



## Testing the Principle of *Praesumptio Iustae Causa* in State Administrative Disputes During Pandemic

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### ABSTRACT

*In the implementation of the state administrative decree, the principle of praesumptio iustae causa is known as part of the implementation of the state administrative decree to resolve state administrative disputes. This principle means that a state administrative decision is always considered valid. This research has the aim of providing protection for the rights of the people that originate from individual rights as well as providing protection for the rights of the community based on the common interests of individuals in the community. The government has an obligation to promote the general welfare as stated in the constitutional mandate. In carrying out this obligation, the government takes regulatory and administrative law enforcement actions. The research method used is descriptive normative research, judging from the effectiveness of this principle is considered valid. And not only that, the possibility of disputes in the state administrative area occurring in the current pandemic era sees this case being included in the area of state administration, even these disputes are often found in the government. The conclusion is Article 65 of Law Number 30 of 2014 concerning Government Administration, what is protected is the interests of the wider community who will be harmed by the issuance of the government decree. So that with the provisions in Article 65 of Law Number 30 of 2014 concerning Government Administration, it can add options for the community to get wider legal protection for the issuance of a government decree/ action.*

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### 1. Introduction

The State Administrative Court in Indonesia is inseparable from the mandate of state administration to provide a sense of justice to the community. The state administration was formed to foster, perfect, and bring order to the apparatus in the field of state administration so that it can become an efficient, effective, clean, and authoritative tool and the state administrative court as a place to resolve or disputes between agencies or state administration

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and citizens of the community. In addition, the State Administrative Court in carrying out its duties and authorities is the will of the constitution in order to provide maximum legal protection to the people. The State Administrative Court has a role in improving good governance.

The distinctive feature of the State Administrative Court of procedural law lies in the legal principles that underlie it, namely: the principle of *praesumptio iustae causa*. This principle implies that every action of the ruler must always be considered legitimate until there is an annulment. With this principle, the lawsuit does not delay the implementation of the state administrative decree being sued. The principle of free proof or the judge who determines the burden of proof; The principle of the judge's activity (*dominus litis*). The judge's activity is intended to balance the position of the parties because the defendant is a state administrative officer while the plaintiff is a person or civil legal entity. The principle of court decisions has binding force (*erga omnes*).

Based on the principle of *praesumptio iustae causa* which states that of the state administrative decree must be considered legally valid until a court decision states otherwise. This is so that the government's task, especially in the context of providing protection, public services, and realizing welfare for the community can run well. If viewed from the historical and philosophical aspects, the purpose of establishing the administrative court according to the government's statement before the plenary session of the House of Representatives of the Republic of Indonesia regarding the draft law on the State Administrative Court, is that the State Administrative Court is held in order to provide protection to the people.<sup>3</sup> This is reaffirmed in the general explanation of number 1 paragraph 8 of Law Number 5 of 1986 concerning the State Administrative Court which says the State Administrative Court is held in order to provide protection to people seeking justice who feel that they have been harmed by an administrative decision.

The provision of protection to the people is a mandate and the preamble to the 1945 Constitution of the Republic of Indonesia, the fourth paragraph which determines: "...to form an Indonesian state government that protects the entire Indonesian nation...". Protection of the entire Indonesian nation does not only come from external threats, but also includes actions by state administration agencies or officials that have implications for harming the people against the implementation of the State Administrative Court.

Legal protection of the people for government actions known in the Netherlands as *het recht tegen het bestuur*.<sup>4</sup> It is also stated in the 1945 Constitution of the Republic of Indonesia of the second amendment of Article 28G paragraph (1) that everyone has the right to personal protection, family, honor, dignity, and property under his control, and has the right to a sense of security and protection from threats and protection from the threat of fear to do or not do something which is a human right. This article proves that the basic concept of administrative law concerns legal protection for the people for government actions and is based on the universally applicable concept of respect and respect for human rights.

