



Contents lists available at [Journal IICET](#)

JPPi (Jurnal Penelitian Pendidikan Indonesia)

ISSN: 2502-8103 (Print) ISSN: 2477-8524 (Electronic)

Journal homepage: <https://jurnal.iicet.org/index.php/jppi>



Action of the government of the DKI Jakarta province in the Jakarta flood control program claims by citizens (analysis of the decision of the PTUN number: 205/G/TF/2021/PTUN-JKT)

Erma Yustiyah^{*}), Anna Erliyana

Master of Law Student Faculty of Law, University of Indonesia (MIH-FHUI), Indonesia

Article Info

Article history:

Received Jul 11th, 2022

Revised Sep 16th, 2023

Accepted Nov 05th, 2023

Keyword:

Government actions,
DKI Jakarta,
Provincial government,
Flood control

ABSTRACT

This study aims to analyze the judges' considerations in Decision No.205/G/TF/2021/PTUN-JKT related to the actions of the DKI Provincial Government Jakarta to implement the Jakarta Flood Control Program, which was sued by a citizen residing in South Jakarta. The Law on Government Administration provides an understanding of the actions of state officials or organizers to do and or not to take concrete actions in the context of administering the Government. In the Decision, the judge stated that there were no unlawful acts (PMH) by the authorities (onrechtmatige overheidsdaad). Still, in his judgment, the judge did not discuss the PMH argument by the rules (onrechtmatige overheidsdaad), which became petite.



© 2023 The Authors. Published by IICET.

This is an open access article under the CC BY-NC-SA license
(<https://creativecommons.org/licenses/by-nc-sa/4.0>)

Corresponding Author:

Erma Yustiyah,
University of Indonesia (MIH-FHUI)
Email: erma.yustiyah@ui.ac.id

Introduction

Flooding is a serious problem faced by DKI Jakarta Province for many years (Salsabila & Nurwati, 2020). The Jakarta area, as the capital city of Indonesia, has a topography that is vulnerable to flooding due to various factors, including high rainfall, less than optimal drainage systems, and high sea levels in the surrounding area. In an effort to overcome flooding problems, the DKI Jakarta Provincial Government has launched various flood control programs and policies (Sunarharum, 2020). This program aims to minimize the impact of flooding on residents' lives and city infrastructure. However, there are claims from some residents regarding the effectiveness of this program.

Actions in the Government's public sphere have unilateral characteristics that are not dependent on the will or interests of individuals or other parties. Therefore, there should be a legal certainty that protects from government actions if there is a conflict between the interests of citizens and government actions that can even cause harm to their citizens. Protection from government actions is realized by the availability of facilities lawsuits against the law by the authorities/government (Abrianto et al., 2018). Means of filing lawsuits in the context of legal protection efforts against government actions that conflict with the interests of its citizens undergo reformulation Before the state administrative court was born, all lawsuits from citizens against the Government were filed through civil judges in general courts (Susilo, 2013). Includes unlawful acts/PMH (onrechtmatigdaad) by the authorities (onrechtmatige overheidsdaad) with the argument that the basis for PMH is Article 1365 of the Criminal Code (Bimasakti, 2018).

The flooding problem in DKI Jakarta has been a complexity that has lasted for years. Even since colonial times, flooding in Jakarta has been a problem (Marfai, 2018). The DKI Jakarta Provincial Government always strives to uncover the complexity of flood problems by committing to solving them seriously, completely and sustainably as a form of environmental protection and management. The dredging activities carried out since 2007 are not included in the details of the four RPJMDs for 2017-2022 through Regional Regulation No. 1 of 2018. The 2017-2022 RPJMD only contains a flood control program by including flood control in policies and regional expenditure projections which are part of one unit. from the objectives of the RPJMD (Yurianto, 2020). Even though flood control programs are always included in the RPJMD, it turns out that from year-to-year flooding is still a problem in DKI Jakarta. Floods in DKI Jakarta were recorded to have paralyzed the city in 2002, 2007 and 2013. Losses due to floods that hit DKI Jakarta are estimated to exceed 38.7 trillion rupiah (Adikesuma, 2015).

