A New Interpretation of the Opposing Theory in State Administrative Court Decisions

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Abstract

The oplossing theory has colored the decisions of the State Administrative Court for more than 12 (twelve) years since it was formulated in the plenary meeting of the state administrative chamber in 2012. The interpretation of the oplossing theory by the state administrative chamber was initially intended to create legal unity because the Supreme Court had implemented a system room whose one goal is legal unity. During this time, the oplossing theory has been applied by judges in the state administrative court in cases of Government Goods/Services Procurement, Work Contracts and Bank Indonesia Liquidity Assistance and Coal Mining Concession Work Agreement (PKP2B). This research uses a normative legal approach with a statutory approach, a comparative approach, a conceptual approach and a case approach. From the research results, it was found that there was inconsistency among state

administrative court judges in the sense that in similar cases, some of them applied the oplossing theory but others did not, giving rise to legal uncertainty. The application of the oplossing theory also does not resolve the essence of the dispute because it has not yet entered into the subject of the dispute. For this reason, it is recommended that the oplossing theory no longer be used and be given a new interpretation both in the State Administrative Court Law and in the plenary meeting of the State Administrative Chamber in accordance with legal developments, namely if there is a point of intersection of authority between civil and state administrative cases, then the case civil law must merge into state administrative matters or in other words private law must merge into public law.

Keywords
New Interpretation, Oplossing Theory, State Administrative Court Decisions

I. Introduction

Based on Article 24 paragraph (2) of the 1945 Constitution, Indonesia adheres to a multi-jurisdictional legal system where justice is carried out by the Supreme Court and its subordinate judicial environment which includes the general court, religious court, military court and state administrative court and by a Constitutional Court. The 1945 Constitution does not specifically regulate the absolute authority of each judicial environment under the Supreme Court and is only regulated in Article 25 of Law Number 48 of 2009 concerning Judicial Power, and even then it is still abstract. It was only then that the absolute competence of each

judicial institution was more clearly regulated in the Judicial Body Law, supplemented by Laws in sectoral fields[1]. However, the implementation of a multi-jurisdictional system will give rise to a tangential point of authority, namely positive authority where there are 2 (two) judicial institutions, each of which claims the authority to adjudicate a certain type of case, including between the general court environment and the state administrative court environment[2].

The point of intersection is that the authority to adjudicate civil and state administrative cases was initially only land matters, but day by day there are more and more, including cases in the field of procurement of government goods and services (PBJ), government actions (including cases of Bank Indonesia liquidity assistance), legal entities, Coal Mining Concession Work Agreement (PKP2B), brands, state assets, employment sanctions and political party administrator disputes. However, the oplossing theory already applied in the administrative court decisions included cases of Government Procurement of Goods/Services, Coal Mining Concession Work Agreement (PKP2B), and cases of government action related to Bank Indonesia Liquidity Assistance (BLBI).

The emergence of theory that merges into doctrine because there is a point of intersection between civil cases and state administration cases. As a Government body, State Administrative Officials who wish to carry out civil legal acts are always preceded by a State Administrative Decree which

[1] "No Title," n.d., https://doi.org/For example, the Law on Openness of Public Information, the Law on Land Acquisition, the Law on Elections and the Law on Regional Head Elections.

[2] "No Title," n.d., https://doi.org/Meanwhile, negative authority is the existence of 2 (two) institutions that both state that they have no authority to adjudicate a dispute.

regulates the legalization of the civil legal acts they wish to carry out. So from this it can be concluded that if a dispute arises regarding a State Administrative Decree issued to carry out a civil action, it should become a matter of competence within the General Courts. This is based on juridical logic with the analytical knife "oplossing theory". Based on this theory, it can be understood that a State Administrative Decree issued by a State Administrative Body or Official to carry out a civil action, or a civil action which is then followed by the issuance of a State Administrative Decree, the State Administrative Decree is considered to be merged into the civil action, because the action This civil law is intended to be carried out by State Administrative Bodies or Officials[3].

