the rule of law concept which, according to Julius Stahl, is referred to as "*rechsstaat*". The rechstaat itself includes four important elements, namely; (1) Protection of

[17] Undang-Undang Nomor 51 Tahun 2009 tentang Peradilan Tata Usaha Negara.
[18] Ridwan, *Tiga Dimensi Hukum Adminitrasi Negara dan Peradilan Administrasi Negara,* (Yogyakarta: FH UII Press, 2009), 51.

Human Rights, (2) Distribution of Power, (3) Government based on Law and (4) State Administrative Court.[19] The presence of the State Administrative Court (PTUN) has the function of providing constitutional protection for citizens from state abuse through decisions of state officials. As Supandi explains that, Administrative Courts (Peratun) are held in order to provide protection (based on justice, truth, order and legal certainty) to people who seek justice who feel that they are being harmed by a state administration decision (state administration), through examination, decision and settlement of disputes in the field of state administration.[20]

4. PTUN competence

Competence is the authority (power) to determine (decide something).[21] Court competence is the authority of the court to examine, adjudicate and decide a case relating to the types and levels of courts that exist based on the prevailing laws and regulations.

The competence of the State Administrative Court consists of:

[19] Jimly Asshiddiqie, *Hukum Tata Negara dan Pilar-Pilar Demokrasi*, (Jakarta: Konstitusi Perss, 2005), 154.

[20] Supandi, *Hukum Peradilan Tata Usaha Negara, Kepatuhan Hukum Pejabat dalam Mentaati Putusan Pengadilan Tata Usaha Negara,* (Medan: Penerbit Pustaka Bangsa Pers, 2011), 76.

[21] Departemen Pendidikan dan Kebudayaan, Kamus Besar Bahasa Indonesia, (Edisi Kedua, Balai Pustaka, 1994), 516.

1. Absolute competence, which concerns the authority of the judicial body to examine, hear and decide a case (see Article 18 of Law Number 48/2009).
2. Relative competence is the authority of a similar court which has the authority to examine, hear and decide the case concerned (see Article 54 of the Law).

B. Overview of Administrative Court Procedure

1. Definition of Administrative Court Procedure

According to Rozali Abdullah, State Administrative Court Procedure Law is a series of regulations that contain how people should act, with one another to carry out the implementation of State Administrative Law (State Administrative Law).[22]

The Administrative Court Procedure Law regulates the methods for disputes in the State Administrative Court and regulates the rights and obligations of the parties involved in the dispute resolution process. According

[22] Rozali Abdullah, *Hukum Acara Peradilan Tata Usaha Negara*, (Jakarta: Raja Grafindo Persada, 1994) 1-2.

to Sjachran Basah, PTUN's procedural law is formal law, because it is one of the elements of the judiciary, as well as the material law.[23]

2. Principles of Administrative Court Procedure

As well as material law and other formal law, there are several legal principles contained in the Procedural Law of State Administrative Courts. [24]

a. The principle of presumption of *rechtmatig*, every governmental action is always considered rechtmatig until there is cancellation (see Article 67 paragraph (1) and paragraph (4) letter a UUPTUN).

b. The principle of the parties must be heard.

c. The principle of procedural unity.

[23] Sjachran Basah, *Hukum Acara Pengadilan Dalam Lingkungan Peradilan Administrasi (HAPLA),* (Jakarta: Rajawali Pers, 1989), 1.

[24] J.J.H. Bruggink, *Refleksi Tentang Hukum*, (Bandung: Citra Aditya Bakti, 1996), 119-120.

d. The principle of the administration of judicial power that is independent and free from all kinds of interference by the powers (Article 3 paragraphs (1) and (2) of Law Number 48/2009).

e. The principle of justice is carried out simply, quickly, and at low cost (Article 4 paragraph (2) of Law Number 48/2009).

f. The principle of active judges (Articles 58, 62, 63, 80, 83 UUPTUN).

7. The principle of open trial to the public (Article 13 paragraph (1) Law Number 48/2009 and Article 70 UUPTUN).

g. The principle of tiered justice.

h. The principle of court as a last resort to obtain justice (Article 48 UUPTUN).

i. The principle of objectivity (Articles 78, 79 UUPTUN)

Meanwhile, Satjipto Rahardjo said that the principle of law is the heart of legal regulations.[25] From this opinion, we can understand that legal principles have an important role in legal regulation. The rule of law without the principle of law is like a living being without a heart. So that the existence of a legal principle in the procedural law of PTUN is very important to make it easier for justice seekers to get justice.

[25] Satjipto Rahardjo, *Ilmu Hukum*, (Bandung: Alumni, 1986), 85.

3. Characteristics of Administrative Law Procedures

The main characteristic that distinguishes TUN Judicial Procedure Law in Indonesia from Civil Procedural Law or Criminal Procedure Law is that the procedural law is jointly regulated by the material law, namely in Law Number 5 of 1985 in conjunction with Law Number 9 of 2004, jo Law Number 51 Year 2009 (State Administrative Court Law). Apart from the aforementioned main characteristics, there are several special characteristics that characterize the Procedural Law of State Administrative Courts, namely, among others, the following;

a. Judges play a more active role in the trial process, in order to seek material truth. The activeness of judges can be found, among others, in the provisions of Article 63 paragraph (2) points a and b, Article 80, Article 85, Article 103 paragraph (1), Article 107.The
b. proof system leads to limited free evidence (vrijbewijs) (Indroharto, 1996: 189). According to Article 107 the judge can determine what must be proven, the burden of proof, along with the evaluation of proof, but Article 100 determines in a limited way what evidence is used.
c. The lawsuit in the State Administrative Court does not delay the Implementation of the State Administrative Decree being challenged (vide

Article 67). This is related to the adoption of the Presumtio Justae Causa principle in State Administrative Law, which means that a State Administration Decree must always be considered true and can be implemented, as long as there is no Court Decision that has permanent legal force which states otherwise. However, if there is an urgent enough interest for the Plaintiff, at the request of the Plaintiff, the Chief Justice or the Panel of Judges may issue an interim decision regarding the postponement of the implementation of the disputed TUN decision.

d. The principle of erga omnes applies to the verdict of the TUN Court Judge, meaning that the decision does not only apply to the disputing parties but also applies to other related parties.
e. In the process of examination in court, the principle of audi alteram partem applies, namely that the parties involved in the dispute must be given the same opportunity to hear their explanations before the judge gives a verdict.
f. It is possible for a trial in absentia (without the Defendant's presence) as regulated in article 72 paragraph (2).
g. The existence of convenience for people who seek justice, among others:

1. For those who are not good at reading and writing are assisted by court clerks in formulating their claims.
2. For those of the disadvantaged group, they are given the opportunity to have proceedings for free.

3. If there is an urgent enough interest for the plaintiff, at the request of the plaintiff, the Chairman of the Court is authorized to judge him.
4. The plaintiff can submit his lawsuit to the TUN Court closest to his place of residence to then be forwarded to the Court which has the authority to try him.
5. TUN bodies or officials who are summoned as witnesses are obliged to come in person.
6.