Furthermore, in a government system based on law, the State Administrative Court has a judicial control function over the government and its implementation. The State Administrative Court are also created to resolve disputes between the government (as defendants) and their citizens (individuals or civil legal entities as plaintiffs), namely as disputes that arise as a result of government actions as stated in the state administrative

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<sup>3</sup> Menteri Kehakiman RI. 1986. *Government's Statement Before the Plenary Session of the DPD RI Regarding the Bill on State Administrative Courts*. Jakarta: Balai Pustaka, p. 9.

<sup>4</sup> Hadjon, Philip M. 2010. *Hukum Administrasi dan Good Governance*. Jakarta: Universitas Trisakti, p. 19.

decision (*beschikking*) which are considered to violate the rights of the government it's citizens.

The disputed matter based on Law Number 5 of 1986 is actually a manifestation of the implementation of a government authority in accordance with public law carried out by the agency and official state. The form of that authority is the authority to form positive law and maintain it.

On October 17, 2014, with the enactment of Law Number 30 of 2014 concerning Government Administration, the authority of the State Administrative Court has grown. The enactment of the Government Administration Law of the legal basis for government agencies and/or officials in carrying out government administration tasks, it is also expected to guarantee basic rights and provide protection for citizens. Every citizen can file a lawsuit against the decisions and/or actions of government bodies and/or officials to the State Administrative Court because this law is a material law of the State Administrative Court system.

Article 65 of Law Number 30 of 2014 concerning Government Administration also regulates the suspension of the decision of the state administration (government) agency/official which reads "decisions that have been determined cannot be postponed, unless they have the potential to cause: state losses, environmental damage, and/or social conflict. The postponement of the decision as referred to in paragraph (1) can be carried out by government officials who make decisions and/or top office. Decision postponement can be made based on requests from relevant government officials or court ruling."

Based on these provisions, the consideration in delaying is no longer on the grounds of "urgent circumstances", but it has been determined if the state administrative decree has the potential to cause state losses, environmental damage and social conflict. The provision also states that delays can be made by government officials who make decisions or top office who make decisions. One of them is based on a court decision. This is different from the provisions stipulated in Article 67 of Law Number 5 of 1986 concerning the State Administrative Court which states that a postponement can be submitted by the justice-seeking community to the State Administrative Court by submitting an application due to urgent circumstances that can harm the interests of the plaintiff and make it difficult for them to do so reinstated if the state administrative decision has to be postponed in order to obtain a determination from the State Administrative Court.

Based on this background, the authors would like to see further the mechanism of the suspension in the State Administrative Court before and after the issuance of Article 65 of Law Number 30 of 2014 concerning Government Administration and the criteria used so that it can be stated that a state administrative decree has the potential to cause environmental damage and can be postponed by the State Administrative Court.<sup>5</sup>

Administrative decision that is being sued will not hinder the working of the legal norms contained in it. The administrative decision is valid and has permanent force if the grace period to sue it has passed without a lawsuit being filed against it.<sup>6</sup> The above principle is the principle of *praesumptio iustae causa*. This principle implies that every action of the authorities must always be considered validity until there is an annulment, with this principle

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<sup>5</sup> Canigo, Miftah Sa'ad. 'Penundaan Pelaksanaan Keputusan Pejabat Tata Usaha Negara (Schorsing) yang Berpotensi Merusak Lingkungan', *Media Syari'ah*, 21(2), 2019, p. 162-176.

<sup>6</sup> Indroharto. 2005. *Usaha Memahami Undang-Undang tentang Peradilan Tata Usaha Negara II*. Jakarta: Pustaka Sinar Harapan, p. 208.

meaning that a lawsuit filed will not delay the implementation of the administrative decision decision that is being sued.<sup>7</sup>

Each administrative decision lawsuit in principle does not delay the implementation of the administrative decision, but in terms of fulfilling legal protection, under certain circumstances, the plaintiff can submit an application so that during the dispute examination process, the administrative decision that has been sued can be postponed for its implementation. In accordance with what has been regulated in Article 67 of Law Number 5 of 1986.