The lawsuit registered under Number 205/G/TF/2021/PTUN-JKT dated September 29 2021 between the residents of South Jakarta and the DKI Jakarta Provincial Government is about the flood control program. The DKI Jakarta Provincial Government is considered negligent in dealing with floods because it did not implement the flood control program listed in the DKI Jakarta Province RPJMD (Eni, 2015). In analyzing the actions of the DKI Jakarta Provincial Government regarding the flood control program claimed by South Jakarta residents, it is necessary to pay attention to several factors that cause flooding that have been identified in previous research. The following limitations can be used as a basis for understanding the complexity of flooding problems in DKI Jakarta:

First, the large number of multi-storey buildings. Previous research has shown that an increase in the number of high-rise buildings in DKI Jakarta can affect the city's water flow and drainage (Rahmadhani et al., 2019). Multi-storey buildings can accelerate the flow of rainwater to the surface, reduce groundwater infiltration, and increase the load on the drainage system. Second, there is the influence of development and reclamation. Land development and coastal reclamation also have a major impact on natural drainage systems and reduce the environment's ability to absorb rainwater (Royandi & Keiya, 2019). Third, Changes in Land Use, River Conditions and Drainage Channels. Conversion of land from green areas or wetlands to built-up or commercial land can also hamper nature's ability to absorb rainwater. In addition, irregular, blocked or sub-optimal conditions of rivers and drainage channels can be a factor causing flooding (Rakuasa et al., 2023). Failure or suboptimality of a city's drainage system, including drains, pumps, and water management installations, can also trigger flooding. This will be exacerbated when extreme weather patterns and high rainfall occur, which can worsen the risk of flooding.

The object of this dispute is a government action, namely the action of a government official or other administrator to do or not do something in the context of administering the government (Wahyunadi, 2016). Decision No.205/G/TF/2021/PTUN-JKT, must consider arguments from both parties. The DKI Jakarta Provincial Government must be able to provide strong reasons and concrete evidence regarding the steps they have taken to overcome flooding, in line with the flood control program mandated in the RPJMD.

This lawsuit is considered a dispute over government actions that arise in the administration of government between citizens and government officials or other state administrators due to actions by the Government (Kesuma, 2022). An action is considered unlawful if the action conflicts with the rights of other people or may also conflict with the legal obligations of the party concerned, and may also conflict with obligations that must be taken into account in social relations in society, both relating to things and things. other people who are often known as Unlawful Actions (Sitorus, 2020). In this case, the Judge can consider whether the DKI Jakarta Provincial Government has implemented a flood control program seriously and whether these steps are adequate in overcoming the factors that cause flooding, including restrictions such as the number of high-rise buildings. The decision may consider whether the actions of the DKI Jakarta Provincial Government are in line with the objectives of environmental protection and management.

Then what about the actions of the DKI Provincial Government against the flood effort program, which is a claim by the residents of South Jakarta? And how does the judge decide the dispute? In this paper, an analysis will be carried out related to the actions of the DKI Jakarta Provincial Government as stated in the petite, which is the object of dispute in Decision No.205/G/TF/2021/PTUN-JKT, and analyze the judges' considerations in Decision No.205/G/TF/ 2021/PTUN-JKT.

Method

The research of this article is based on a qualitative method (Rusli, 2021). The type of research used is normative juridical, namely putting the law as a building system of norms and stopping at the scope of legal conceptions, legal principles, and regulatory rules or legal substance. By analyzing normatively the Decision of the

Administrative Court No.205/G/TF/2021/PTUN-JKT juxtaposed with the primary legal material used, namely Law No. 32 of 2009 concerning Environmental Protection and Management, Law No. 23 of 2014 concerning Regional Government, Law no. 30 of 2014 concerning State Administration, DKI Jakarta Provincial Government Regulation No. 1 of 2018 concerning the 2017-2022 Medium-Term Development Plan, Governor Regulation No. 31 of 2019 concerning Integrated Development and Revitalization of Water Resources Infrastructure with the Concept of Naturalization as well as secondary legal materials covering various literature and articles that support writing. This study aims to determine the extent to which the PTUN judges understand the PMH argument by the authorities/officials (*onrechtmatige overheidsdaad*) in Decision No. No.205/G/TF/2021/PTUN-JKT. As well as knowing the elements used by judges to fulfill the PMH argument by the authorities/officials (*onrechtmatige overheidsdaad*).

Results and Discussions

Actions of the DKI Jakarta Provincial Government in Flood Control

The DKI Jakarta government has the right and authority to carry out government duties in the DKI Jakarta area (Abdullah, 2016; Abdurrahman & Susanto, 2016). This is as Article 7 paragraph (1) UUAP states that government officials are obliged to carry out government in accordance with statutory regulations, government policies and the General Principles of Good Governance or AUPB (Susanti, 2017). However, in the implementation of every action taken there are several things that intersect between public interests and personal interests as legal subjects in civil law and public law (Bimasakti, 2018). If a legal violation occurs, it is called *onrechtmatige* as stated in Article 1365 of the KUPer, an unlawful act, then the elements are the existence of an unlawful act, error, loss, and a causal relationship between the loss and the performance.

