



## ANALYSIS OF DECISION OF CENTRAL JAKARTA COURT NUMBER 757/Pdt.G/2022/PN Jkt.Pst (FROM PMH TO ABUSE OF POWER)

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### ABSTRACT

On March 2, 2023, the Central Jakarta District Court decided to accept the PRIMA party's lawsuit, declared the PRIMA party the party that was harmed, ordered the defendant to pay a fine of five hundred billion, punished the defendant in this case, the KPU not carrying out the remaining stages of the KPU, and so on. On the one hand, this decision is considered to be in the wrong room, and the JAKPUS District Court judges exceeded their authority, especially regarding the election postponement clause. However, on the other hand, this decision was aimed at justice for the PRIMA party due to the KPU's negligence. Based on this, the research seeks to analyze more deeply and comprehensively whether the JAKPUS District Court decision was in the wrong chamber and the judge exceeded his authority or whether this decision was indeed in his room. This research is normative research with a normative juridical approach. The legal material used in this study is secondary legal material, namely in the form of a JAKPUS District Court decision number 757/Pdt.G/2022/PN.Jkt.Pst, laws and regulations, doctrine, expert opinions, and so on related to the theme of this research. In addition, no research specifically examines this decision. The results of this study indicate that the unlawful act referred to in this case is a legal act committed by a government agency/institution, which is the authority of the Administrative Court as outlined in PERMA Number 2 of 2019. In addition, the judge's actions in handling this case fall into the category of abuse of power for exceeding their authority and not implementing the written rules, in this case, PERMA Number 2 of 2019

**Keywords:** Acts Against the Law, Abuse Of Power, Postponement of Elections

### INTRODUCTION

The lawsuit by the PRIMA party (Adil Makmur People's Party) originated from the enactment of the Administrative Verification Results of Political Party Candidates for Election Contesting on October 15, 2022, at 00.35 WIB which stated the final status of the Plaintiff (Adil Makmur People's Party) did not meet the requirements (TMS). This resulted in the PRIMA party being unable to participate in the next election stage in the form of factual verification of

Political Parties as Candidates for the 2024 Election because several leaders and management needed to be completed. Even though in SIPOL KPU, the position that made this party based on TMS has been fulfilled and declared MS or fulfilled the requirements. Apart from that, the PRIMA party is complaining that there are no permanent guidelines for SIPOL, and even PKPU Number 24 of 2022 was only enacted on July 20, 2022, a month after the political party administrative verification results. Furthermore, on July 30, the PRIMA party tried to try to repair it, but the SIPOL system was unable to detect which file was in error (Pusat 2022).

On March 2, 2023 the Central Jakarta District Court with number 757/Pdt./2022/PN Jkt.Pst decided with the object of the tort lawsuit as follows 1) Accept the suit in its entirety. 2) Saying that the plaintiff party is a political party that has suffered losses in administrative verification by the plaintiff. 3) Sentence the defendant to pay the plaintiff material compensation of 5 billion. 4) Punish the person concerned to refrain from carrying out the remaining stages of the 2024 general election. 5) Determine that the decision, in this case, can be carried out immediately (*uitvoebaar bij voorraad*). 6) Stipulates that the cost of the case shall be borne by the defendant for four hundred and fifty thousand rupiahs (Pusat 2022).

There are several types of the term unlawful act among jurists, namely R. Wirjono Prodjodikoro using the term criminal act, Utrecht used the term act contrary to legal principles, and Sudiman Kartohadi Prodjo put forward the term unlawful act. According to R. Wirjono Prodjodikoro, the word "unlawful act" is relatively narrow because what is meant by this term is not only an act that directly violates the law but also an act that directly violates regulations other than the law but can be said to violate the law indirectly. (Sari 2020).

Article 1365 of the Civil Code does not provide a formulation of an unlawful act. Still, it only regulates a person who, if he suffers a loss due to an illegal act committed by another person against him, will successfully file a claim for compensation at the District Court (Prayogo 2016).

In Article 1365 of the Civil Code, there are two teachings, namely: 1). Narrow Teachings The formulation of unlawful acts according to narrow instructions, namely, an act that violates the personal rights of other people or is contrary to their legal obligations from those who commit them and this must be based on the Law. So against the Law is the same as against the Law. The definition of an unlawful act according to this narrow teaching was adhered to by the Hoge Raad before 1919, to be precise before the Arrest Hoge Raad 31 January 1919. 2). Broad Teachings The formulation of unlawful acts according to general teachings, namely, to do or not to do something that violates other people's rights or is contrary to the proper precautionary attitude in society towards people or other people's goods (Hassanah 2015).