It is also hoped that the use of the oplossing theory by the state administrative chamber will create legal unity and avoid disparity in decisions between the civil and state administrative chambers. Moreover, since 2012, the Supreme Court has implemented a chamber system, one of the aims of which is to realize legal unity. However, the use of the oplossing theory by state administrative court judges is gradually being abandoned because it is considered not to resolve legal problems where the judge's considerations have not yet touched the essence of the dispute. There is even an opinion from the parties to the dispute, especially the Plaintiff whose lawsuit was declared not accepted, that the use of the oplossing theory is only carried out by judges who are lazy to consider the essence of the dispute.

To realize legal unity between the civil chamber and the state administrative chamber, the Supreme Judges of the state

[3] "No Title," n.d., https://doi.org/Anajeng Esri Edhi Mahanani, Pemetaan Normatif Logika Pengecualian Keputusan Tata Usah Negara dalam Sengketa Tata Usaha Negara, Jurnal Pranata Hukum, Vol 3 No. 1 Februari 2021.

administrative chamber have had an agreement which is outlined in the plenary formulation of the 2012 State Administrative Chamber (SEMA Number 7 of 2012) which states: "to ensure a decision State Administration (KTUN) is considered to be merged into a civil legal action if, in fact, the KTUN which is disputed and whose validity is requested to be tested turns out to be:

a. The final scope of the KTUN is issued (its purpose) is intended to give birth to a civil legal act. This includes KTUNs issued in order to prepare or complete a civil legal action.
b. If the Defendant issues a KTUN for the object of the dispute, he will become the subject or party in a civil engagement as a continuation of the KTUN for the object of the dispute.
c. KTUN relating to divorce permits is not classified as KTUN which merges with civil legal acts (in casu. Divorce), because divorce permits are a provision of public law (administrative law) as a condition for civil servants who will carry out a divorce. Thus, divorce permission is lex specialist and is excluded from the application of the oplossing theory.

The main objective in using the oplossing theory at that time was legal unity where the state administrative chamber seemed to "give in" to the civil chamber. This is also because the supreme judges in the state administrative chamber were previously civil judges such as Indroharto, Benyamin Mangkudilaga, Paulus Effendi Lotulung, Imam Subechi, Supandi and Yulius. However, along with the development of law and the times, the legal situation has changed to the opposite. Previously it was the authority of the general judiciary, now it has been transferred to the authority of the state administrative judiciary, for example the authority to decide disputes *onrechtmatige overheidsdaad* (acts against the

law by the government) based on the Supreme Court Regulations or (PERMA) Number 2 of 2019.

In Article 10 of the Supreme Court Regulation Number 2 of 2019 it is stated "When this Supreme Court Regulation comes into force, cases of unlawful acts by Government Agencies and/or Officials (*Onrechtmatige Overheidsdaad*) which are submitted to the District Court but have not yet been examined, are delegated to the Administrative Court complies with the provisions of the laws and regulations." Furthermore, Article 11 of Supreme Court Regulation Number 2 of 2019[4] states "In cases of unlawful acts by government bodies and/or officials (*Onrechtmatige Overheidsdaad*) which are being examined by the District Court, the District Court must declare that it has no authority to judge."

Likewise, the case regarding the termination of a government employee's employment agreement with a work agreement (PPPK) based on Supreme Court Regulation Number 2 of 2023 is the authority of the state administrative court which was previously the authority of the Industrial Relations Court because it was included in a rights dispute between workers and employers in industrial relations based on work contracts/agreements.

[4] "Perma Nomor 2 Tahun 2019 Tentang Pedoman Penyelesaian Sengketa Tindakan Pemerintahan Dan Kewenangan Mengadili Perbuatan Melanggar Hukum Oleh Badan Dan/Atau Pejabat Pemerintahan" (n.d.), https://doi.org/Perma Nomor 2 Tahun 2019 Tentang Pedoman Penyelesaian Sengketa Tindakan Pemerintahan dan Kewenangan Mengadili Perbuatan Melanggar Hukum oleh Badan dan/atau Pejabat Pemerintahan.

Based on this background, what will be examined in this research is as follows:

1. With the development of law, is the oplossing theory still relevant to be applied in various current State Administrative Court decisions?
2. Is there a need to give a new meaning to the use of oplossing theory?