The fifth Paragraph of the explanation of Law no. 30 of 2014 concerning Government Administration (UU AP) states that the public can file a lawsuit against the decisions or actions of government agencies and or officials through the Administrative Court because UUAP is a material law of the Administrative Court system (Simamora, 2014). The general principle of good governance is a road marking for state administrators in carrying out their duties. This directive is significant to ensure his actions remain by the law's real purpose. AUPB consists of 13 principles, namely the principle of legal certainty, expediency, impartiality, accuracy, not abusing authority, openness, public interest, and good service (Putriyanti, 2015).

The DKI Jakarta government has the right to carry out regulatory actions (*regelen*) and also state administration (*besturen*) with government administration actions (Susilo, 2013; Putriyanti, 2015). From the theoretical aspect, government agencies or officials should not act outside the implementation of legal regulations according to explicit norms. However, in some cases, they sacrifice more important interests or needs, such as a sense of comfort or justice for the community or individuals, for legal certainty. This is done because government agencies or officials are public servants who pay attention to and formulate policies concerning their lives (Susilo, 2013).

As a result of freedom of action in carrying out regulatory and implementation actions, deviations from applicable laws and regulations (positive law) often occur, which can cause harm to affected communities. In the end, these actions are included in Unlawful Acts by Government Agencies or Officials (*onrechtmatige overheidsdaad*) (Susilo, 2013; Ridwan et al., 2018). In case Number 205/G/TF/2021/PTUN-JKT, a resident who lives in South Jakarta filed a lawsuit for not implementing the Jakarta flood control program. The DKI Provincial Government is deemed to have harmed the plaintiff due to the flooding because it did not take concrete action in the context of administering government as intended in Article 1 paragraph (1) of Perma Number 2 of 2019. The concrete action in question is the unfinished dredging of the Mampang river, widening of the Krukut river, and construction of river sheet piles in Pela Mampang.

Theoretically, administrative actions (*bestuurshandelingen*) include actions of a material nature (*feitelijk handling*) that are natural or physical (concrete) carried out by the Government, including passive actions or omissions that are preceded by a written determination. Apart from that, there are also legal actions (*recht handling*) which have an impact on an organization (Bimasakti, 2018). The main points of the lawsuit in case Number 205/G/TF/2021/PTUN-JKT include concrete administrative actions, in the form of not doing (passively) what state administrators should do (Ridwan et al., 2018).

Since the preparation of the second Regional Medium-Term Development Plan (RPJMD) of DKI Jakarta Province (2007-2012), dredging activities for rivers in DKI Jakarta have been included as a form of river normalization. This activity continues to be maintained in the third RPJMD (2013-2017) based on Regional Regulation No. 6 of 2012. The DKI Jakarta Provincial Government's flood management efforts are included in the objectives of the 2017-2022 RPJMD (fourth stage), which strengthens the results of the 2013-2017 RPJMD with the legal basis of Regional Regulation No. 1 of 2018. In the section on strengthening the capacity and

quality of facilities/infrastructure of the city of Jakarta, it is stated that efforts to avoid flooding and reduce inundation by strengthening the water system, drainage, maintenance of river bodies and canals, and maintaining the area of surface water bodies of reservoirs and lakes (Mulyana, 2021). However, no details of normalization activities were found as contained in the RPJMD for the period 2012-2017 with the legal basis of Regional Regulation No. 6 of 2012 during the Government of Jokowi and Basuki Tjahya Purnama.

The vision, mission, and work promises of the governor and deputy governor also consider strategic issues for the medium-term development of the DKI Jakarta province by including the point of anticipating floods, tidal waves, and inundation, which are included in the main issue categories in economic and infrastructure acceleration. Things that the DKI Jakarta Provincial Government pays attention to in implementing flood and waterlogging management are institutional strengthening, improving the quality of human resources, and developing leadership by streamlining various efforts to improve river systems and sluice gates, lakes and reservoirs, seawater protection, development information system for early warning and community preparedness.

In the Water Resources management section, three main related programs will be carried out to support DKI Jakarta's priority programs for 2017-2022, one of which is mentioned about the construction of reservoirs/naturalization and river normalization. In this case, the DKI Provincial Government has government duties, namely: (1) government, namely the enforcement of state power and authority, (2) we are required by law (in a broad sense), (3) management of the State Household, both internal households (personnel, finance, material state domains, logistics) and external households (public environments, community logistics, state enterprises, social security, production, distribution, traffic, transportation, communication, and public health), (4) development in all fields is carried out in a planned manner, (5) environmental preservation consists of regulating environmental use, environmental protection, and environmental sanitation.