4. Sources of Administrative Procedure

a. Material Sources

According to Zevenbergen[26] material sources of law include notions of legal principles, previous laws that provide materials on current law, and as sources of law. Apart from that, what determines the procedural law for the administrative officers are the principles of law related to the administration of justice which are adjusted to the characteristics of the administrative law for the administrative officers and serve as the legal principles for the administrative officers. The principles and material of the administrative law

[26] Arief Hidayat, "*Negara Hukum Pancasila (Suatu Model Penyelenggaraan Negara), Pro-siding Kongres Pancasila IV: Strategi Pelembagaan Nilai-Nilai Pancasila dalam Menegakkan Konstitusionalitas Indonesia",* PSP UGM, (Yogyakarta: 31 Mei-01 Juni 2012), 33.

in its making were influenced by the theory or teaching of law, especially the theory of administrative law and public law in general.

From the material aspect, to find out the source of the administrative law procedural law, it must be seen from where the material provisions on the procedural law were taken or what things affect the material provisions of the administrative law procedures. Administrative law material sources include government practices, judicial practices, and the doctrines of legal experts. According to HAS Natabaya,[27] the doctrine to be accepted as a source of law takes a long time because the doctrine still needs to be proven by other legal experts and the doctrine can be accepted by the public.

b. Formal sources

Formal sources of law are the places or sources from which a rule obtains legal force. Procedural law or in Sjachran Basah's[28] term as formal law is part of public law, the essence of formal law is as a means or publiekrechtelijk instrumentarium for material law enforcement. This is related to the form or method that causes the regulation to become formally applicable. In the introduction to legal science it has been studied that norms

[27] H.A.S Natabaya, *Pembahasan Perkembangan Pembangunan Nasional tentang Hukum Tata Negara dan Administrasi Negara,* (Jakarta: Badan Pembinaan Hukum Nasional, 1998), 37-39.

[28] Sjachran Basah, *Menelaah Liku-Liku Rancangan Undang-Undang Nomor … Tahun 1986 tentang Peradilan Tata Usaha Negara,* (Bandung: Alumni, 1992), 78.

or rules consist of various kinds with their respective characteristics. Legal norms are characterized by enforceable binding power and external sanctions. A norm to become a legal norm must go through a certain way and have a certain form. From this form, it can be seen that a rule is a law and not a moral, religious or other norm. Because of this form, these rules become applicable and binding on all parties (*erga omnes*). In order to find out the source of the procedural law for Peratun, of course it can also be approached from a material and formal aspect.[29]

C. Overview of Public Legal Entities

1. Definition of Legal Entities

The term legal entities is commonly known and used in social interactions in the community, including in various legal traffic. Legal entities are legal subjects other than humans as legal subjects. In Dutch, a legal entity as a legal subject is a translation from rechtspersoon for humans as a legal subject for translation from natuurlijke persoon, meanwhile in English literature a legal entity as a legal subject is called legal person, while natural person is translated as a human being as a legal subject.[30]

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[29] Enrico Simanjuntak, *HUKUM ACARA PERADILAN TATA USAHA NEGARA TRANSFORMASI & REFLEKSI,* (Jakarta: Sinar Grafika, 2018), 58.

[30] A.A. Gede D. H. Santosa "*PERBEDAAN BADAN HUKUM PUBLIK DAN BADAN HUKUM PRIVAT,*" Vol. 5 No. 2, Agustus (2019): http://dx.doi.org/10.23887/jkh.v5i2.18468

The term legal entity can be found in various laws and regulations that have been in effect and are still in effect today so that the term legal entity is an official term. The laws and regulations that mention the term legal entity include, among others, Perpu Number 19 of 1960 concerning State Companies, Law Number 40 of 2007 concerning Limited Liability Companies, Law Number 16 of 2001 concerning Foundations and Amendments to Law Number 28 of 2004, Law Number 25 of 1992 concerning Cooperatives, Law Number 5 of 1960 concerning Basic Agrarian Regulations, Law Number 24 of 2003 concerning the Constitutional Court.[31]

2. Definition of Public Legal Entities Public Legal

Entities (*publiekrecht*), namely legal entities established under public law or legal entities that regulate the relationship between the state and / or its apparatus and citizens concerning the public / public interest, such as criminal law, constitutional law, state administrative law. , international law and so on.[32]

[31] A.A. Gede D. H. Santosa "*PERBEDAAN BADAN HUKUM PUBLIK DAN BADAN HUKUM PRIVAT,*" Vol. 5 No. 2, Agustus (2019): http://dx.doi.org/10.23887/jkh.v5i2.18468

[32] "Badan Hukum Publik," Wikipedia, diakses pada 2 April 2021, https://id.wikipedia.org/wiki/Badan_hukum#:~:text=Badan%20Hukum%20Publik%20(publiekrecht)%20yaitu,negara%2C%20hukum%20international%20dan%20lain

Man. S. Sastra Widjaja (2005) provides criteria for determining whether a legal entity is a public legal entity and a private legal entity (called a civil legal entity), namely:

1. Based on the occurrence, or based on its founder, this means that if the legal entity is for its establishment, the provisions of public law apply. or established by a general authority the legal entity is a public legal entity, but if the legal entity is established by an individual so that the provisions of civil law apply, the legal entity is a private legal entity;
2. Employment field, meaning that if the employment of a legal entity is for the public interest, including a public legal entity, if the job is for the benefit of an individual or a group of people is a private legal entity (Widjaja, 2005).[33]

D. Overview of Legal Standing

a. Definition of Legal Standing

Legal standing is a condition in which a certain person or party meets the requirements and has the right to submit an application or lawsuit to the court. According to the online legal dictionary the definition and meaning of

[33] A.A. Gede D. H. Santosa "*PERBEDAAN BADAN HUKUM PUBLIK DAN BADAN HUKUM PRIVAT,*" Vol. 5 No. 2, Agustus (2019): http://dx.doi.org/10.23887/jkh.v5i2.18468

the word Legal Standing is the authority to act as a legal subject in carrying out a legal act.[34]

According to the explanation of Article 53 Paragraph (1) paragraph (1) of the PTUN Law, those who have the Legal standing to file a lawsuit at the State Administrative Court are individuals or civil legal entities who feel that their interests have been harmed by a State Administrative Decree can file a lawsuit. The person in question is the definition of a person in the natural sense. So far, based on Article 53 Paragraph (1) Paragraph (2) Law Number 9 of 2004 concerning State Administrative Courts leads to an interpretation of the meaning of legal losses. The PTUN judge in constructing a legal loss is based on the fact that there is a direct loss, based on the principle of causality and causing real losses. meaning that if there is a State Administrative Decree that has the potential to cause harm, then the State Administrative Decree can be sued in court even though the loss is not real and is not direct. State Administrative Decrees also have the potential to cause harm to parties other than individuals and civil legal entities. decisions that apply to citizens or

[34] Marzha Tweedo, "Kamus Hukum Online Indonesia," diakses pada 13 April 2021, https://kamushukum.web.id/search/legal

groups have aopportunity legal standing to file a lawsuit at the State Administrative Court.[35]