In the discussion section, it will be explained what are the implications of delaying the implementation of the decision, as well as the legal consequences that arise after the postponement is carried out. The main discussion in this paper is about the process of delaying the implementation of the administrative decision that is being sued (here in after referred to as the postponement of the implementation of the administrative decision) and is known as the administrative judicial procedural law.

## **2. Method**

The method used in this study is a qualitative descriptive method. Qualitative descriptive refers to the identification of distinguishing traits or characteristics of a group of people, objects, and events. Basically, qualitative descriptive involves the conceptualization process and results in the formation of classification schemes. The data used is secondary data sourced from publications, namely books, journals, newspapers, websites, and policy documents related to the problem.

The normative juridical approach is used in this paper to examine the document review using various secondary data such as legislation, legal theory, doctrine, and the author's analysis of the problem in reviewing the mechanism of delay in the State Administrative Court after the issuance of Article 65 of Law No. 30 of 2014 concerning Government Administration, and find out the legal consequences of delays in managing state administrative decisions during the pandemic.

## **3. Mechanism of Postponement in the Administrative Court After the Issuance of Article 65 of Law Number 30 of 2014 concerning Government Administration**

Determination of postponement of implementation of state administrative decisions in practice the implementation of the state administrative decision is contained in Article 67 of Law Number 5 of 1986 which explains:

- 1) The lawsuit does not delay or hinder the implementation of the decisions of the state administrative body or official as well as the actions of the state administrative body or official being sued;
- 2) The plaintiff may apply for the implementation of the state administrative decision to be postponed as long as the examination of the state administrative dispute is ongoing until a court decision has permanent legal force;
- 3) The application as referred to in paragraph (2) may be filed at once in a lawsuit and may be decided beforehand from the subject matter of the dispute; and
- 4) Application for postponement as referred to in paragraph (2):
  - a. It can be granted only if there is a very urgent situation which results in the interests of the plaintiff being greatly harmed if the state administrative decision being sued is still implemented.

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<sup>7</sup> Tjandra, W. Riawan. 2018. *Hukum Administrasi Negara I*. Jakarta: Sinar Grafika, p. 10.

- b. It cannot be granted if the public interest in the context of development requires the implementation of the decision.

Article 67 refers to the plaintiff in certain circumstances may submit an application so that during the dispute examination process, the implementation of the state administrative decision being sued can be postponed. So, regarding the delay in the implementation of the state administrative decision during the examination process (needs to be underlined) it must be requested or applied to the court first. State administrative decision cannot be postponed automatically by a court examination process.

The determination to postpone the implementation of state administrative decision in the practice of the State Administrative Court in Indonesian is known as postponement which is an action or attitude taken by the State Administrative Court that can be carried out by the Chair/Vice Chairperson of the State Administrative Court, Panel of Judges, Sole Judge, on the basis of a request from the defendant to postpone the implementation of the state administrative decision which is the object of the dispute during the dispute examination until a court decision has permanent legal force and is stated in use court degree.

The grammatical interpretation of the correlation of Article 67 paragraphs (1) and (2) gives the impression as if there is a contradiction between the two verses. If Article 67 paragraph (1) prohibits delaying the implementation of the state administrative decision, Article 67 paragraph (2) actually opens up opportunities for delaying the implementation of the state administrative decision. However, by using a systematic interpretation, it can be analyzed that the relationship between the two paragraphs of the article is the relationship between the general principle (*algemene beginselen van behoorlijk bestuur*) and the special principle (*bijzondere beginsel*). In special circumstances as regulated in Article 67 paragraph (4), the special principles contained in Article 67 paragraph (2) which exclude the general principle (Article 67 paragraph 1) which contains the principle of presumption of validity, in order to provide protection to the interests of the plaintiff.<sup>8</sup>

The process of delaying the implementation of the state administrative decision in the Government Administration Law as previously mentioned in Article 65 of Law Number 30 of 2014 concerning Government Administration also regulates the suspension of the decision of the state administration (government) agency/official which reads “decisions that have been determined cannot be postponed, unless they have the potential to cause: state losses, environmental damage, and/or social conflict. The postponement of the decision as referred to in paragraph (1) can be carried out by government officials who make decisions and/or top office. Decision postponement can be made based on requests from relevant government officials or court ruling.”