From the description of the Government's duties in point 5 above, the DKI Provincial Government is obliged to carry out environmental management, environmental protection, and environmental sanitation as regulated in Law no. 32 of 2009 concerning Environmental Protection and Management (UU PPLH). In Article 2 of the PPLH Law, there are principles in the implementation of environmental protection and management, which include (Baihaki, 2021): (1) the principle of government responsibility guarantees the rights of citizens to a good environment and requires the prevention of environmental damage, (2) the precautionary principle requires the Government to take steps to minimize or avoid environmental damage. Regional Regulation No. 1 of 2018 is the legal basis for the DKI Jakarta RPJMD, one of which contains efforts to control Jakarta floods in policies and regional expenditure projections and is one of the objectives of the RPJMD. The DKI Jakarta Provincial Government must construct reservoirs/naturalization and river normalization as their duties as the Government (Mulyana, 2021).

Since 2017, the river dredging program, commonly known as river normalization, has been forced to stop due to differences of opinion and the concept of normalization that has been carried out since the Jokowi administration to Basuki Tjahya Purnama (Ahok) (Putri, 2017). The chairman of the Ciliwung River Basin Center, Bambang Hidayah, said that since 2018 there had been no normalization activities and refused to relocate residents along the river (Afandi et al., 2023). The dredging was not carried out because the naturalization concept promoted by the DKI Jakarta Provincial Government is a way of managing water resource infrastructure by developing green open spaces while still paying attention to storage capacity, flood control functions, and conservation (Dwiputra et al., 2021).

As a result of not carrying out river normalization, especially in the South Jakarta area, South Jakarta residents admitted that they experienced both material and immaterial losses due to the floods on 19-21 February 2021. The DKI Jakarta Provincial Government has an obligation to implement the AUPB, namely the principles used as a sign for officials to use their authority both in making decisions and in taking government action (Putriyanti, 2015).

Decision Analysis No. 205/G/TF/2021/PTUN-JKT

The judge's consideration in Decision No. 205/G/TF/2021/PTUN-JKT is divided into three parts, namely (Ridwan et al., 2018): In the aspect of authority, The judge stated that the dredging of the Mampang River and the construction of the plaster for the Pela Mampang Village were under the authority of the DKI Jakarta Provincial Government. This authority is based on the provisions of Law no. 23 of 2014 concerning Regional Government (UU Pemd) Article 65 Paragraphs (1) and (2) which regulates the duties of Regional Heads. In the attachment to the Regional Government Law in part C, number 1, it is also stated that the DKI Jakarta Province has the authority to manage water resources that cross its territory. Responsibility in handling, maintaining, and operating rivers/canals/sluice gates and reservoirs confirms if it is included in the power of the DKI Provincial Government. Other considerations related to management are also seen in the mutual

agreement between the DKI Provincial Government and the Director-General of Irrigation of the Ministry of Public Works, which has divided the authority.

In the procedural aspect, the judge considered that the DKI Provincial Government did not carry out the dredging of the Mampang River and the construction of the Pela Mampang River sheet pile by the DKI Provincial Government. This assessment is based on the defendant's authority in dealing with flood problems that have been regulated in various regulations, which in this regard are the Musrenbang for the preparation and implementation of the RPJPD, RPJMD, as well as the Regional Government Work Plan (RKPD).

The first is in Perda No. 14. In 2011, the Integrated Development Planning and Budgeting System provided regulations for implementing the Musrenbang, which is the basis of regional development planning in preparing and implementing the RPJPD, RPJMD, and RKPD. *The second* is that the people of South Jakarta, as the plaintiffs, have submitted a proposal for dredging the river through the 2019-2021 Musrenbang, but the proposal was rejected without explanation. According to the judge, this contradicts Article 2 and Article 3 of Regional Regulation No. 14. The year 2011. This refusal is, at the same time, a contradiction with AUPB regarding reasonable expectations because, in 2015-2016, the dredging and plastering activities of the Mampang River could be carried out.