According to Rosa Agustina in her book Unlawful Acts, Postgraduate FH UI, formulating unlawful acts must meet the following requirements: first, the action is contrary to the legal obligations of the perpetrator; second, the act is contrary to the personal rights of others, third is contrary to decency, fourth, contrary to morality, thoroughness and prudence (Dameria, Busro, and Hendrawati 2017).

On the one hand, this decision is by the corridors of legislation to guarantee the constitutional rights of the PRIMA party to nominate as ELECTION participants. However, on the other hand, the decision was deemed wrong, and the judge exceeded his authority/abuse of power, which should have been the authority of BAWASLU as the ELECTION supervisory body, Administrative Court in matters of administration and the management of the Constitutional Court when it came to the results of ELECTION disputes.

Authority has an essential position in the study of constitutional law and administrative law. So important was this position of authority that F.A.M. Stroink and J.G. Steenbeek stated: "Het begrip bevoegdheid is and also een kernbegrip in het staats en administratief recht" (Susanto 2020). The term authority or authority is equated with "authority" in English and "bevoegdheid" in Dutch. Authority in the Black's Law Dictionary is defined as Legal power, a right to command or to act; the freedom and control of public officers to require obedience to their orders legally issued within the scope of their general duties. The term "bevoegdheid" is used in the concept of private law and public law, while "authority" is always used in the concept of public law (Nugraha 2016).

Opinion of Indriyanto Seno Adji, quoting from W. Konijnenbelt, states that to measure abuse of authority using the following parameters: (1) the element of abuse of power is assessed whether there is a violation of written basic regulations or the principle of decency that lives in society and this country. The criteria and parameters are alternative. (2) The principle of propriety in implementing a policy or zorgvuldigheid is applied if there are no basic regulations, or this principle of etiquette is applied if there are basic regulations. In contrast, the basic (written) regulations cannot be applied to certain conditions and circumstances which are urgent (Muhamad, Abdurrahman, and Fauzi 2022).

Based on this, this study aims to analyze the decision of the Central Jakarta District Court with number 757/Pdt./2022/PN Jkt.Pst, especially regarding the fourth point, namely the postponement of the 2024 ELECTION stage. In addition, researchers also understand about the issuance of the High Court decision. However, there is an exciting side that needs to be studied comprehensively in dealing with the conclusion of the Central Jakarta District Court number 757/Pdt./2022/PN Jkt.Pst, namely whether the decision was correct in the PMH chamber or the wrong room.

## **RESEAARCH METHOD**

This research is a normative research with a normative juridical approach where the law is part of the building of norms, including decisions, principles, and other statutory regulations related to PMH (Perbuatan Against the Law) and abuse of authority by the panel of judges at the Central Jakarta District Court. The legal materials in this study use secondary legal materials, namely controlling the decision of the Central Jakarta District Court with number 757/Pdt./2022/PN Jkt.Pst, in particular dealing with the fourth point, namely the postponement of the 2024 ELECTION stage, laws and regulations, doctrine, principles, and expert opinion related to this research. In collecting legal materials, this study used a library research technique. The

analysis technique used in this study is a grammatical legal interpretation technique that examines the words in the decision of the Central Jakarta District Court number 757/Pdt./2022/PN Jkt.Pst and a systematic legal interpretation technique that links the finding to statutory regulations. -Other invitations related to this research.

## **RESULT AND DISCUSSION**

### **Result**

This lawsuit originated. The case from the PRIMA party (Adil Makmur People's Party) started after the stipulation of the Administration Verification Results of Political Party Candidates for Election Contestants, which on October 15, 2022, at 00.35 WIB stated that the final status of the Plaintiff (Adil Makmur People's Party) did not meet the requirements (TMS). This resulted in the PRIMA party being unable to participate in the next election stage in the form of factual verification of Political Parties as Candidates for the 2024 Election because several leaders and management needed to be completed. Even though in SIPOL KPU, the position that made this party based on TMS has been fulfilled and declared MS or fulfilled the requirements(Pusat 2022).