Based on these provisions, the implementation of state administrative decisions can be postponed for three reasons, one of which is if the state administrative decisions cause state losses. If it is related to the provisions of Article 67 of Law Number 5 of 1986, there are fundamental differences regarding the reasons why a state administrative decision can be postponed by the State Administrative Court. To better illustrate the differences in the suspension arrangements regulated in the Law on State Administrative Courts and those in the State Administration Law, see the following table:

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<sup>8</sup> *Ibid.*, p. 77.



**Table 1.** Differences in Law Number 5 of 1986 and Law Number 30 of 2014

<b>Difference:</b>	Form	Product of law	Who can do procrastination reasons for procrastination
Law Number 5 of 1986	Application	Determination	<ol style="list-style-type: none"> <li>1. State administrative decisions are attached to officials/agencies;</li> <li>2. The plaintiff's losses are disproportionate to the benefits of implementing state administrative decisions; and</li> <li>3. The state administrative decision being sued has nothing to do with the public interest.</li> </ol>
Law Number 30 of 2014	Lawsuit	Decision	<p>The agency/official that issues the state administrative decree and/or the official's superior has the potential to cause:</p> <ol style="list-style-type: none"> <li>1. State losses;</li> <li>2. Environmental damage; and</li> <li>3. Social conflict.</li> </ol>

Source: collected from various references.

Based on the table, in addition to differences regarding the reasons for the postponement of a state administrative decision in Article 65 of Law Number 30 of 2014, the article also regulates legal products produced or issued by the State Administrative Court in the form of a court decision. This is in stark contrast to the legal product issued by the State Administrative Court regarding the postponement of state administrative decisions as regulated in the provisions of Article 67 of Law Number 5 of 1986 concerning the State Administrative Court, namely in the form of stipulation.

Based on the provisions of Article 65 of the Administration Law, it is also fully regulated regarding who must postpone a government decision. Can be carried out by government officials who make decisions and superiors of officials who issue such administrative decisions. This is more complete than the regulation regulated in Article 67 of the Law on the State Administrative Court which only regulates the reasons why a state administrative decision may be postponed or not. The provisions of Article 65 of the Government Administration Law also regulated the implementation of delays that can be carried out based on the request of the relevant government officials and court decisions, however, the regulation of postponement of State Administrative Decisions in Article 65 of the Government Administration Law does not clearly regulate the mechanism or procedure for proceedings in Administrative Court. This is the same as the postponement stipulated in Article 67 of the Administrative Law. However, the postponement in Article 67 of the Administrative Law has been further regulated by an internal regulation of the Supreme Court, while for the delay regulated in the government administration law, there is no implementing regulation.

### **3.1. Who has the Right to Apply a Postponement**

Article 65 of the Government Administration Law does not clearly regulate who can apply for a postponement to the State Administrative Court. We are still guided by the provisions of Article 67 of the Law on State Administrative Courts, that the right is the plaintiff who files a lawsuit to the State Administrative Court to file a postponement of the implementation of the decision/action of the state administration agency/official. Applications for

suspension of state administrative decisions can be filed at once in a lawsuit or filed separately at the same time as the lawsuit or at the latest when the replik is filed (Supreme Court Instructions Number 052/Td.TUN/III/1992). If there is a lawsuit to the State Administrative Court, the plaintiff can postpone the implementation of the decision/action of the said government agency/official based on the conditions above.

The form of submitting a postponement to the State Administrative Court based on the provisions of Article 65 of the Government Administration Law is not clearly regulated whether to submit an application or through a lawsuit, but, if viewed as a whole, the contents of the provisions in paragraph (3) state that a postponement of a decision can be made based on either court ruling. Based on these provisions, it can be explained that if the legal product produced by the State Administrative Court by submitting a postponement of the enforcement of a state administrative decision submitted by justice seekers is a court decision.