In the Substance Aspect, the judge considered that the Government's action not to dredge the Mampang River and the construction of the Pela Mampang Village River plaster, which had been proposed by the residents every year through the Musrenbang, was categorized as a Passive Government Action (Omission) that should have been carried out. Therefore, the action of the DKI Provincial Government, which does not carry out the dredging and construction of the Kali Mampang river plaster, is substantially contrary to the laws and regulations. *First*, the dredging action termed normalization was carried out in 2015-2016. *Second*, Article 143 Paragraph (3) letter a and NC Perda No. 1 of 2012 concerning the 2030 Regional Spatial Plan clearly states that the construction and capacity building of drainage channels in the Mampang sub-district will be normalized for the Mampang River so that the DKI Jakarta Provincial must carry out dredging and anointing of the Mampang River. *Government*. In substance, it also violates the AUPB on the principle of sustainability and the focus of reasonable expectation, where in 2015-2016, dredging was carried out and then stopped after that.

Based on the considerations in terms of authority, procedural and substance aspects above, the judge in Decision No. 205/G/TF/2021/PTUN-JKT decides as follows (Ridwan et al., 2018): (1) Declaring null and void The Government's action, in this case, the DKI Jakarta Provincial Government is the incomplete dredging of the Mampang River. Because the DKI Jakarta Provincial Government does not carry out the dredging and anointing of the Mampang River, it is contrary to the laws and regulations, and the AUPB in the procedural and substance aspects must be declared null and void. This Decision is based on Article 71, Paragraph (1) of the UUAP, which states that decisions and actions can be canceled if there is a procedural error or substance error, (2) It was stated that the DKI Jakarta Provincial Government is obliged to carry out the dredging and anointing of the Mampang River, (3) declaring that he rejects the plaintiff's claim for compensation because the compensation claim is not detailed and the evidence submitted does not prove material losses, (4) declaring to punish the DKI Jakarta Provincial Government to pay for the cas.

Reviewing the judge's Decision, the DKI Jakarta Provincial Government's actions are not declared unlawful acts by the authorities (*onrechtmatige overheidsdaad*). According to Badruzaman, quoted by Agustina, for government agencies or officials to be held accountable for PMH, some conditions must be met, namely (Baihaki, 2021): (1) there must be an active act or a passive act (not doing or omission), (2) there must be an act that violates the law, (3) there is an error, (4) the occurrence of losses, (4) the loss and the violating act have a causal relationship. However, the PMH argument by the authorities/government (*onrechtmatige overheidsdaad*) is not postulated in Article 1365 of the Criminal Code. This article is only used as a guideline for measuring PMH elements. The doctrine against the law must prove that the Government's actual actions are carried out in its position as an authorized official, not as a person (Bimasakti, 2018).

In the main case, it is stated that the defendant did not commit an unlawful act (Ridwan et al., 2018). However, it is not discussed at all regarding the PMH element by the authorities/officials (*onrechtmatige overheidsdaad*), which judges in considering decisions. This obscures the basis of the PMH (*onrechtmatige overheidsdaad*) argument, which states that the Jakarta Provincial Government's actions were not against the law of the judge. Observing the judge's assessment of the authority aspect, the judge said that the object of the dispute, namely the dredging and anointing of the Mampang River, was the authority of the DKI Provincial Government. Failure to take such action has fulfilled the first PMH requirement, namely that there is a passive activity in the form of omission of what must be done (Pramudana & Perdana, 2023). In terms of substance, it was also strengthened by the judge's statement that the Government's action was a Passive Government Action (*Omission*) that should have been carried out.

Then on the procedural aspect, the judge stated that the dredging and anointing of the Mampang River were not carried out, which was contrary to the provisions stipulated in the regulations and violated the AUPB. In this aspect, it can be categorized into the requirements at the second point, namely PMH, and the third point is an error. Then it was reaffirmed on the substance aspect where the judge considered that the DKI Provincial Government's action not to dredge and build the Kali Mampang river plaster contradicted the statutory regulations. The judge declared they void the activities of the DKI Provincial Government.

Not carrying out dredging and making river sheet piles means that flood control efforts are not carried out as stated in the RPJMD. So this is not by AUPB, namely: (1) the principle of legal certainty contained in UUAP, Law no. 25 of 2008 concerning Public Services (UUPB), as well as in the Supreme Court Decision No. 505K/TUN/2012 and No. 99/PK/2010 implicitly states that the principle of legal certainty requires government administration actions to be based on justice and decency, (2) the principle of justice and obligation where the community has proposed dredging activities for the Mampang river and the Construction of River Sheet Piles in Pela Mampang Village through the Development Plan Deliberation (Musrenbang) every year but was rejected without any clarity. The budget for normalization was hampered due to efforts to change the naturalization concept, so the DKI Provincial Government prepared a normalization budget to implement the naturalization concept (Rahayu, 2019), (3) the principle of implementing the public interest because the object of the dispute does not have measurable data that refers to program planning. So no precise data were found regarding the steps taken in flood control.