II. Method

The research method used is normative legal research with the approach applied to discuss the problems in this study is through a statutory approach, a conceptual approach, analytical approach and a case approach. The types of data in this research are secondary data and tertiary data. Secondary data comes from library research. The secondary data source in the form of a literature review was carried out on various types of legal material sources which can be classified into 3 (three) types, namely:

a) Primary legal materials (primary resources or authorative records), in the form of the 1945 Constitution, statutory regulations, decisions from various courts, especially the State Administrative Court, State Administrative High Court and Supreme Court decisions which have permanent legal force.
b) Secondary legal materials (secondary resources or not authorative records), in the form of legal materials that can provide clarity on primary legal materials, such as literature, research results, seminar papers, articles and so on.
c) Tertiary legal materials (tertiary resources), in the form of legal materials that can provide guidance and clarity on primary legal materials and secondary legal materials such

as those from dictionaries/lexicons, encyclopedias and so on.

III. Result and Discussion

Article 2 letter a of Law Number 5 of 1986 concerning State Administrative Courts regulates "*not included in the meaning of State Administrative Decisions according to this Law: a. State Administrative Decisions which are civil legal acts.*" In the explanation of this article, it is explained that "State Administrative Decisions are civil legal acts, for example decisions concerning buying and selling matters carried out between government agencies and individuals which are based on civil law provisions."

Based on Article 2 letter a and its explanation, it can be understood that a State Administrative Body or Official has the authority (*bevoeg*) to carry out public/administrative legal actions and has the right/capacity (*bekwam*) to carry out private/civil legal actions. In the provisions of Article 2 letter a of Law Number 5 of 1986[5] there is no explicit mention of the theory of amalgamation, but it is developed in the doctrine of the oplossing theory which is interpreted as every state administrative decision whose substance relates to the realm of civil law as oplossing in civil actions[6].

On the basis of the provisions of Article 2 letter a of the Regulations Law, the State Administrative Court has handed

[5] "Undang-Undang Nomor 5 Tahun 1986 Tentang Peradilan Tata Usaha Negara" (n.d.).

[6] "No Title," n.d., https://doi.org/Paulus Rudi Calvin Sinaga dan Anna Erliyana, Relevansi Teori Oplossing dalam Penanganan Sengketa Terkait Keputusan Pengadaan Barang dan Jasa Pemerintah, Jurnal Konstitusi Vol 19, Nomor 2 Juni 2022.

down several decisions by providing interpretations regarding what is meant by oplossing theory, for example the most recent in Case Number 443 K/TUN/2023 dated 2 October 2023, between Chairman of the DKI Jakarta Branch State Receivables Affairs Committee as Applicant for Cassation and PT. Bogor Raya Development (formerly PT. Asia Pacific Permai) as Respondent to the Cassation, where the Supreme Court of Justice gave the following legal considerations:

> *Considering, that regarding the reasons for the cassation, the Supreme Court is of the opinion that the state administration decision that is the object of the dispute is a state administration decision issued based on a civil agreement in the context of collecting state receivables, so that it is merged into civil law;*
> *Considering, that based on the considerations above, according to the Supreme Court there are sufficient reasons to grant the cassation request without needing to consider other reasons for cassation;*

Based on this decision, the Supreme Judge of the state administrative chamber has expanded the interpretation of the oplossing theory which was originally a State Administrative Decree which was a civil legal act, for example decisions involving buying and selling matters carried out between government agencies and individuals which were based on civil law provisions to 3 (three) interpretations as formulated in the 2012 plenary meeting of the State Administrative Chamber as outlined in the Supreme Court circular letter (SEMA) number 7 of 2012[7].