According to Mertokusumo, a decision is a statement which the judge, as a state official authorized to do so, pronounces at the trial and aims to end or resolve a case or dispute between the parties. Not only what is said is called a decision, but also a statement that is poured in written form and then pronounced by the judge at trial.<sup>9</sup> In addition, the decision is also interpreted as a judge's statement in response to the lawsuit and rebuttal of the litigating parties, which is based on evidence at trial. At least that's the decision that is interpreted by Sasangka in his book *The Law of Evidence*.<sup>10</sup> According to Arto, a decision is a judge's statement which is stated in written form and pronounced by the judge in a trial open to the public as a result of a lawsuit (contentious).<sup>11</sup> According to Harahap's view, the difference between a contentious lawsuit and a voluntary lawsuit is that a case in the form of contentious jurisdiction has the following characteristics:

- 1) In the form of disputes or cases of a party nature;
- 2) There is a plaintiff who acts to file a lawsuit against the defendant; and
- 3) The examination process takes place in a contradictory manner, namely the plaintiff and the defendant have the right to object based on the *audi alteram partem* principle.<sup>12</sup>

The characteristics of a volunteer application or claim are:

- 1) The problem submitted is of one-sided interest (for the benefit of one party only);
- 2) The problem that is requested for adjustment to the District Court is in principle without dispute or differences with another party; and
- 3) No other person or third party is drawn as an opponent, but it is absolute one party (*ex parte*).<sup>13</sup>

The determination of the postponement is a legal product that was born from the application, but in this case there is a state administrative dispute, so it is different from the application in the civil procedural law process in the General Court or in the Religious Court. The civil procedural process of the application in question is purely an application to obtain legalization of rights from the applicant and there are no parties to the dispute.

Based on the principle of statutory interpretation, *lex specialis derogat legi generali* states that special legal rules can override general legal rules. In this case, the Government Administration Law is a general legal rule that regulates government agencies/officials and is a material law for the State Administrative Court. Meanwhile, the Law on the State

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<sup>9</sup> Mertokusumo, Sudikno. 2002. *Hukum Acara Perdata Indonesia*. Yogyakarta: Liberty Yogyakarta, p. 202.

<sup>10</sup> Sasangka, H. 2005. *Hukum Pembuktian*. Jakarta: Mandar Maju, p. 140.

<sup>11</sup> Arto, M. 1996. *Praktek Perkara Perdata Pada Pengadilan Agama*. Jakarta: Pustaka Pelajar, p. 165.

<sup>12</sup> Harahap, M. Yahya. 2006. *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata*. Jakarta: Sinar Grafika, p. 56.

<sup>13</sup> *Ibid.*, p. 56.

Administrative Court is a formal law to maintain the material law, so in the author's opinion, the *lex specialist* (special law) in proceedings at the State Administrative Court is the Law on the State Administrative Court. The mechanism for the implementation of the postponement by the State Administrative Court based on the Law on Government Administration remains based on the Law on the State Administrative Court, then the court decision referred to in the Government Administration Law must again refer to Article 67 of the Law on State Administrative Courts, namely the submission must be in the form of an application and the legal product issued by the Court must be in the form of a determination.

It's just that these rules do not fully accommodate the needs referred to in the Government Administration Law, because there are additional reasons that a government decree can be postponed. However, the norms in question can still be used until the Supreme Court issues new rules to regulate it. In order for the application for the postponement of the implementation of the state administration decision to be effective, the method of preparing the application for the postponement of the implementation of the state administration decision needs to take into account the following matters:<sup>14</sup>

- 1) Contains the motivation and arguments of the plaintiff whose substance describes that:
  - a. The decision being sued may cause harm to the plaintiff so that its validity cannot be maintained;
  - b. The decision being sued is against the law, because it fulfills the formulation of the provisions of Article 53 paragraph (2); and
  - c. The urgency of the postponement of the implementation of the state administration decision.
- 2) The application for postponement of the implementation of the state administration decision is carried out long before the planned implementation of the decision;
- 3) The main petition of the lawsuit should read:
  - a. Ordering the defendant to postpone the implementation of the disputed state administration decision as long as the dispute is ongoing until there is a court decision that has permanent legal force;
  - b. Declare the disputed decision against the law and null and void because of it;
  - c. Order the defendant to issue a new decision that is as fair as possible; and
  - d. Sentencing the defendant to pay court fees.