In the verdict, the judge's assessment related to the claim for compensation was considered to be lacking in detail and lacking evidence, giving rise to the assumption that the judge included the conditions for loss in point 4 and the causal relationship between the loss and the unlawful act was the determinant of the non-fulfillment of the PMH argument. Therefore, it obscures the terms of PMH, which requires a loss and a causal relationship between failure and unlawful acts, and PMH (*onrechtmatige overheidsdaad*), which should not consider the element of loss and the relationship between the cause of loss and PMH (Baihaki, 2021). According to Sudikno Mertokusumo's view, a legal entity, which in this case can be interpreted as a government, can be held accountable for unlawful acts from its organs if it is carried out within its authority the act of carrying out its duties (Mertokusumo & Tjandra, 2014). According to Agustina, as quoted by Wibisana, an act is considered PMH only if it violates what has been regulated in the legislation (Baihaki, 2021). In a broad sense, according to Agustina, PMH is if the PMH perpetrator (the defendant) will be responsible if the provisions violated are aimed at protecting those who suffer losses (the plaintiff). The lack of details of the loss and the lack of evidence of the loss should not be considered by the judge not to determine the PMH (*onrechtmatige overheidsdaad*).

Referring to Article 87 letter of UUAP "Written Determination which also includes Factual Actions," it is stated that Factual Actions (*Feitelijk Handelingen*) are also included in the definition of KTUN in the PERATUN (Expansion) Law (Bimasakti, 2018). The expansion of the KTUN concept within the scope of administrative law after the birth of the UUAP has consequences, one of which is regarding PMH by the Government (*onrechtmatige overheidsdaad*) (Abrianto et al., 2018). In this regard, it gives birth to discourse about whether the purpose of the letter a of the article also means that PMH by the Government (*onrechtmatige overheidsdaad*) is included in the realm of Decisions in the PERATUN Law or is it just a concrete action in the form of a physical act of carrying out a written stipulation (Bimasakti, 2018). PMH case has been transferred to the Administrative Court through.

The Decree No. 205/G/TF/2021/PTUN-JKT Jakarta Administrative Court judges declared null and or void the Government's actions in the form of dredging and anointing the Mampang River. Two possibilities underlie this Decision if it is related to Article 87 letter an of the UUAP, namely (Abrianto et al., 2018): (1) the action of the DKI Jakarta Provincial Government is considered to have been born after a written determination was preceded by a written implementation, namely Perda No. 1 of 2018 concerning the RPJMD, which contains the obligations of the Jakarta flood control program. However, as described above, in the 2017-2022 RPJMD, no dredging and anointing activities were found for the Mampang River, (2) this concrete action of the DKI Jakarta Provincial Government is considered independent without a written determination.

Furthermore, in Perma No. 2 of 2019 concerning Guidelines for Dispute Settlement of Government Actions and Authority to Adjudicate PMH by Government Agencies and Officials (*onrechtmatige overheidsdaad*) in Article 5 Paragraph (2) letter a, namely "Requires taking government action," Article 5 Paragraph (3) which stipulates that the implementation of the obligations in Article 5 Paragraph (2) letter a may be accompanied by request for compensation and rehabilitation. And Article 5 Paragraph (4) further states that the intended repair is the restoration of the original condition.

The Decision not to carry out PMH by the authorities/officials (*onrechtmatige overheidsdaad*) makes way for the plaintiff to obtain compensation and or recovery for his losses to be closed. The authorities/officials

(onrechtmatige overheidsdaad) did not discuss the basis for the PMH argument in Decision No. 205/G/TF/2021/PTUN-JKT carries the assumption that the PTUN judges do not understand the extent to which government action is categorized as PMH by the authorities/officials (onrechtmatige overheidsdaad). In addition, the non-discussion of which elements are deemed not to meet the PMH argument by the authorities/officials (onrechtmatige overheidsdaad) carries the assumption that there is still ambiguity in the primary considerations of judges in deciding cases related to concrete government actions that are included in the PTUN domain.