Kamarullah in his dissertation stated that in practice there is an overlapping of authority in handling disputes over

[7] "Sema Nomor 7 Tahun 2012 Tentang Pemberlakuan Rumusan Hasil Rapat Pleno Kamar Mahkamah Agung Tahun 2012 Sebagai Pedoman Pelaksanaan Tugas Bagi Pengadilan" (n.d.).

state administrative decisions which merge into civil legal acts. What should be sued is the issue of the legality of State Administrative decisions which are the authority of the State Administrative Court, but because the provisions of Article 2 point a of Law no. 5 of 1986 Jo. Law no. 9 of 2004, then submitted to the District Court (General Court). In this way, the main issue no longer concerns legality but rather concerns unlawful acts by authorities or breaches of contract whose main demand is compensation. The District Court assesses the legality aspect of the authority of the decision regarding cancellation of the agreement using public law provisions. Such an assessment is not appropriate, because as a public law dispute the lawsuit should be submitted to the State Administrative Court, because the State Administrative Court has the authority to assess the legality aspect of whether the decision is juridically defect, especially defects in authority[8].

Therefore, Dian Agung Wicaksono et al suggest that it is better to start reconsidering how an administrative decision (KTUN) which is a civil legal act is interpreted. To be precise, the provisions of Article 2 letter a of the Regulations Law and its amendments should not be interpreted extensively, but rather grammatically by qualifying a KTUN that was born based on a civil legal act as a KTUN which is a civil legal act[9]. The oplossing theory is also used in criminal cases. Padjadjaran University state administrative law expert Professor I Gede Pantja Astawa does not agree that BLBI cases are processed through criminal trials. He is of the opinion that

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[8] Kamarullah, *Keputusan Tata Usaha Negara Yang Merupakan Perbuatan Hukum Perdata* (Untan Press, 2008).

[9] "No Title," n.d., https://doi.org/Dian Agung Wicaksono dkk, Diskursus Kompetensi Absolut Pengadilan Tata Usaha Negara Dalam Mengadili Perbuatan Pemerintah Dalam Pengadaan Barang/Jasa, Jurnal Rechtvinding, Vol 9 No. 3, Desember 2020.

the government's policy of pursuing settlement outside of court is an administrative decision. The government's administrative decision was then merged into a civil legal action in the form of a PKPS agreement. "So, whatever problems arise from the implementation of the agreement, they must be resolved using civil methods and mechanisms. Not resolved by criminal settlement[10].

The use of the oplossing theory must also be careful, in the sense that there must be a side to eradicating criminal acts of corruption and saving state money because in criminal cases there have been cases which at the District Court and at the appeal level or High Court fulfilled the elements of a criminal act and the defendant was sentenced to prison, said to be merged into civil action at the cassation level (opinion of supreme judge Syamsul Rakan Chaniago) and administrative legal action (opinion of supreme judge Muhammad Askin) so that the defendant, former head of National Banking Restructuring Agency (BPPN) Syafruddin Arsyad Tumenggung, was declared acquitted based on decision No. 1555 K/Pid.Sus/2019[11] dated 9 July 2019.

It was later discovered that Supreme Judge Syamsul Rakan Chaniago had been subject to ethical sanctions. "The person concerned met with Ahmad Yani, one of the legal advisors for the Syafruddin Arsyad Tumenggung defendant at Plaza Indonesia on June 28, 2019 at 17.38 WIB until 18.30 WIB, even though at that time the person concerned sat as a member judge on the panel of judges for the Syafruddin Arsyad

[10]"Https://Kabar24.Bisnis.Com/Read/20180914/16/838440/Polemik-Blbi-Terjerat-Perdebatan-Pidana-Atau-Perdata," n.d.

[11] Putusan Mahkamah Agung Nomor No. 1555 K/Pid.Sus/2019 (n.d.).

Tumenggung defendant," explained Andi Samsan Nganro Spokesperson for the Supreme Court[12].

Research on decisions within the administrative court system indicates that many case types employ the oplossing theory by administrative court judges, owing to the interaction of civil law and administrative law. This interaction is evident in instances of government procurement of products and services, concession agreements like the Coal Mining Business Agreement (PKP2B), and governmental acts pertaining to Bank Indonesia's liquidity support (BLBI). The notion of oplossing provides a framework for judges to resolve legal disputes stemming from the intersection of public interests in administrative law and the contractual rights of private entities in civil law.