If examined further, then the effort to request a postponement of the state administration decision turns out to have a common ground (similarity) in the form of an effort to examine the fast procedure that is allowed in the examination of the state administration dispute. The similarities between the two further show that the existence of the State Administration Court is really intended to protect the rights of citizens (human rights).

### **3.2. Legal Consequences of the Delay on the Implementation of the State Administration Decision**

The contents of the stipulation regarding the application for postponement of the implementation of the state administration decision can be in the form of:

- 1) The plaintiff's application was rejected;
- 2) The plaintiff's application is declared not accepted; and

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<sup>14</sup> Tjandra, W. Riawan. *Op.Cit.*, p. 78.



- 3) The plaintiff's application is accepted in whole or in part. The dictum for such matters can be in the form of an order to the defendant to postpone the implementation of all or part of the state administration decision being sued.

The law does not open up the possibility for the application to be granted in the form of temporary measures or *dwangsom* in addition to delaying the implementation of the decision being sued. The provisions of Article 109 of Law Number 5 of 1986 concerning the terms of court decisions also apply to the determination of the application for postponement of the implementation of the state administration decision. The legal consequence of such a postponement is to immediately delay the execution of the state administration decision being sued.

According to Soemaryono, in an interview at the Jakarta State Administrative High Court, if the defendant continues to implement or execute the state administration decision which has been postponed by the court, the state administration decision issued by the defendant can be declared legally invalid and all losses are borne by the defendant. If the plaintiff feels aggrieved by the state administration decision which is still carried out by the defendant, even though there has been a postponement decision issued by the court, then the plaintiff can file a civil claim for compensation to the District Court due to the loss received. Still according to Soemaryono, the legal remedy that can be taken for the postponement decision if the defendant feels that the state administration decision he has made is correct is to file an objection. The reason for filing an objection from the defendant is that there is an element of public interest (Article 67 paragraph (4) sub b of Law Number 5 of 1986). The submission of the objection is in the form of a rebuttal letter addressed to the Chairperson of the Court by attaching evidence.<sup>15</sup>

Basically, Law Number 5 of 1986 does not stipulate what legal remedies can be taken by the defendant against the determination to postpone the implementation of the state administration decision. However, in this case, forms of resistance have developed in practice. The court always provides an open opportunity for the defendant to defend his rights if he feels that the determination to postpone the implementation of the state administration decision is not appropriate.

The decision to postpone the implementation of the state administration decision issued by the Head of the Court, in accordance with its temporary nature, can be challenged by the defendant immediately after the decision is issued in the form of a rebuttal. The Chief Justice of the Court after receiving the rebuttal can process it in a relatively short procedure, namely with 1 or 2 meetings, then can reject or grant the rebuttal. Reject means the postponement is maintained and grant means the postponement is revoked. If the panel of judges wishes to grant the defendant's rebuttal, then the revocation of the postponement determination is carried out before the principal case is decided.<sup>16</sup>

In practice, it is not easy to carry out the contents of the application for the postponement of the implementation of the state administration decision. There are several cases that show that the defendant does not want to comply with the contents of the application for postponement of the implementation of the state administration decision that has been issued by the court. The request for the postponement of the implementation of the state administration decision from the plaintiff was declared to be accepted by the court, but still the execution of the state administration decision was carried out by the defendant.

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<sup>15</sup> Interview with Sumaryono.

<sup>16</sup> Siahaan, Lintong. 2005. *Prospek PTUN Sebagai Pranata Penyelesaian Sengketa Administrasi di Indonesia: Studi Tentang Keberadaan PTUN Selama Satu Dasawarsa 1991-2001*. Jakarta: Perum Percetakan Negara RI, p. 23.