Conclusions

Environmental protection and management as the Government's responsibility as regulated in the PPLH Law have been applied in the DKI Jakarta Provincial Government's RPJMD through Regional Regulation No. 1 of 2018. In the 2017-2022 RPJMD, the DKI Jakarta Provincial Government's Water Resources Management section states that three main related programs will be carried out to support DKI Jakarta's 2017-2022 priority programs, one of which is displayed on the construction of reservoirs/ naturalization and river normalization. The Government's action that became the object of the dispute was the DKI Jakarta Provincial Government did not carry out the dredging and anointing of the Mampang River. This activity had previously been carried out from 2015-to 2016, but since 2017 it has not been resumed. As a result of this government action, some residents of South Jakarta suffered losses due to flooding, which should have been prevented through the precautionary principle of flood control. In Decision No. 205/G/TF/2021/PTUN-JKT, the judge declared the Government's action null and void and required the DKI Jakarta Provincial Government to carry out dredging and anointing. However, the compensation provision was not granted because it was not detailed and lacked evidence.

In Decision No. 205/G/TF/2021/PTUN-JKT, the judge did not state that the defendant committed PMH by the Ruler/Government (onrechtmatige overheidsdaad) due to the judge's lack of understanding based on the PMH argument. The PMH argument by the Ruler/Government (onrechtmatige overheidsdaad) should suffice to be seen from state officials' position for government actions (both active and passive) and violations of the law. The non-fulfillment of details and evidence of losses should not obscure the PMH argument by the Ruler/Government (onrechtmatige overheidsdaad).

References

- Abdullah, D. (2016). Hubungan pemerintah pusat dengan pemerintah daerah. *Jurnal Hukum Positum*, 1(1), 83–103.
- Abdurrahman, A., & Susanto, M. (2016). Urgensi Pembentukan Undang-Undang Komisi Kebenaran dan Rekonsiliasi di Indonesia dalam Upaya Penuntasan Pelanggaran HAM Berat di Masa Lalu. *Padjadjaran Jurnal Ilmu Hukum (Journal Of Law)*, 3(3), 509–530.
- Abrianto, B. O., Nugraha, X., & Grady, N. (2018). Perkembangan Gugatan Perbuatan Melanggar Hukum oleh Pemerintah Pasca-Undang-Undang Nomor 30 Tahun 2014 Development of Lawsuit for Law Violation by the Government of the Post Law Number 30 of 2014. *Jurnal Hukum & Pembangunan*, 48(4).
- Adikesuma, T. N. (2015). Permasalahan Pelestarian Sumber Daya Air Jakarta. *Widyakala Journal: Journal Of Pembangunan Jaya University*, 2(1), 87–104.
- Afandi, A. A., Utama, V. P., Khomenie, A., Prabowo, C. H., Apriyanto, R., Barus, L. S., & Nurhasana, R. (2023). Pengembangan Kawasan Permukiman di Wilayah Rawan Banjir Kampung Melayu, Jakarta Timur. *RUAS*, 21(1), 1–10.
- Baihaki, M. R. (2021). Persetujuan lingkungan sebagai objectum litis hak tanggung gugat di peradilan tata usaha negara (telaah kritis pergeseran nomenklatur izin lingkungan menjadi persetujuan lingkungan dalam undang-undang nomor 11 tahun 2020 tentang cipta kerja). *Majalah Hukum Nasional*, 51(1), 1–20.
- Bimasakti, M. A. (2018). Onrechtmatig Overheidsdaad Oleh Pemerintah Dari Sudut Pandang Undang-Undang Administrasi Pemerintahan/Act Against the Law By the Government From the View Point of the Law of Government Administration. *Jurnal Hukum Peratun*, 1(2), 265–286.
- Dwiputra, R., Kusratmoko, E., & Tambunan, R. P. (2021). Prioritas Lokasi Revitalisasi Sungai Ciliwung di Wilayah DKI Jakarta. *Jurnal Riset Jakarta*, 14(2), 65–76.
- Eni, S. P. (2015). Upaya-upaya pemerintah daerah provinsi DKI Jakarta dalam mengatasi masalah permukiman kumuh di perkotaan. *Scale*, 2(2), 243–252.
- Kesuma, D. (2022). *Reformasi Pelayanan Publik*-Damera Press. Damera Press.
- Marfai, M. A. (2018). *Banjir pesisir: kajian dinamika pesisir Semarang*. UGM PRESS.
- Mertokusumo, S., & Tjandra, W. R. (2014). *Perbuatan melawan hukum oleh pemerintah*. Cahaya Atma Pustaka.