In instances of government procurement of goods and services, the administrative court must verify that the bidding process and contracts between the government and private entities adhere to relevant laws, considering both public regulations and the contractual rights of the parties involved. Likewise, in the instance of PKP2B, there exists a connection between the government, acting as the concession grantor, and the private entity, which is the beneficiary of the rights to manage natural resources. The principle of oplossing facilitates a compromise between the government's duty to control and oversee natural resource management and the company's entitlement to legal certainty regarding the established contract.

[12] "Https://Banten.Antaranews.Com/Berita/61518/Ma-Hakim-Syamsul-Rakan-Chaniago-Yang-Lepaskan-Terdakwa-Blbi-Terbukti-Langgar-Etik," n.d.

In the BLBI case, the administrative court must evaluate the government's activities regarding the provision of liquidity assistance to financial institutions. The oplossing theory assists judges in reconciling the state's interest in preserving economic stability with the duty to guarantee that government measures do not infringe upon the rights of entities receiving liquidity assistance in accordance with relevant law restrictions. Consequently, administrative court judges confront the challenge of interpreting and applying the law in a manner that is equitable to the parties involved while ensuring their decisions align with the principles of good governance and transparency as outlined in administrative law.

Government Goods/Services Procurement Cases

In cases of government procurement of goods/services, there have been research results from Paulus Rudi Calvin Sinaga and Anna Erliyana which found that there are still differences in the handling patterns of government procurement of goods/services cases in the administrative courts in Indonesia. There is a State Administrative Court which applies the oplossing theory so that it considers that handling government procurement disputes is not within the absolute competence of administrative court. Meanwhile, it was also found that the State Administrative Court applied an override to the oplossing theory, thereby considering that the State Administrative Court had the authority to handle disputes over the procurement of government goods and services[13].

[13] "No Title," n.d.

Suci Damayanti and Khoirunissa Sri Yudyaningrum also said that there are still often legal irregularities in efforts to resolve disputes over the procurement of goods and services as a result of differences in interpretation regarding the Administrative Court's authority, both as regulated by Government Administration Law (UUAP) and by the Administrative Court Law (UU Peratun) itself. The research results show that Administrative Court judges are often inconsistent in their decisions, causing legal irregularities. This is not only influenced by the expansion of the meaning of the administrative decision in the Government Administration Law, but also as a result of inconsistent judges in interpreting administrative decision anywhere in the field of Procurement of Goods/Services which is the absolute authority of the Administrative Court. Including when interpreting whether or not objections and appeals are required in disputes over the procurement of goods/services[14].

Bank Indonesia Liquidity Assistance (BLBI) Case

The resolution of the BLBI case has begun with the formation of the National Banking Restructuring Agency (BPPN) based on Presidential Decree Number 27 of 1998, but it will not be completed until 2023. Obligors always have many ways to avoid their debt payment obligations. Since the issuance of Presidential Decree Number 6 of 2021 concerning

[14] "No Title," n.d., https://doi.org/Suci Damayanti Dan Khoirunissa Sri Yudyaningrum, Penyelesaian Sengketa Tata Usaha Negara Di Bidang Pengadaan Barang Dan Jasa Pemerintah Yang Berkepastian Hukum, Jakarta, Jurnal Hukum Peratun, Vol 6 No. 1 Februari 2023.

the Task Force for Handling State Claims for BLBI Funds (BLBI Task Force), the BLBI Task Force has begun blocking, confiscating, auctioning, preventing going abroad, stopping public services, installing notice boards and so on on the assets of the BLBI obligor. Against the actions of state financial managers/BLBI Task Force, BLBI obligors fought back by filing a lawsuit with the State Administrative Court.