One example of the defendant's refusal to submit to the contents of the application for postponement of the implementation of the state administration decision is the case of Aminah Torik (the plaintiff) lawsuit against the Mayor of the Bogor Level II Regional Head (the defendant). This case occurred around January 1995. The plaintiff, whose building permit was almost finished, was threatened with demolition with an unloading order from the defendant, arguing that he did not have a building permit. On the threat of demolition, the plaintiff filed a lawsuit against the defendant and at the same time submitted a request for a postponement of the implementation of the unloading order to the Bandung State Administrative Court.<sup>17</sup>

Based on the claim and petition from the plaintiff, the judge at the Bandung State Administrative Court through the postponement decision Number 03/PEN/PTUN-BDG/1995 dated January 18, 1995, postponed the order for the demolition of the plaintiff's house to take effect. But later, it turned out that the defendant still did not want to carry out the postponement decision. The defendant even deliberately witnessed and led the demolition of the plaintiff's house by himself, by inviting other officials to witness it, such as the Dandim of Bogor City, the Head of Bogor Police and the Chair of the Bogor City of Regional People's Representative Assembly.<sup>18</sup>

Execution or execution of court decisions is the end of the entire process of a series of disputes in any judicial institution. Unlike the case with the execution of the decision to postpone the implementation of the state administrative decision, it is not the end of a series of disputes but is temporary until a court decision has permanent legal force, even at any time the decision to postpone the implementation of the state administrative decision can be revoked.<sup>19</sup>

Case in point: in the issue that arose when the state administrative decree which became the legal standing of the Plaintiff was the Central Executive Board of the Indonesian Computer Entrepreneurs Association in case 53/Pdt.Sus-HKI/Cipta/2017/PN Jkt.Pst it was stated that it must be tested first the validity. As a result of the judge's consideration, the plaintiff's claim cannot be accepted or *niet ontvankelijke verklaard*. This decision is very detrimental to the plaintiff because indirectly the judge has postponed the implementation of the state administrative decree. Even though the judge in this case is not an administrative judge who can declare a state administrative decree implementation can be postponed or not.

#### **4. Conclusion**

The postponement mechanism in the State Administrative Court with the existence of Article 65 of Law Number 30 of 2014 concerning Government Administration continues to use the rules contained in Article 67 of Law Number 5 of 1986 concerning the State Administrative Court and the derivative rules that regulate further regarding the determination of postponement issued by the Supreme Court.

The existence of Article 65 of Law Number 30 of 2014 concerning Government Administration does not abolish the postponement arrangement as regulated in Article 67 of Law Number 5 of 1986 concerning State Administrative Courts, because the matters regulated in Article 65 of Law Number 30 of 1986 2014 concerning Government Administration has different legal protections. In Article 67 of Law Number 5 of 1986 concerning the State Administrative Court, the thing that is protected is the interest of the

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<sup>17</sup> Interview with Sumaryono.

<sup>18</sup> Interview with Sumaryono.

<sup>19</sup> Asmuni. 'Eksekutabilitas Penetapan Penundaan Pelaksanaan Keputusan Tata Usaha Negara', *Perspektif Hukum*, 16(1), 2016, p. 99-121.

plaintiff who will be harmed by the issuance of a government decree. Article 65 of Law Number 30 of 2014 concerning Government Administration, what is protected is the interest of the wider community who will be harmed by the issuance of the government decree. So that with the provisions in Article 65 of Law Number 30 of 2014 concerning Government Administration, it can add options for the community to get wider legal protection for the issuance of a government decree/action.

The criteria for being able to say that a state/government administrative decision has the potential to cause environmental damage and its enforcement can be postponed by the State Administrative Court, if the plaintiff has filed a lawsuit to the State Administrative Court regarding the government's decision/action related to the environment and the lawsuit has been accompanied by an application filed by the plaintiff either simultaneously with the plaintiff's claim or separately from the plaintiff's claim. In determining the determination of the application for postponement, the judge must continue to see the urgency of the decision/action of the government to be postponed by referring to the results of the examination or audit of the environmental auditor who has been certified by the environmental auditor under the Ministry of the Environment, and does not conflict with the "interests of the environmental auditor".

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**Conflict of Interest Statement:**

The author declares that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

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