- Mulyana, B. (2021). Evaluasi Akuntabilitas Kinerja Pemerintah Provinsi Daerah Khusus Ibukota Jakarta. *Jurnal Ilmiah Administrasi Pemerintahan Daerah*, 13(1), 1–18.
- Pramudana, I., & Perdana, S. (2023). Analisis Kewenangan Pelaksanaan Tugas Kepala Daerah Menurut Undang-Undang Nomor 23 Tahun 2014. *EduYustisia*, 2(1), 17–30.
- Putri, M. I. (2017). Jurnalisme Lingkungan Pada Media Online Arus Utama dan Jurnalisme Warga di Era Digital: Framing Pemberitaan Banjir di Indonesia Pada Detik. com dan Suarakomunitas. net (Environmental Journalism in Online Media Main Stream and Digital Age Journalism: Framing of Flood Coverage in Indonesia at Detik. com and Suarakomunitas. net). *Indonesian Media Research Awards and Summit*, 656–689.
- Putriyanti, A. (2015). Kajian Undang-Undang Administrasi Pemerintahan dalam Kaitan dengan Pengadilan Tata Usaha Negara. *Pandecta Research Law Journal*, 10(2), 180–194.
- Rahayu, N. S. (2019). Inovasi E-Government Dalam Perencanaan Pembangunan Daerah. *Jurnal Administrasi Dan Kebijakan Publik*, 9(1), 1–26.
- Rahmadhani, A. W., Raffif, M. N., & Suropto, S. (2019). Analisis Pelaksanaan Pengelolaan Dan Pemantauan Lingkungan Pembangunan Gedung Bertingkat. *Prosiding Seminar Nasional Teknik Sipil*, 1(1), 337–345.
- Rakuasa, H., Wahab, W. A., Kamiludin, K., Jaelani, A., Ramdhani, R., & Rinaldi, M. (2023). Pemetaan Genangan Banjir di Jalan TB. Simatupang, Jakarta Selatan oleh Unit Pengelola, Penyelidikan, Pengukuran dan Pengujian (UP4) Dinas Sumber Daya Air DKI Jakarta. *Jurnal Altifani Penelitian Dan Pengabdian Kepada Masyarakat*, 3(2), 288–295.
- Ridwan, H. R., Heryansyah, D., & Pratiwi, D. K. (2018). Perluasan Kompetensi Absolut Pengadilan Tata Usaha Negara Dalam Undang-Undang Administrasi Pemerintahan. *Jurnal Hukum Ius Quia Iustum*, 25(2), 339–358.
- Royandi, E., & Keiya, R. (2019). Kontestasi aktor dalam pengelolaan sumber daya pesisir di wilayah pembangunan reklamasi Teluk Jakarta. *TEMALI: Jurnal Pembangunan Sosial*, 2(1), 77–98.
- Rusli, M. (2021). Merancang Penelitian Kualitatif Dasar/Deskriptif dan Studi Kasus. *Al-Ubudiyah: Jurnal Pendidikan Dan Studi Islam*, 2(1), 48–60.
- Salsabila, A. H., & Nurwati, N. (2020). Deforestasi dan migrasi penduduk ke ibu kota baru kalimantan timur: peran sinergis pemerintah dan masyarakat. *Prosiding Penelitian Dan Pengabdian Kepada Masyarakat*, 7(1), 27–39.
- Simamora, J. (2014). Tafsir Makna Negara Hukum dalam Perspektif Undang-Undang Dasar Negara Republik Indonesia Tahun 1945. *Jurnal Dinamika Hukum*, 14(3), 547–561.
- Sitorus, S. (2020). Surat Kuasa dan Gugatan (Analisis Konsep dan Teknik Penulisan). *Hikmah*, 17(2), 99–114.
- Sunarharum, T. M. (2020). Membangun Ketangguhan dan Adaptasi Transformatif: Kasus Pengurangan Risiko Bencana Banjir di Jakarta. *Reka Ruang*, 3(2), 71–80.
- Susanti, B. (2017). Menyoal Jenis dan Hierarki Peraturan Perundang-undangan di Indonesia. *Jentera: Jurnal Hukum*, 1(2), 128–143.
- Susilo, A. B. (2013). Reformulasi Perbuatan Melanggar Hukum Oleh Badan Atau Pejabat Pemerintahan Dalam Konteks Kompetensi Absolut Peradilan Tata Usaha Negara. *Jurnal Hukum Dan Peradilan*, 2(2), 291–308.
- Wahyunadi, Y. M. (2016). Kompetensi absolut pengadilan tata usaha negara dalam konteks Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan. *Jurnal Hukum Dan Peradilan*, 5(1), 135–154.
- Yurianto, Y. (2020). Analisis Kebijakan Pengendalian Inflasi DKI Jakarta. *BALANCE: Economic, Business, Management and Accounting Journal*, 17(1), 12–33.