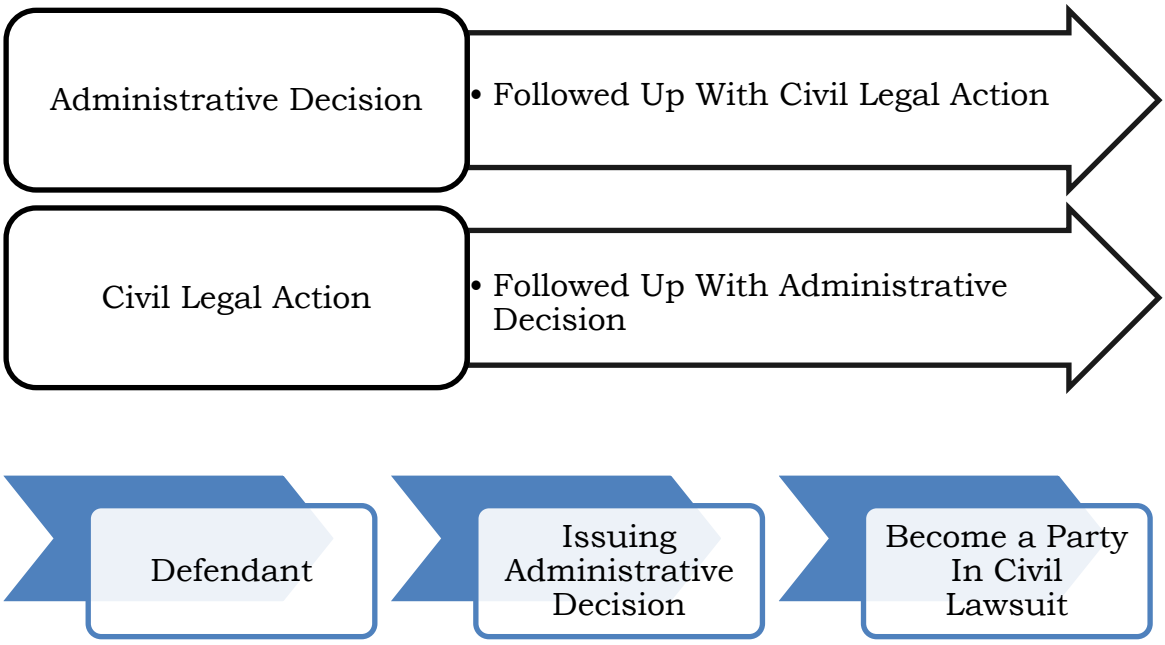
The Supreme Court, especially the state administrative chamber, has received many requests for cassation and review of cases related to government actions related to Bank Indonesia Liquidity Assistance (BLBI). In 2023, the Supreme Court has decided at least 4 (four) cases and until early 2024 there are still several more cases that have not been decided. Of the four cases that have been decided, 1 (one) case was decided using the oplossing theory, while the other 3 (three) cases did not use the oplossing theory. These four cases include Case Numbers: 299 K/TUN/TF/2023[15] dated 2 October 2023, 156 PK/TUN/2023[16] dated 2 October 2023, 442 K/TUN/2023[17] and 443 K/TUN/2023[18] dated 2 October 2023.

The case of government action related to Bank Indonesia Liquidity Assistance itself has different characteristics from the meaning of the oplossing theory so far. The meaning of the oplossing theory so far is as stated in the formulation of the 2012 plenary meeting of the state administrative chamber as outlined in the Supreme Court Circular Letter (SEMA) Number 7 of 2012 above which, if described, is as follows:

Picture 1

[15] Putusan Mahkamah Agung Nomor 299 K/TUN/TF/2023 (n.d.).
[16] Putusan Mahkamah Agung Nomor 156 PK/TUN/2023 (n.d.).
[17] Putusan Mahkamah Agung Nomor 442 K/TUN/2023 (n.d.).
[18] Putusan Mahkamah Agung Nomor 443 K/TUN/2023 (n.d.).

Interpretation of Oplossing Theory By Supreme Court



The characteristics of government action cases related to Bank Indonesia Liquidity Assistance (BLBI) in the State Administrative Court have 3 (three) layers of legal action starting with public legal action in the form of a bailout policy, regardless of whether this is discretionary, then followed by with civil legal action in the form of agreements in the form of MSAA, MRNIA and APU until ending with public legal action again in the form of blocking, sealing, installing signboards and others as described below:

Picture 2
Characteristics Of Government Action Cases Related to Bank Indonesia Liquidity Assistance (BLBI)

Because there is indeed a point of intersection between private law actions and public law actions in BLBI cases at the State Administrative Court and there has been no change in agreement among the Supreme Judges of the State Administrative Chamber regarding the meaning of the oplossing theory, it is only natural that in one of the Supreme Court's decisions namely, case Number 443/K/TF/TUN/2023 dated 2 October 2023 still applies the oplossing theory, even though if you look at its characteristics, public legal actions are more dominant than private legal actions.