E. Overview of the concept of Siyasah Qadha'iyyah

1. Definition of Siyasah

The word siyasi, is taken from an Arabic word which means regulating, managing, controlling state affairs, improving human conditions and affairs and regulating the affairs of a country it comes from the words sasa, yasusu and then becomes siyasah. At first, Siyâsah is an effort or effort to achieve or solve a problem. It also means a management related to the government, such as the rulers regulating and managing the people to realize benefit and also regulate the affairs of community life.[36]

Fiqh siyasah is one aspect of Islamic law that discusses the regulation and management of human life in a state in order to achieve benefit for humans

[35] Tim Penyusun Modul Badan Diklat Kejaksaan R.I, "*MODUL HUKUM ACARA TATA USAHA NEGARA"* (Jakarta: Kepala Badan Diklat Kejaksaan R.I, 2019), http://badiklat.kejaksaan.go.id/e-akademik/uploads/modul/d89c98015549a65975dc8918b3d096df.pdf

[36] M. Hasbi Umar, "*Hukum Menjual Hak Suara Pada Pemilukada Dalam Perspektif Fiqh Siyasi*," Vol. XII, No. 2 Desember (2018) (Jurnal AL-„ADALAH).

themselves. In this siyasah fiqh, mujtahid scholars explore the sources of Islamic law, which is contained therein in relation to state and community life.

2. Siyasah Qadha'iyyah

Judicial institutions in fiqh siyasah are known as Qadha'iyyah which comes from the word al-qadha, namely a judicial institution formed to handle cases that require a ruling based on Islamic law. According to linguistic knowledge, the meaning of qaḍa includes completing, fulfilling, and deciding laws or making a provision. This latter meaning is used in this context. In terms of the term jurisprudence expert, qaḍa means legal institutions and words that must be obeyed, uttered by someone who has a common area or explains religious law on the basis of requiring people to follow it.[37]

According to Muhammad Salam Madkur, qaḍa is called a judge because he prohibits the perpetrator from unfair acts because of the various meanings of the word qaḍâ`, so it can be used in the sense of deciding a dispute by a judge. The person who does it is called qadhi. According to jurisprudence experts, the sharia terminology of the word qaḍa is to decide disputes and avoid differences and conflicts. With the above definition, it can be said that the task of qaḍa (judicial institution) is to reveal religious law, not to stipulate a law, because the law already exists in matters faced by judges. The judge

[37] Saiful Aziz, *Posisi Lembaga Peradilan Dalam Sistem Pengembangan Hukum Islam*, (Semarang: Fakultas Agama Islam Universitas Wahid Hasyim Semarang, 2016)

only applies it to the real world, not establishes something that doesn't exist yet.[38]

3. The role of the siyasah Qadha'iyyah

The judiciary has a very important role, so the sunnah of the Prophet SAW displays the hadiths that turn people away from qadla 'and away from it, with the aim of keeping people who want to interfere in this matter, even though he is not an expert, either it is a pious person who perverts or a fool who does not have the ability to properly implement his legal decisions on the cases that occur. That Sayyidah Aisyah said: "I have heard Rasulullah SAW say that on the Day of Judgment, the fair Qaḍi (judge) will be brought in, then because of the severity of the examination, he imagines, (it would be nice if) he never decided the law between two people (disputing) about a fruit altogether, and so forth from the hadiths and aṡar-aṡar that frightens (people involved in) the judiciary.[39]

Judicial institutions have pillars that must be in place, namely:

[38] Saiful Aziz, Posisi Lembaga Peradilan Dalam Sistem Pengembangan Hukum Islam, (Semarang: Fakultas Agama Islam Universitas Wahid Hasyim Semarang, 2016)

[39] Saiful Aziz, Posisi Lembaga Peradilan Dalam Sistem Pengembangan Hukum Islam, (Semarang: Fakultas Agama Islam Universitas Wahid Hasyim Semarang, 2016)

a. Judges, namely people appointed by the authorities to settle charges because the cleric is unable to complete all these tasks by himself
b. Law, a qahdi product decision to resolve disputes and decide the dispute of
c. Al-Mahkum bih, namely the right if the qahdi al-ilzam is the stipulation of qahdi on the defendant by fulfilling the plaintiff's mandate what is his right while qahdi al-tarki (refusal) is the rejection of
d. Al-Mahkum alaih's claim, that is, the person who is subject to a verdict on Al-Mahkum is the plaintiff a rights that are solely human rights.[40]

4. The function of siyasah Qadha'iyyah

As a state institution that is assigned to settle and resolve every case fairly, the judiciary functions to create public order and peace that is fostered through upholding the law. The establishment of judicial institutions in politics is intended to realize in the midst of public life has been mentioned that a state, judicial institutions to enforce law in the territory of the state or as a medium to implement Islamic teachings in the field of law enforcement and protection.

The judiciary in politics is tasked with resolving disputes and deciding the law with God's justice in order to maintain balance and peace in society. The foundation and function of the judiciary is the maintenance of legal

[40] Alaiddin Kato, *Sejarah Peradilan Islam,* (Jakarta: PT. Raja Grafindo Persada, 2011), 13-14.

certainty, the judiciary in politics has the main function to create order, security and peace in society through law enforcement and justice. In addition, to create the welfare of the people by maintaining the law of God. Therefore, justice in politics has a very noble function, including reconciling the two disputing parties guided by the law of God, setting sanctions and implementing them for every act that violates the law.

In carrying out the functions of the Judicial Institution, the judge in the trial must consider the existing evidence and then weigh the evidence to then give a verdict that is as fair as possible for the seekers of justice. The Qur'an and the Sunnah have provided the basis for judges to be fair to all parties, namely the seekers of justice. Here are some verses of Al-qu'an and Al-sunnah (hadith of the Prophet) related to law enforcement.

1. Al-Qur'an Surah An-Nisa: 58[41]

إِنَّ اللَّهَ يَـأْمُرُكُمْ أَنْ تُـؤَدُّوا الْأَمَانَـاتِ إِلَـى أَهْـلِهَـا وَإِذَا حَكَمْـتُمْ بَـيْنَ النَّـاسِ أَنْ تَحْكُمُـوا بِالْعَدْلِ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا

Means: "Verily, Allah ordered you to deliver trusts to their owners , and when you judge between men, you judge with justice. Indeed, Allah is the Best to teach you. Indeed, Allah is All-Hearing, All-Seeing. " (QS An-Nisa: 58)

[41] Tim Penerjemah, *Al-Qur'an dan Terjemahannya*, (Jakarta: Lentera Optima Pustaka, 2011), 88.