Apart from that, the PRIMA party is complaining that there are no permanent guidelines for SIPOL. Even PKPU Number 24 of 2022 was only enacted on July 20, 2022, a month after the political party's administrative verification results. Furthermore, on July 30, the PRIMA party tried to try to repair it, but the SIPOL system was unable to detect which file was in error. On July 27, the PRIMA party. That links the finding to statutory regulations. -Other invitations related to this research(Komisi Pemilihan Umum Republik Indonesia 2022).

At the same time that the PRIMA parties filled in the members who still needed to meet the requirements, the KPU simultaneously added the number of members who had not. In addition, there is a double standard between the central KPUS and regional KPUs regarding uploaded documents and their limitations. Due to KPU's unprofessionalism, the PRIMA party sued BAWASLU on October 20, 2022, with Register Number 002/PS.REG/BAWASLU/X/2022 with the following verdicts: 1) . Partially granted the PRIMA Party's request. 2). Cancel the KPU Minutes Number: 232/PL.01.1-BA/05/2022 concerning the Recapitulation of Verification Results of the Administration of Political Party Candidates for the General Elections on October 13, 2022. 3) Order the KPU to allow the PRIMA Party to submit documents required for improvement during 1x24 hours. 4) . Ordered to notify the PRIMA Party regarding the opportunity to submit the document requirements for improvement by 1x24 hours before the implementation, repair, and submission of the document requirements for political parties participating in the election begins. 5) Order the KPU to manually verify repairs to the repair requirements document submitted by the PRIMA Party. 6) Order the KPU to publish the Minutes of the Recapitulation of the Verification Results of the Political Party Administration by the results of the revision of the revisions. 7) Order the Respondent to implement this decision no later than 3 (three) working days after the decision is to render rendered (Pusat 2022).

The BAWASLU decision implies that the KPU issued KPU Decree Number 460 of 2022 dated 8 November 2022 concerning Stages, Programs, and Schedules for Submission of Documents Requirements for Correction, Verification, and Determination of Political Parties Owners of DPR and DPRD Members as a follow-up to the BAWASLU decision. Then the KPU ordered the PRIMA party to repair the file and upload it in SIPOL as contained in the KPU RI Letter Number 1063/PL.01.1-SD/05/2022 dated 8 November 2022 concerning Submission of Documents Requirements for Repairs to SIPOL. Because SIPOL continued to experience bug errors, in the end, the PRIMA party also repaired the document verification for PRIMA parties to remain TMS/Not Qualified (Indonesia 2016).

Based on the chronology above, this research focuses on the position of the decision of the Central Jakarta District Court number 757/Pdt./2022/PN Jkt.Pst whether it is PMH territory or whether the judge's actions include abuse of power..

## **Discussion**

### **Unlawful act**

There are several types of the term unlawful act among jurists, namely R. Wirjono Prodjodikoro using the term criminal act, Utrecht used the term act contrary to legal principles, and Sudiman Kartohadi Prodjo put forward the term unlawful act. According to R. Wirjono Prodjodikoro, the word "Unlawful act" is relatively narrow because what is meant by this term is not only an act that directly violates the law but also an act that directly violates other regulations than the law but can be said to violate the law indirectly (Dameria, Busro, and Hendrawati 2017).

Article 1365 of the Civil Code does not provide a formulation of an unlawful act. Still, it only regulates a person who, if he suffers a loss due to an illegal act committed by another person against him, will successfully file a claim for compensation at the District Court (Prayogo 2016).

The definition of an unlawful act regulated in Article 1365 of the Civil Code contains two teachings, namely: a. Narrow Teachings The formulation of illegal acts according to narrow teachings, namely, an act that violates the personal rights of other people or is contrary to their legal obligations from those who commit them and this must be based on the Law. So against the Law is the same as against the Law. The definition of an unlawful act according to this narrow teaching was adhered to by the Hoge Raad before 1919, to be precise before the Arrest Hoge Raad 31 January 1919. b. Broad Teachings The formulation of unlawful acts according to general teachings is to do or not to do something that violates other people's rights or is contrary to the proper precautionary attitude in society towards people or other people's goods (Setiawan 1982).

