



## Implementation of the Principle of “Lex Specialis Derogate Legi Generalis” in Regulations on Administrative Measures of State Administrative Disputes (State Administrative Decision Case Study Number: 23/G/KI/2022/PTUN.SMG)

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<http://dx.doi.org/10.47814/ijssrr.v7i4.2075>

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### **Abstract**

Application of administrative effort after the 2014 law no. 30 years of government administration is followed by regulatory administration The state enterprises governing administrative efforts make a concerted effort to implement the administrative effort itself. This research is meant to know Implementation of a administrative effort that should fit into the rule that Apply and apply principles Lex specialists derogate generalis In the verdict Number: 23/G/KI/2022/PTUN.SMG For pursuing this administrative effort. method The study is normative jurisdiction using the associated associated associated with law and literature approaches. The results of the study suggest that administrative efforts are being made to settle disputes between people directly between the body and the administration. The facts on the field judge have applied Lex specialist derogate legi generalis So in the verdict number: 23/G/KI/2022/PTUN.SMG The judge dismissed any charges filed.

**Keywords:** *Lex Specialist Derogate Legi Generalis; Administrative Efforts; Governance Issues*

### **Introduction**

The continuation of public service still largely mismatches the needs and changes experienced in people's lives, national and national, so that the system still largely disappoints society Especially related with the issue of a writ Administration officials, for example, in publishing a licensing letter.

This disappointment which leads to an issue that can be settled through Legal channels and can be completed in admissible judicial governance of state enterprises in act Number 5 in 1986 about the judiciary of state enterprises as amended with act number 9 in 2004 about Changes to act Number 5 in 1986 about the judiciary of state enterprises Then amended back with Act number 51 in 2009 about A second change to the Act Number 5 in 1986 about the judiciary of state enterprises. The judicial establishment of this state as a legal entity in Indonesia (rechstaat) and prevent the actions of state officials Arbitrarily as well as keep state officials from performing The act of breaking the law harms the people, so even if the officials of the state Breaking the law can result in punishment.

Before lawsuits are brought before the judiciary of state enterprises, individuals or civil corporations need administrative efforts with regard to regulations The established basis. Where this administrative effort was initially set within Act Number 5 in 1986. On the judicial affairs of state enterprises (and their changes) and the subsequent regulations of the Supreme Court decree are made Number 2 in 1991 Which ruled that administrative efforts could be made when a ground rule was established From the agency or the government administration has the basic rules governing Administrative efforts. But as time passed passed Act number 30 in 2014 on government administration and for follow-up The development of the administrative law in it is regulated Supreme Court of the republic of Indonesia Number 6 in 2018 about The government administration solution after an effort It's the administration that makes the judicial system of state enterprises on the ground It changes.

The Supreme Court of the republic of Indonesia The number 6 in 2018 on the issue of settlement for government administration after Pursuing this administrative effort is what makes ultimately the effort Administrative duties are required before state governance issues are filed for action Judiciary of state enterprises.

The application of the *lex specialist derogat legi generalis* is one of the principles In the legal administration that used to set up the relationship between two kinds A different law rule, that is, a special *lex specialist* and a general *legi generalis*. This principle has The important relevance in the context of the administrative effort rules of business issues The country.

Background application of the *lex specialist derogat legi generalis* principle in the administrative effort ordinance of state-run governance issues can help in providing legal certainty in settling the governance issues so that Can maintain consistency in protecting individual rights. In the context of administrative efforts policing governance issues of state governance, the application of the principle *lex specialist derogat Legi generalis* will ensure that regulations that are more specific and relevant to the issue of state-owned enterprises are more powerful than By public regulations, thus providing clarity and protection A better law for all involved in the issue.

### ***Formulation of the Problem***

Based on the background that I have described above, there are several problems that will be answered in this study:

- 1) What made administrative efforts necessary before taking the issue of state enterprises to the judicial administration of state enterprises necessary?
- 2) How to implement the *lex specialist derogat legi generalis* based on ruling number: 23/G/KI/2022/PTUN.SMG?

### ***Research Methods***

The method used in research is that of legislation. Where to achieve maximum and accountable results, then must study its regulatory legislation so that it can see consistency and harmony between one law and another.

For research specs I used *normatif yuridis*, where I examined literature data from secondary data sources. The source of the data I obtained was verbal words so that the result would be accountable and sure.

## ***Discussion***

### **1) An Analysis Makes It Necessary for Administrative Efforts to Present State Governance Issues Before the Judicial Decisions of State Enterprises**

Administrative efforts are a procedure followed by persons or civil corporations when they are dissatisfied with the expulsion of a state-run decision, which is carried out within their own government.<sup>1</sup> The administration's effort consists of two forms: the administrative effort and the administrative appeal.

Act number 5 In 1986 about the judiciary of state enterprises (and their change) as a formal law of state governance, which has so far not been updated. In chapter 48 in the application of administrative efforts, mention that prior to the lawsuit State enterprises submitted to the judiciary of the state enterprises by looking at The basic rules of a government agency or officials that issue decisions When administrative effort is required first, there is an issue State enterprise needs administrative effort, and under chapter 51 Which explains that the governance issues that have been through efforts Administrative authority is the Supreme Court of state enterprises First class court.

So that before a person or a civil corporation wants to file a administrative effort on the body or state governance official because of the state governance decision it makes, it needs to look at the basic rules of the body or administration administration itself, whether inside The basic rules governing administrative or administrative efforts. When the underlying rules governing the individual or corporation are governed by the basic rules of the agency or the government administration that has issued the decision of its governance. But when the rules Basically do not set up any administrative efforts, so the person or civil corporation guidelines under the terms of the inside Act number 30 in 2014. It's also set in handbill Number 2 in 2019 For the completion of the pleno cabinet in 2019 high court as a guideline for the handling of duty for the courts.