2. Al-Qur'an Surah An-Nisa: 135[42]

يَـا أَيُّهَـا الَّـذِينَ آمَنُـوا كُونُـوا قَـوَّامِينَ بِالْقِسْـطِ شُـهَدَاءَ لِلَّهِ وَلَـوْ عَلَـى أَنْفُسِـكُمْ أَوِ الْوَالِـدَيْـنِ وَالْأَقْـرَبِينَ إِنْ يَكُـنْ غَنِيًّـا أَوْ فَقِيـرًا فَـاللَّهُ أَوْلَـى بِـهِمَـا فَـلَا تَتَّبِعُـوا الْهَـوَى أَنْتَعْـدِلُواوَإِنْ تَلْـوُوا أَوْ تُعْرِضُوا فَإِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا

Means : "O you who believe, Be you the enforcers of justice, be a witness for the sake of God, even against yourself or against your parents and your relatives. If he (the accused) is rich or poor, then God knows best So do not follow your lusts to deviate from the truth. And if you distort (the facts) or refuse to bear witness, then surely Allah is Aware of what you do. " (QS An-Nisa: 135).

3. Al-Qur'an Surah al-Maidah: 8[43]

يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ لِلَّهِ شُهَدَاءَ بِالْقِسْطِ وَلَا يَجْرِمَنَّكُمْ شَنَآنُ قَوْمٍ عَلَى أَلَّا تَعْدِلُوا اعْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَى وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ خَبِيرٌ بِمَا تَعْمَلُونَ

Means: "O you who believe! Be upholders of justice for the sake of Allah, when you bear witness with justice, and do not let your hatred of a people incite you to act unjustly. Be just, for it is nearer to piety, and fear

[42] Tim Penerjemah, *Al-Qur'an dan Terjemahannya*, (Jakarta: Lentera Optima Pustaka, 2011), 135.

[43] Tim Penerjemah, *Al-Qur'an dan Terjemahannya*, (Jakarta: Lentera Optima Pustaka, 2011), 109.

Allah. Indeed, Allah is Allah. Be careful of what you do. " (QS Al-Maidah: 8).

4. Al-Qur'an Surah al-Maidah: 42[44]

سَمَّاعُونَ لِلْكَذِبِ أَكَّالُونَ لِلسُّحْتِ فَإِنْ جَاءُوكَ فَاحْكُمْ بَيْنَهُمْ أَوْ أَعْرِضْ عَنْهُمْ وَإِنْ تُعْرِضْ عَنْهُمْ فَلَنْ يَضُرُّوكَ شَيْئًا وَإِنْ حَكَمْتَ فَاحْكُمْ بَيْنَهُمْ بِالْقِسْطِ إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ

Meaning: "They are listeners to lies and If they come to you, judge them or turn away from them, and if you turn away from them, they will not harm you in the least. But if you want to judge. So judge with justice. Lo! Allah loveth those who do justice. (QS Al-Maidah: 42).

5. Al-Qur'an al-an'am: 152[45]

وَلَا تَقْرَبُوا مَالَ الْيَتِيمِ إِلَّا بِالَّتِي هِيَ أَحْسَنُ حَتَّى يَبْلُغَ أَشُدَّهُ وَأَوْفُوا الْكَيْلَ وَالْمِيزَانَ بِالْقِسْطِ لَا نُكَلِّفُ نَفْسًا إِلَّا وُسْعَهَا وَإِذَا قُلْتُمْ فَاعْدِلُوا وَلَوْ كَانَ ذَا قُرْبَى وَبِعَهْدِ اللَّهِ أَوْفُوا ذَلِكُمْ وَصَّاكُمْ بِهِ لَعَلَّكُمْ تَذَكَّرُونَ

Meaning: "And do not approach the property of an orphan, except in a better way, until he reaches adulthood. And perfect the measure and the balance justly. We do not burden a person except according to his ability. And when you speak, speak justly, even if he is a relative, and fulfill the promise of Allah. That is what Allah has commanded you that you may remember. " (Surat al-An'am: 152).

[44] Tim Penerjemah, *Al-Qur'an dan Terjemahannya*, (Jakarta: Lentera Optima Pustaka, 2011), 116.

[45] Tim Penerjemah, *Al-Qur'an dan Terjemahannya*, (Jakarta: Lentera Optima Pustaka, 2011), 150.

6. Al-Hadith about the various judges [46]

القضاة ثلاثة : اثنان فى النار و واحد فى الجنة، رجل علم الحق فقضى به فهو فى الجنة و رجل قصة للناس على جهل فهو فى النار و رجل حار فى الحكم فهو فى النار (رواه ابن ماجه)

In the hadith, the Prophet said, the Judge has three kinds: two (kinds) go to hell, one (kind) go to heaven. As for the judge who enters heaven is the judge who knows the truth and then decides the matter with that truth. while a judge who is foolish and decides things with his foolishness goes to hell. And a judge who knows the truth but does not decide matters with that truth goes to hell.

7. Hadith about the judge who tried his[47]

إِذَا حَكَمَ الْحَاكِمُ فَاجْتَهَدَ ثُمَّ أَصَابَ فَلَهُ أَجْرَانِ، وَإِذَا حَكَمَ فَاجْتَهَدَ ثُمَّ أَخْطَأَ فَلَهُ أَجْرٌ(رواه ابن ماجه)

In this hadith the Prophet said, if a judge later tried his true ijtihad then he gets two rewards, and if a judge makes ijtihad and it turns out that his ijtihad is wrong then he gets a reward.

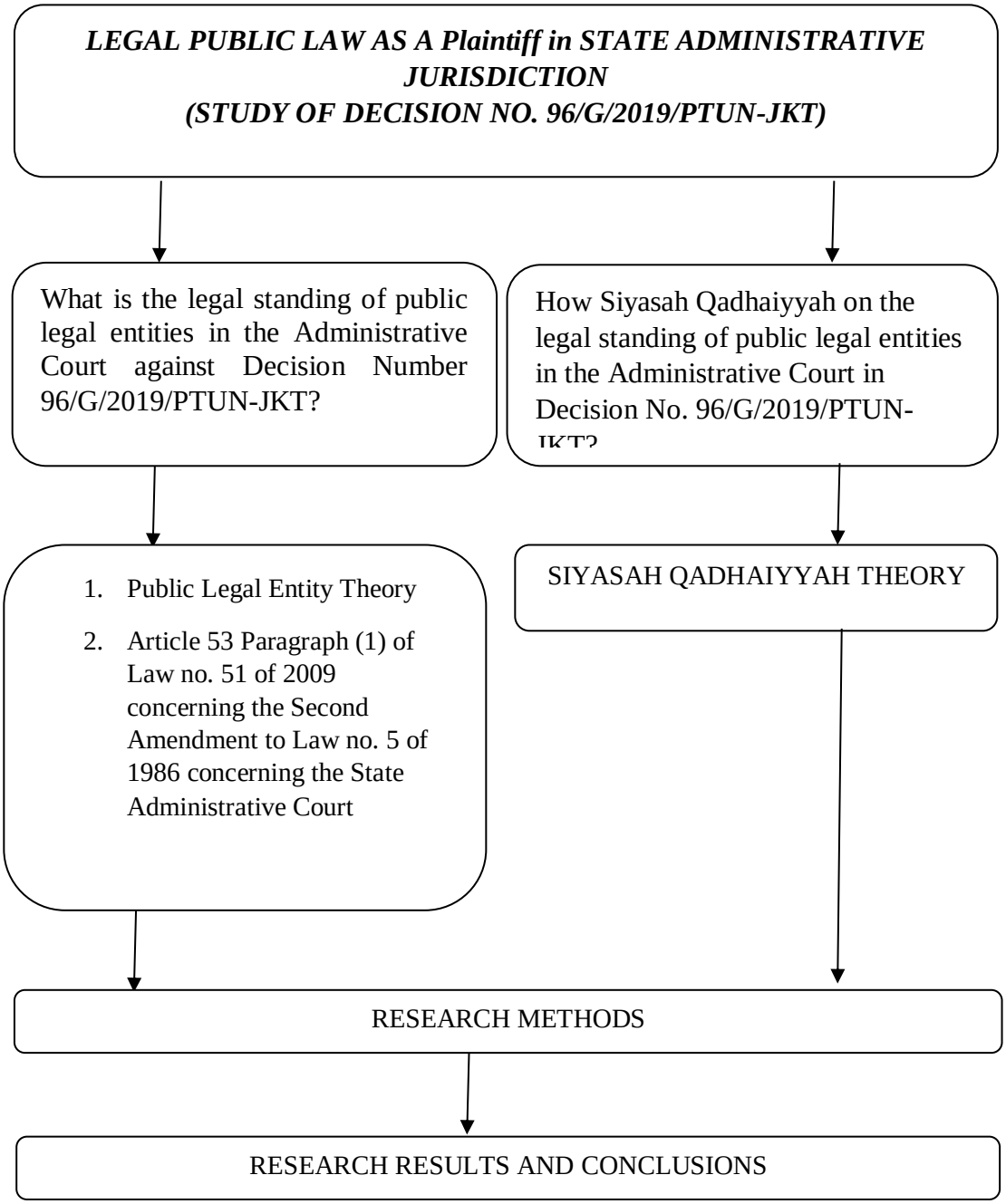
From the explanation of some verses and hadiths above we can take some important points in law enforcement, namely:

1. Establish the law fairly

[46] Majah, *Sunan Ibnu Majah*, (Baitul Afkar Dauliyyah), hadits No. 2315, 249.
[47] Majah, *Sunan Ibnu Majah*, (Baitul Afkar Dauliyyah), hadits No. 2314, 249.

2. Be a witness because of God
3. Fair to anyone such as yourself, both parents, relatives, rich people or poor.
4. Do not follow lust because they want to deviate from the truth
5. Threats to unjust behavior
6. Do not because hatred of a race makes it unfair
7. Be fair not only to people who are Muslims, but to all followers of religions other than Islam such as people who are Jewish.
8. Judges get a reward if they perform ijtihad

F. Framework of thinking



CHAPTER III

RESEARCH RESULTS AND DISCUSSION

A. Public Legal Entity According to Article 53 Paragraph (1) of Law Number 51 of 2009 on the Second Amendment to Law Number 5 of 1986 on the State Administrative Court against Decision Number 96/G/2019/PTUN-JKT

To understand how thestatus legal of public legal entities according to Article 53 Paragraph (1) of Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 on State Administrative Justice needs to understand how the Law is made and what changes have taken place to the Law. There are several considerations behind the formation of Law Number 5 of 1986 on State Administrative Justice, one of which is that; The Republic of Indonesia as a state of law based on Pancasila and the 1945 Constitution aims to realize a prosperous, secure, peaceful, and prosperous state and nation, which guarantees the equal position of citizens in law and ensures the maintenance of harmonious, balanced, and harmony between the apparatus in the field of state administration with the citizens. The realization of this way of life, by filling independence through national and gradual development, is sought to build, improve, and discipline the apparatus in the field of state administration, in order to be able to be an efficient, effective, clean, and

authoritative tool, which in carrying out its duties, always based on the law based on the spirit and attitude of devotion to society.[48]

The PTUN law has been changed twice. The first change is Law Number 9 of 2004 on Amendments to Law Number 5 of 1986 concerning State Administrative Courts. A total of 39 articles were changed/deleted in the change. There are several considerations in the formation of the Law. One of them states that; State administrative court as regulated in Law Number 5 of 1986 on State Administrative Justice is no longer in accordance with the development of the needs of the legal community and constitutional life according to the Constitution of the Republic of Indonesia in 1945.[49]

The second amendment is Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts. During the changes, to article 53 Paragraph (1) underwent a change in the sound of the article. Article 53 of Law Number 5 of 1986 on State Administrative Justice reads; A person or civil legal entity whose interests are affected by a State Administrative Decision may file a written lawsuit to the competent Court containing a demand that the disputed State Administrative Decision be declared void or invalid, with or without a

[48] Zulkarnain, Dewi Mayaningsih, *HUKUM ACARA PERADILAN TATA USAHA NEGARA DI INDONESIA* (Bandung:PUSTAKA SETIA Bandung, 2018), 23.
[49] Zulkarnain, Dewi Mayaningsih, *HUKUM ACARA PERADILAN TATA USAHA NEGARA DI INDONESIA* (Bandung:PUSTAKA SETIA Bandung, 2018), 24-25.

claim for damages and/or rehabilitation.[50] Then the article was amended, namely article 53 Paragraph (1) of Law Number 9 of 2004 on Amendments to Law Number 5 of 1986 on State Administrative Justice reads; A person or civil legal entity whose interests are affected by a State Administrative Decision may file a written lawsuit to a competent court containing a demand that the disputed State Administrative Decision be declared null and void, with or without a claim for damages and/or rehabilitated. Meanwhile, the second amendment is Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 on the State Administrative Court, there is no change to the sound of article 53.

From the above description of the change in the sound of article 53 of Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 on State Administrative Justice, it can be concluded that the changes occurred only in the context of its writing.

Public Legal Entity *(publiekrecht*) is a legal entity established based on public law or legal entity that regulates the relationship between the state and or its apparatus with citizens concerning the public interest. In the legislation the researcher did not find the definition, definition, and

[50] Pasal 53 ayat (1) Undang-Undang No. 9 Tahun 2004 Tentang Perubahan atas Undang-Undang No. 5 Tahun 1986 tentang Peradilan Tata Usaha Negara

classification of public legal entities and private legal entities. Except as contained in Law Number 24 of 2003 on the Constitutional Court Article 51 paragraph (1) c which states "public or private legal entities can be the applicant as a party that considers its constitutional rights and/or authority to be harmed by the application of law".[51] Understanding of how the status legal of public legal entities according to Article 53 Paragraph (1) of Law Number 9 of 2004 on Amendments to Law Number 5 of 1986 on the State Administrative Court can be seen how the article sounds, the article reads; A person or civil legal entity whose interests are affected by a State Administrative Decision may file a written lawsuit to a competent court containing a demand that the disputed State Administrative Decision be declared null and void, with or without a claim for damages and/or rehabilitated. While in article 53 Paragraph (2) of Law Number 9 of 2004 on Amendments to Law Number 5 of 1986 on State Administrative Justice reads; The reasons that can be used in a lawsuit as referred to in paragraph (1) are: a. The decision of the defendant's State Administration is contrary to the applicable laws and regulations; b. The decision of the State Constitution being challenged is contrary to the general principles of good governance.