According to Rosa Agustina in her book Unlawful Acts, Postgraduate FH UI formulates unlawful acts must meet the following requirements: first, the action is contrary to the legal obligations of the perpetrator; second, the act is contrary to the subjective rights of others. Third is contrary to decency. Fourth, contrary to morality, thoroughness, and prudence. (Namira 2010)



Based on the information and chronology above, both broadly and narrowly, the KPU has violated the PRIMA party's and its staff's rights to be nominated and nominated in the 2024 ELECTION. Therefore, it is correct that the JAKPUS District Court accepts the lawsuit filed by the PRIMA party if based on the above theory of the Civil Code. However, since the issuance of PERMA Number 2 of 2019, dated August 20, 2019 and PERMA No 4 of 2019 that all forms of unlawful acts by Government Agencies/Officials are the authority of the Administrative Court (PTUN). However, what becomes an interesting discussion is whether the PERMA contradicts the Civil Code. According to researchers, these regulations are consistent. The existence of PERMA Number 2 of 2019 is a derivative regulation / delegated liaison that limits the court's authority in deciding PMH cases. Ideally, all forms of PMH carried out by Government Agencies/Officials are the authority of the Administrative Court (Agung 2019).

### Abuse Of Power

Authority has an important position in the study of constitutional law and administrative law. So important was this position of authority that F.A.M. Stroink and J.G. Steenbeek stated: *"Het begrip bevoegdheid is and also een kernbegrip in het staats en administratief recht"*. The term authority or authority is equated with "authority" in English and "bevoegdheid" in Dutch. Authority in the Black'S Law Dictionary is defined as Legal power, a right to command or to act, the freedom and control of public officers to require obedience to their orders legally issued within the scope of their general duties. The term "bevoegdheid" is used in private and public law, while "authority" is always used in the concept of public law. Agencies/Officials are the authority of the Administrative Court (Susanto 2020).

In administrative law, every grant of authority to an agency or a state administration official is always accompanied by the "purpose and intent" of the given command, so the application of that authority must be by the "purpose and intent" of the given source. If the use of such power is not by the "purpose and intent" of granting such authority, then an abuse of control (*"détournement de pouvoir"*) has been committed. The parameter "purpose and intent" of giving head in determining the occurrence of abuse of power is known as the principle of specialty (*specialiteitsbeginsel*). Mariette Kobussen developed this principle in her *De Vrijheid Van De Overheid* book. Substantially, *specialiteitsbeginsel* implies that every authority has a specific purpose. In the administrative law literature, the focus of *zuiverheid van oogmerk* (sharpness of direction or purpose) has long been known. Deviating from this principle will give birth to *"détournement de pouvoir"* (Nugraha 2016).

Abuse of internal authority consists of 1) Discretion Philipus M. Hadjon stated to make it easier to understand free or discretionary power by looking at its scope. Free power or discretionary power includes: (a) the authority to decide independently, (b) the authority to interpret disguised norms or vague norms (Zaqiah Darojad 2015). Opinion of Indriyanto Seno Adji, quoting from W. Konijnenbelt, states that to measure abuse of authority using the following parameters: (1) the element of abuse of power is assessed whether there is a violation of written basic regulations or the principle of decency that lives in society and this country. The

criteria and parameters are alternative. (2) The principle of propriety in implementing a policy or *zorgvuldigheid* is applied if there are no basic regulations, or this principle of etiquette is applied if there are basic regulations. In contrast, the basic (written) regulations cannot be applied to certain urgent conditions and circumstances. (Windarto 2021).

The parameter of abuse of authority in the type of authority is bound to use laws and regulations (written rules) or use the parameter of the principle of legality. In contrast, the free authority (discretion) parameter of abuse of authority uses the general principles of good governance because the "*wetmatigheid*" code is inadequate (Nugraha 2016). Based on the explanation above, the researcher concluded that the Central Jakarta District Court judge had included the PRIMA party case and did not consider PERMA Number 2 of 2019, which is (written rules) concerning Guidelines for Settlement of Disputes on Government Actions and Authority to Tries Unlawful Acts by Agencies and Government Officials (*Onrechmatige Overheidsdaad*) which is the authority of PTUN.

## CONCLUSION

Based on the explanation above, the researcher concludes that the decision of the JAKPUS District Court Number 757/PDT.G/2022 PN Jkt. Pst is indeed a case related to unlawful acts and should be under the jurisdiction of the District Court, in this case, the JAKPUS District Court. However, since the birth of PERMA Number 2 of 2019, all forms of unlawful acts committed by government bodies/individuals have been under the Administrative Court's (PTUN) authority. Because the PMH in question was carried out by the KPU, which is a government agency/institution, the Administrative Court should have handled this case more precisely. Furthermore, the researcher views the judge's actions in handling this case as an abuse of power because there are limits to written rules not implemented by the JAKPUS District Court judges.

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