Coal Mining Concession Work Agreement (PKP2B) Case

Cases involving Coal Mining Concession Work Agreement have also applied the oplossing theory several times by the Panel of Judges of the Supreme Court, for example in case no. 199 K/TUN/LH/2019[19] which was decided on May 23 2019 between the Indonesian Forum for the Environment

[19] Putusan Mahkamah Agung Nomor 199 K/Tun/Lh/2019 (n.d.).

(WALHI) as Plaintiff/Casation Applicant against the Minister of Energy and Mineral Resources of the Republic of Indonesia as Defendant/Cassation Respondent I and PT. Image of Palu Minerals as Defendant II Intervention/Casation Respondent II.

In this case, 2 Supreme Court Justices, namely Supandi and Is Sudaryono, applied the oplossing theory with the following legal considerations:

> *Considering, that the actions of the Government (Defendant) in issuing the object of dispute in order to fulfill the continuation of the work contract stages as a Private Legal Entity, therefore the State Administrative Decree is a State Administrative Decree which is a civil legal act, so that if there are objections from the parties - parties, including third parties, fall under the absolute competence of the Civil Court, as regulated in the provisions of Article 2 letter a of Law Number 9 of 2004 concerning the second amendment to Law Number 5 of 1986 concerning the State Administrative Court, so that the State Administrative Court not competent to adjudicate;*

Interestingly, in this case there was a dissenting opinion from one of the Supreme Court Justices, Yodi Martono Wahyunadi, who was of the opinion regarding the authority of the State Administrative Court as follows:

> *That the object of the lawsuit is a written determination containing an act of State Administrative Law. Decree of the Minister of Energy and Mineral Resources of the Republic of Indonesia Number 422.K/30/DJB/2017 dated 14 November 2017 concerning Approval of Improvement of the Production Operation Phase of the PT Citra Palu Minerals Work Contract ;*
> *That the object of the dispute was issued on the basis of the implementation of the Work Contract which had been agreed upon by the Defendant and Defendant II*

Intervention which was born on the basis of the provisions of Law Number 11 of 1967 concerning Basic Mining Provisions. Along the way, while contract implementation was still ongoing, there was a change in regulations with the promulgation of Law Number 4 of 2009 concerning Mineral and Coal Mining. The principle change in the two regulatory regimes is to change the Contract of Work system which has a civil dimension (Law Number 11 of 1967) to a licensing system or better known as Mining Business Permits (IUP) which has a public law dimension (Law Number 4 of 2009). ;

Whereas the object of the dispute was published at the time Law Number 4 of 2009 came into force, so it is necessary to determine which rules should be the government's reference in responding to the continuation of the Work Contract, these rules are also a benchmark for determining dispute resolution options if submitted to court;

Whereas Article 169 of Law Number 4 of 2009 stipulates that: "When this Law comes into force:[20]

a. *Contracts of work and coal mining concessions that existed before the enactment of this Law remain in effect until the expiration of the contract/agreement;*
b. *The provisions contained in the article on the work contract and the coal mining business agreement as intended in letter a shall be adjusted no later than 1 (one) year from the promulgation of this Law, except regarding state revenues;*
c. *The exception to state revenue as referred to in letter b is efforts to increase state revenue;*

Whereas during the work contract between the Defendant and the Intervening Defendant II, there was an Amendment to the Work Contract Approval dated 12 April 2017, where based on Article 31 of the Work

[20] "Undang-Undang Nomor 4 Tahun 2009 Tentang Pertambangan Mineral Dan Batubara" (n.d.).