[51] Pasal 51 ayat (1) C Undang-Undang Nomor 24 Tahun 2003 Tentang Mahkamah Konstitusi

Based on the sound of the article, as long as the suing person or civil legal entity and the reason for the lawsuit in accordance with Article 53 Paragraph (2) of Law Number 9 of 2004 on Amendments to Law Number 5 of 1986 on the State Administrative Court, the court judge in this case the judge must accept the legal standing of the plaintiff. However, if thenot a person or a civil legal entity, such as a public legal entity, then there is no obligation for the judge to accept the legal standing of the plaintiff is plaintiff according to the provisions of Article 53 Paragraph (1) of Law Number 9 of 2004 on Amendments to Law Number 5 of 1986 concerning State Administrative Courts. Because explicitly or implicitly the term public legal entity is not mentioned in article 53 Paragraph (1) of Law Number 9 of 2004 on Amendments to Law Number 5 of 1986 concerning State Administrative Courts. There is no interpretation from legal experts regarding the legal standing of public legal entities based on Article 53 Paragraph (1) of Law Number 9 of 2004 on Amendments to Law Number 5 of 1986 concerning State Administrative Courts. The parties given Legal standing based on the article remain the same that is, a person or civil legal entity because the PTUN Law limitatively determines that the subject of the Plaintiff in a TUN dispute is a person or civil legal entity that feels its interests are harmed as a result of the issuance of a KTUN.

At the conference on matter Number Number 96/G/2019/PTUN-JKT was attended by several members and asked for information on matters in accordance with their membership. One of the experts present was PHILIPUS M. HADJON, a constitutional law and administrative law expert. In his description as an expert mentions; That public officials and or public agencies cannot be Plaintiffs in the state administrative court, because in accordance with its philosophy that state administrative disputes are disputes between citizens against the government, then in Article 53 paragraph (1) who can sue is a person or legal entity civil whose interests are harmed, it is clear that it does not include public bodies.[52] Based on this opinion, it is clear that the judge's only reference in determining legal standing is Article 53 paragraph (1). So that public legal entities do not have the legal standing to sue because it is contrary to Article 53 paragraph (1) and philosophically what is meant by the Article is a dispute between citizens against the government, not government against government.

In addition to Law Number 9 of 2004 on Amendments to Law Number 5 of 1986 on State Administrative Justice, other laws such as Law Number 11 of 2020 on the Creation of Work changes to Law Number 30 of 2014 on Government Administration. There is the term legal entity in articles 1, 34,

[52] PUTUSAN No. 96/G/2019/PTUN-JKT, 134.

and article 39. However, what is meant by legal entity in that article is a civil legal entity. Law Number 11 of 2020 on the Creation of Work changes to Law Number 30 of 2014 on Government Administration does not explain how the status legal of public legal entities as plaintiffs in the TUN Court.

Furthermore, in the Law of the Republic of Indonesia Number 3 of 2009 on the Second Amendment to Law Number 14 of 1985 on the Supreme Court. Article 31A Paragraph (2) letter c mentions the terms public legal entities and private legal entities related to the application for examination of legislation under the law against the law. In general, Law of the Republic of Indonesia Number 3 of 2009 on the Second Amendment to Law Number 14 of 1985 on the Supreme Court also does not explain what a public legal entity is and how thestatus legal of a public legal entity as a plaintiff in the TUN Court.

Another law is Law Number 48 of 2009 on Judicial Power. In this law there is not a single sound of an article relating to a public legal entity. After observing some of the above legislation, the researcher did not find a single article that clearly explains what a public legal entity is definitively and how the status legal of a public legal entity as a plaintiff in PTUN.

In Book II of the Administrative and Judicial Technical Guidelines, there are examples of lawsuits from TUN officials in questioning TUN's

decision on the revocation of Occupancy Permits (SIP) held by government agencies, lawsuits against TUN Decisions containing demolition orders of government agencies, lawsuits against revocation of land certificates. government agencies, and so on. Thus, as long as there is an interest that is harmed by the issuance of a TUN Decision, it will automatically give birth to the right to sue (standing to sue) for a person or civil legal entity, including TUN Bodies/Officials who act to defend their civilian interests, then the principle "without any interest is not will give birth to a lawsuit (points of interest, points of action) ". Based on the explanation in Book II of the Administrative Technical and Judicial Technical Guidelines, thestatus legal of public legal entities as plaintiffs in PTUN can be given as long as there is an interest harmed by the issuance of a KTUN.[53]

[53] Decision No. 96/G/2019/PTUN. Jkt, 144

B. Legal Standing of Public Legal Entities in Decision Number 96/G/2019/PTUN-JKT according to the View of the Concept of Siyasah Qadhaiyyah

As stated in the decision no. 96/G/2019/PTUN-JKT, there are several concepts which later became the author's analysis. In case No. 96/G/2019/PTUN-JKT judges have carried out their duties well, starting from the trial process, in listening to the parties, assessing the evidence presented at trial, and giving decisions. We can see this process in the decision. This means that all the legal mechanisms in the lawsuit above have been passed in accordance with the applicable procedures in the legislation.

According to the Siyasah Qadhaiyyah concept, the establishment of a judiciary is to handle cases that require decisions based on Islamic law. Although the case that is the focus of this research is not the case of Islam. However, the verdict can still be assessed whether it is based on Islamic law or not. Because in Islamic law there are several principles and provisions related to law enforcement in general.

It was explained by Muhammad Salam Madkur that qaḍa is called a judge because he prohibits the perpetrator from unjust acts.[54] Judges are required to be fair from the beginning of the trial process to the end, namely

[54] Saiful Aziz, Posisi Lembaga Peradilan Dalam Sistem Pengembangan Hukum Islam, (Semarang: Fakultas Agama Islam Universitas Wahid Hasyim Semarang, 2016)

giving a verdict. In the context of Siyasah Qadhaiyyah, justice that is carried out or decided by a judge is an important thing in a decision. This means that judges are not recommended to do things that are contrary to the rules as judges based on the Qur'an and Hadith.

In case Number 96/G/2019/PTUN-JKT) the judges have carried out their duties properly, namely fair in the process at trial, fair in listening to the parties, fair in assessing the evidence presented in court, and fair in giving decisions, all of which we can see in Several legal considerations by the judge regarding the rejection of the exception to the legal standing of the plaintiff in particular and other legal considerations in general. Other legal considerations are about absolute competence, overdue / expired lawsuits, premature lawsuit, plaintiffs with bad intentions, the plaintiff's lawsuit exceeds the charges, on the subject of the dispute, as well as evidence presented at trial. The judge's behavior is in accordance with the concept of law enforcement based on the verse of the Koran which states. Surah An-Nisa: 58:[55]

إِنَّ اللَّهَ يَـــأْمُرُكُمْ أَنْ تُـــؤَدُّوا الْأَمَانَـــاتِ إِلَـــى أَهْلِهَـــا وَإِذَا حَكَمْـــتُمْ بَـــيْنَ النَّـــاسِ أَنْ تَحْكُمُـــوا بِالْعَـــدْلِ إِنَّ اللَّهَ نِعِمَّـــا يَعِظُكُـــمْ بِـــهِ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا

It means; Verily, Allah commands you to convey the trust to those who are entitled to it, and when you set a law between people, you should judge it

[55] Translator Team, Al-Qur'an and its Translation, (Jakarta: Lentera Optima Pustaka, 2011), 88.

justly. Indeed, Allah is the best who teaches you. Indeed, Allah is All-Hearing, All-Seeing. (Q.S An-Nisa: 58).

Based on the kinds of judges described in the hadith narrated by Ibn Majah that of the three kinds of judges only one will enter heaven, namely the judge knows the truth (law) then he decides with that truth. As in the book Sunan Ibn Majah Hadith Number 2315:[56]

القضاة ثلاثة : اثنان فى النار و واحد فى الجنة، رجل علم الحق فقضى به فهو فى الجنة و رجل قصة للناس على جهل فهو فى النار و رجل حار فى الحكم فهو فى النار (رواه ابن ماجه)

It means; There are three kinds of judges: two (kinds of) going to hell, one (kinds of) going to heaven. As for the judges who enter heaven, they are judges who know the truth and then decide cases with that truth. while a judge who is stupid and decides cases with his stupidity goes to hell. And the judge who knows the truth but does not decide the case with the truth will go to hell.

If we look at the judge's decision in Decision Number 96/G/2019/PTUN-JKT) can be understood that the judge has made a decision with the judge's knowledge of justice, that in this decision the judge has considered various aspects related to the determination of the legal standing of a public legal entity as a plaintiff. Because according to the judge, the Malang Regency Government was harmed by the TUN Decree issued by the

[56] Majah, Sunan Ibn Majah, (Baitul Afkar Dauliyyah), Hadith No. 2315, 249.

PUPR Minister, the judge had jihad to accept the legal standing of the Malang Regency Government as the plaintiff. The judge's action of carrying out ijtihad is in accordance with the concept of law enforcement based on siyasah qhadaiyyah as explained by the Prophet in his words narrated by Ibn Majah in Sunan Ibnu Majah hadith Number 2314:

إِذَا حَكَمَ الْحَاكِمُ فَاجْتَهَدَ ثُمَّ أَصَابَ فَلَهُ أَجْرَانِ، وَإِذَا حَكَمَ فَاجْتَهَدَ ثُمَّ أَخْطَأَ فَلَهُ أَجْرٌ(رواه ابن ماجه)

It means; If a judge performs ijtihad and then his ijtihad is correct, he gets two rewards, and if a judge ijtihad and it turns out that his ijtihad is wrong, he gets one reward.

In relation to the mechanism for determining Islamic law, in fact the Qur'an and Hadith remain the main reference. Only after that, if the Qur'an and Al-Hadith do not provide a specific legal explanation, aql plays a role in legal discovery. This analogy can also be applied in the context of the legal standing of a public legal entity which actually does not have a clear basis. Law No. 51 of 2009 concerning the Second Amendment to Law no. 5 of 1986 concerning the State Administrative Court which is the basis for the proceedings of the State Administrative Court, does not at all mention the position of public legal entities as interested parties in the absolute mechanism of justice. However, the argument that there are parties who are harmed by the TUN's decision remains the authority of the State Administrative Court.

The absence of norms that regulate this gives birth to the function of ijtihad to be used at the right time to uphold justice. In addition, some of these legal considerations can be seen that the legal considerations are made in order to maintain legal certainty, create order, security and public peace through the enforcement of law and justice.

After observing and understanding the legal considerations made by the judge against the exception that the defendant does not have legal standing based on his viewpoint. the concept of Siyasah Qadhaiyyah which explains that as a state institution that is assigned to settle and settle every case fairly, the judiciary functions to create public order and peace that is fostered through upholding the law. In accordance with the sound of surah al-maidah:[57]

يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ لِلَّهِ شُهَدَاءَ بِالْقِسْطِ وَلَا يَجْرِمَنَّكُمْ شَنَآنُ قَوْمٍ عَلَى أَلَّا تَعْدِلُوا اعْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَى وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ خَبِيرٌ بِمَا تَعْمَلُونَ

It means; O you who believe! Be you as enforcers of justice for Allah, (When) be witnesses with justice. And let not your hatred of a people encourage you to act unjustly. Be fair, because (fair) is closer to piety. And fear Allah. Indeed, Allah is thorough in what you do." (Q.S Al-Maidah: 8).

Justice in this case can be seen in legal considerations that as long as there are interests that are harmed by the issuance of a State Administrative

[57] Translator Team, Al-Qur'an and its Translation, (Jakarta: Lentera Optima Pustaka, 2011), 109.

Court Decree, it will automatically give birth to the right to sue (standing to sue) for a person or civil legal entity, including TUN Bodies / Officials acting to defend their civil interests. The judge's decision is in accordance with several points in law enforcement based on the Siyasah qadha'iyah concept, namely to determine the law fairly in this case related todetermination legalThe standing of the public legal entity as the plaintiff, namely Malang Regency Government, is a witness because Allah (the witnesses are sworn in according to their respective beliefs), is fair to anyone like yourself, both parents, relatives, rich or poor people, do not follow lust because they want to. deviates from the truth (it can be seen from the legal considerations by the observing judge Noting the sincerity of judges in observing exceptions and giving legal considerations to these exceptions), threats to unfair behavior (fear of threats from Allah against unfair behavior), judges have decided cases not based on hatred of a people so that judges do not act fairly, be fair not only to people who are Muslim, but to all adherents of religions other than Islam such as those who are Jewish. This is in accordance with the explanation in the Koran surah al-maidah verse 42:[58]

سَمَّاعُونَ لِلْكَذِبِ أَكَّالُونَ لِلسُّحْتِ فَإِنْ جَاءُوكَ فَاحْكُمْ بَيْنَهُمْ أَوْ أَعْرِضْ عَنْهُمْ وَإِنْ تُعْرِضْ عَنْهُمْ فَلَنْ يَضُرُّوكَ شَيْئًا وَإِنْ حَكَمْتَ فَاحْكُمْ بَيْنَهُمْ بِالْقِسْطِ إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ

[58] Translator Team, Al-Qur'an and its Translation, (Jakarta: Lentera Optima Pustaka, 2011), 116.

It means; If they (the Jews) come to you (Muhammad asking for a verdict), then give them a verdict or turn away from them. …and if you turn away from them, they will not harm you in the least. But if you want to decide (their case), then judge fairly. Verily, Allah loves those who do justice. (Q.S Al-Maidah: 42).

From the explanation above, it can be concluded that the mechanism in the decision no. 96/G/PTUN-JKT in accordance with the concept in Siyasah Qadhaiyyah. As already mentioned and explained, the pillars contained are in accordance with the concepts offered as well. On the other hand, the existence of an effort for justice is an important effort in a court decision that has binding legal force. Another point of support is the judge's ijtihad as part of the Siyasah Qadhaiyyah. Of course, the efforts made are aimed at creating order.