> *Contract Amendment it was stated that the company could submit an application for continued mining operations in the form of a business permit in the mining sector in accordance with statutory regulations, therefore the object of the dispute is issued subject to the provisions of Law Number 4 of 2009 concerning Mineral and Coal Mining, subject to public law (administrative law) so that in casu the State Administrative Court has the authority to adjudicate the a quo case;*

From the results of this research, it is known that although the use of the oplossing theory still exists, there has been disapproval of its use so that within a panel of judges there are dissenting opinions regarding the use of the oplossing theory, even at the cassation level.

Besides that, the use of the oplossing theory does not answer the essence of the dispute (sometimes called a "*sissy decision*" by the Plaintiff). Even if the Defendant's argument regarding the oplossing theory is granted, then his victory is only superficial because the victory is only temporary and can be questioned again in civil court. For this reason, it would be better if the defendant does not need to file an exception based on the oplossing theory, and up to now there has been no research on civil decisions where cases have previously been submitted to the Administrative Court but the oplossing theory has been applied (what is the civil judge's opinion about whether it goes to the subject matter of the case or not).

Thus, the agreement of the Supreme Court Justices of the State Administrative Chamber formulated in the Supreme Court Circular Letter Number 7 of 2012 needs to be revised and improved by giving a new meaning to the oplossing theory in accordance with legal developments which is roughly formulated like this: "In the event that the State Administrative Decree issued or the Government Action taken

is in the context of preparing civil legal action, for example determining the winner of an auction or in the context of carrying out civil legal action such as blocking the assets of BLBI fund obligors, then it cannot be said to be oplossed into the civil action but rather stands alone. so that State Administrative Court Judges still have the authority to judge them."

The oplossing theory must also be given a new meaning in line with legal developments and societal demands, namely if there is a point of intersection of authority between the general/civil court environment and state administrative court, then civil cases must merge into state administration cases or in other words private law. which must be integrated into public law.

If this results in the existence of 2 (two) decisions that have permanent legal force which conflict with each other, then for legal certainty and legal unity it is still possible to carry out extraordinary legal remedies in the form of a judicial review.

IV. Conclusion

The Law on State Administrative Courts does not provide a broad interpretation of the oplossing theory, but only State Administrative Decisions which are civil legal acts, for example decisions concerning buying and selling matters carried out between government agencies and individuals which are based on provisions. civil law. Furthermore, the Supreme Court, in this case the State Administrative Chamber, provides an extensive interpretation in the Supreme Court Circular Letter (SEMA) Number 7 of 2012 which is oriented towards legal unity and tends to give way to the civil chamber. This interpretation is currently no longer relevant to legal

developments because in many cases, some of the authority of the general judiciary is delegated to the state administrative judiciary.

In its implementation, the Supreme Court's interpretation also gives rise to inconsistencies among state administrative court judges, so that the Supreme Court, on the other hand, needs to provide a new interpretation regarding the meaning of the oplossing theory, namely if the State Administrative Decree or government action issued or carried out is in the context of preparing a civil legal action or in In order to carry out civil legal actions, it cannot be said to be oplossed into the civil action but rather stands alone so that the State Administrative Court Judge still has the authority to judge.

The theory of oplossing must also be given a new meaning in line with legal developments and societal demands, namely if there is a point of intersection of authority between civil cases and state administration, then civil cases must merge into state administration cases or in other words it is private law that must merge into public law. In accordance with the conclusion above, defendants in the State Administrative Court should not need to submit an exception regarding absolute authority with the argument of the oplossing theory because even if the exception is granted, the victory will only be temporary and can be tried again in civil court. Meanwhile, State Administrative Court Judges should not use the oplossing theory in handing down decisions but rather go into the essence of the case so that they can answer the essence of the dispute.

Meanwhile, legislators are advised to revise the provisions in Article 2 letter a of Law Number 5 of 1986 concerning State Administrative Courts by providing explanations that are in accordance with legal developments and revise law number

30 of 2014 concerning government administration by providing strict boundaries as to which KTUN is the object of PTUN disputes and which decisions are the object of general court disputes. Likewise, the Supreme Judges of the State Administrative Chamber should also revise the formulation of the 2012 plenary meeting of the State Administrative Chamber by giving new meaning to the oplossing theory which confirms the authority of the state administrative court.

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