CHAPTER IV

CLOSING

CONCLUSIONS AND SUGGESTIONS

A. Conclusion

After the researchers conducted an analysis of legal materials with a statutory approach, the findings were as follows:

1. The dispute between a public legal entity (PemKab Malang) and a public legal entity (Minister of PUPR) in Decision no. 96/G/2019/PTUN-JKT is the first case that occurred in Indonesia. As previously explained, there are no laws and regulations governing the legal standing of public legal entities as plaintiffs in the Administrative Court. However, according to the judge, the development of judicial practice has recognized and accepted the TUN Agency/Official who acted as the Plaintiff in acting on behalf of the TUN Agency/Official in questioning the validity of the issuance of the TUN Decree addressed to the relevant government agency. The judge is of the opinion that as long as there are interests that are harmed by the issuance of a TUN Decision, it will automatically give birth to the right to sue (standing to sue)

for a person or civil legal entity, including TUN Bodies/Officials who act to defend their civil interests, then the principle of "without any interest is not will give birth to a lawsuit (points d'interet, points d'action)"

2. In the event that the judge's decision by ijtihad places a public legal entity as the plaintiff, according to the researcher, it is in accordance with the Siyasah Qadhaiyyah concept related to law enforcement. In this case, the judge has carried out his duty as a judge, namely to resolve and resolve each case fairly (related to legal standing). In this case, the judiciary has carried out its function to create public order and peace which is fostered through the enforcement of the law itself.

B. Suggestions

Based on the conclusion of this study, the researcher suggests to the government to immediately evaluate the Administrative Court Law, in order to accommodate the legal vacuum of public legal entities as plaintiffs. This is important to do to make it easier for PTUN judges to resolve identical cases such as Decision NO. 96/G/2019/PTUN-JKT. The existence of this is evidence that the judicial mechanism will always experience development which must also be accompanied by the renewal of laws and regulations.

REFERENCES

Books

Abdullah, Rozali. State Administrative Court Procedural Law. Jakarta: Raja Grafindo Persada, 1994.

Afandi, Priyan. "The Authority of the State Administrative Court in Administrative Disputes on the Election of Regional Heads", Thesis. Faculty of Law, University of Lampung, 2017). http://repository.lppm.unila.ac.id/5868/1/797-2494-1-PB.pdf

Asshiddiqie Jimly. Constitutional Law and the Pillars of Democracy. Jakarta: Press Constitution, 2005.

Aziz, Saiful. The Position of the Judiciary in the Islamic Law Development System. Semarang: Faculty of Islamic Religion, Wahid Hasyim University Semarang, 2016.

Wet, Sjachran examines the intricacies of the Draft Law Number … of 1986 concerning the State Administrative Court. Bandung: Alumni, 1992.

Wet, Sjachran. Court Procedure Law in Administrative Courts (HAPLA). Jakarta: Rajawali Press, 1989.

Bruggink, J.J.H. Reflections on Law. Bandung: Citra Aditya Bakti, 1996.

Ministry of Education and Culture, Big Indonesian Dictionary. Second Edition, Balai Pustaka, 1994.

Efendi, Jonaedi, Ibrahim, Johnny. Normative and Empirical Legal Research Methods. Depok: Prenadamedia Group, 2018.

Hadjon, Philipus M. Legal Protection for the People in Indonesia; A Study of the Principles, Their Application by Courts in the General Courts Environment and the Establishment of State Administrative Courts. Surabaya: Science Development. 1987.

Indonesia Dictionary

Kato, Alaidin. History of Islamic Courts. Jakarta: PT. Raja Grafindo Persada, 2011.

Majah. Sunan Ibn Majah. Baitul Afkar Dauliyyah.

Natabaya, H.A.S. Discussion on National Development Development on State Administrative Law and State Administration. Jakarta: National Legal Development Agency, 1998.

Rahardjo, Satjipto. Legal studies. Bandung: Alumni, 1986.

Ridwan. Three Dimensions of State Administrative Law and State Administrative Courts. Yogyakarta: FH UII Press. 2009.

Simanjuntak, Enrico. TRANSFORMATION & REFLECTION STATE ADMINISTRATIVE JUDICIAL PROCEDURES. Jakarta: Sinar Graphic, 2018.

Soekanto, Soejono. Introduction to Legal Research. Jakarta: UI Press, 2007.

Soetami, A. Siti. Bandung State Administrative Court Law: Refika Aditama, 2019.

Sukirno. “The Existence of the Makassar State Administrative Court (A Study of Islamic Constitutional Law Thoughts”, Thesis. Department of Criminal and Administrative Law, Faculty of Sharia and Law Uin Alauddin Makassar, 2018). http://repositori.uin-alauddin.ac.id/10002/1/skripsi%20sukirno.pdf

Supandi. Law of the State Administrative Court, Legal Compliance of Officials in Obeying the Decisions of the State Administrative Court. Medan: Press Nation Library Publisher. 2011.

Translation Team. Al-Qur'an and its Translation. Jakarta: Lentera Optima Pustaka, 2011.

Tweedo, Marzha. "Online Indonesian Legal Dictionary," accessed on April 13, 2021, https://kamus Hukum.web.id/search/legal

Wiyono, State Administrative Court Procedural Law. Jakarta: Sinar Graphic, 2014.

Zulkarnai, and Mayaningsih, Dewi. STATE ADMINISTRATIVE JURISDICTION PROCEDURES IN INDONESIA. Bandung: LIBRARY SETIA Bandung, 2018.

Legislations

Law No. 5 of 1986 concerning the State Administrative Court

Law Number 24 of 2003 concerning the Constitutional Court.

Law No. 51 of 2009 concerning the Second Amendment to Law no. 5 of 1986 concerning the State Administrative Court

Journal Articles

Gede A.A, Santosa. "DIFFERENCES OF PUBLIC LAW AND PRIVATE LEGAL ENTITIES," Vol. 5 No. 2, August (2019): http://dx.doi.org/10.23887/jkh.v5i2.18468

Hidayat, Arief. "State of Law Pancasila (A Model of State Administration), Proceedings of the IV Pancasila Congress: Strategy for Institutionalizing Pancasila Values in Upholding Indonesian Constitutionalities", PSP UGM. Yogyakarta: 31 May-01 June 2012.

The R.I. Attorney's Education and Training Agency Module Development Team "STATE ADMINISTRATION PROCEDURE LAW MODULE", 2019): http://badiklat.kejaksaan.go.id/e-akademik/uploads/modul/d89c98015549a65975dc8918b3d096df.pdf

Umar M. Hasbi. "The Law of Selling Voting Rights in the Regional Head Election in the Perspective of Fiqh Siyasi," Vol. XII, No. December 2 (2018)

Etc

Decision No. 96/G/2019/PTUN. Jkt

Anggraeni, sparrow. «Malang City Government Appeals, Wendit Water Source Polemic Still Revolving. » poor times, December 08, 2019. https://malangtimes.com/baca/46944/20191208/163200/index.html

https://id.wikipedia.org/wiki/Badan_ Hukum#:~:text=Badan%20Hukum%20Publik%20(publiekrecht)%20that is,country%2C%20 Hukum%20international%20dan%20lain

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