At the heart of this provision, on the basis of the current administration of state enterprises that requires a formal administrative effort to resolve a state-run dispute before it is brought to the state. This rule also basically has meaning and the same order as article 3 Supreme Court of the republic of Indonesia number 6 in 2018.

Birth of the Supreme Court of the republic of Indonesia The number 6 In 2018 of the issuance of the issuance of governmental administration guidelines makes administrative work compulsory first in accomplishing it The issue of state enterprises before appeal to the judiciary of state enterprises and make it possible to settle the issue through a state-owned agency or administration that issues an decision The state. The implementation of its original administrative efforts asa safeguard for government officials and provides legal protection for people and civil corporations within the government itself. Administrative efforts provide the one with an issue (usually a citizen or a company) a chance to complete the issue with an internal entity or government authority. This can reduce the number of cases that are flooding the judiciary of state enterprises and allow conflict parties to seek a faster and more efficient solution. The administrative process also allows the combatants an opportunity to examine whether the intentional actions of the government were really actions Breaking the law or not. It can avoid possible justice Decided that the issue was unfounded. Raising disputes Directly to the justice of state enterprises can cost time and expense Significant. By having a administrative effort first, a party Disputes can avoid some of the costs and procedural obstacles It's judicial.

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<sup>1</sup> Undang-undang Republik Indonesia nomor 5 tahun 1986 tentang Peradilan tata Usaha Negara, Penjelasan.

## 2) Implementation of the Lex Specialist Derogate Legi Generalist Based on the Verdict of Number: 23/G/KI/2022/PTUN.SMG

Lex specialist Derogate legi Generalists are a legal principle that regulates hierarchies between common laws (lex generalis) and special laws (lex specialist) in the legal context of administration. This principle says that when there is a conflict between the terms of the common law and the specific law, the special law will override the common law. This principle could also Apply in the context of administrative efforts.

The first step in applying this principle is to identify the requirements of the law that are relevant. Specific laws are laws that specifically govern a particular subject or problem, while common laws are laws that apply more generally to various subjects or Trouble.

Legal certainty: Lex specialist Derogate legi Generalists helped ensure the certainty of the law by governing how two kinds Different rules of law had to be applied in specific situations. in The context of governance issues, legal certainty is crucial to Make sure that the parties involved in the issue have insight It's clear about the rules that apply.

The settling of issues: administrative efforts in the settling of state-run issues often involve a special rule of law, such as the rule governing the procedure of appeal or the administrative appeal. The application of the lex specialist derogical legi generalis allows these specific laws of law to have more power than the general rule of law, when there is conflict between the two.

Consistent: this principle also helps keep consistency in The rule of law. When there is a law law of a particular nature which Regulating a certain matter, a general rule of law is not May ignore or conflict with them. This helped Making sure that more specific rules always apply above that rule More general.

Protection of individual rights: this principle can also be used to protect individual rights. When there is a discrepancy between specific legal regulations that grant individuals certain rights with general law regulations that can limit those rights, this principle will ensure that individual rights are respected.

In the context of the administrative effort rules for the governance issues of the state, the application of the principle of the lex specialist derogat legi generalis will ensure that regulations that are more specific and relevant to those governance issues have more power than those that are Is public, and thus provides better legal clarity and protection for all involved in the issue.

The wrongs committed by Jusri Sihombing as petitioner in the prosecution of an objection lies in an effort brought before the state governance court, in which the state ordinance court ruled irrespective of its absolute authority to judge the application of an objection raised by the petitioner because of the request The motion is unanimous.

Judging by the legal considerations that have been passed by the panel of judges and have been written down On the verdict Number: 23/G/KI/2022/PTUN.SMG. That in the handbill Number 10 in 2020 for formulating the results of the 2020 pleno room of the high court asa guide to performing a task for the court that states when basic regulations have explicitly set up a trial The state enterprises have the authority to prosecute the case, and no administrative effort is required, as well as act number 14 in 2008 Of public information transparency.

We need to pay attention to the sound of article 47 Act 14 in 2008 Of public information transparency that explained that litigation could be brought to trial if The prosecution was the public body of the state, and looked at chapter 1 verse (1) The Supreme Court of the republic of Indonesia rules 02 in

2011 on ordinances The settlement of the dispute for public information in that court is a lawsuit Being filed by one or the parties in writing is an objection For not accepting the decision of the information commission. The verdict is Non-litigation ruling issued by the associated information commission A dispute between the public body and public information applicant.

Based on the two regulations it is clear that the complaint filed by the applicant has been mistaken and misinformed in the application of the rule, for the lawsuit submitted by the applicant is the decision of the chairman of central Java province information commission number: 01/KEP/KI-JTG/III/2022 It's not about stopping a deliberate process of settling public information, and good faith isn't about non-litigation litigation ruling that could lead to litigation litigation. It should have been if the applicant had wanted to object Central Java central information commission decision number: 01/KEP/KI-JTG/III/2022 Then it should refer to the ninth down of 1 decision chairman of central information number: 01/KEP/KIP/V/2018 On a dissolution process that was not carried out in earnest and good faith explains that the applicant who felt objection to the decision the information chairman could Objected in accordance with the statute of limitations. Whereas legislation governed by the information commission The province is the Act number 5 in 1986 on the judiciary of state enterprises and Act number 30 in 2014 Regarding administration The government. Both regulations state when the body or the official State enterprises are required to settle disputes through administrative efforts First, the court has the authority to check, disconnect and settle disputes over national governance. The central Java provincial information commission, however, has not had a regulation of basic law, which states that it can file a motion to raise an objection because it has been issued a decree from the government itself, and refers only to act number 5 in 1986 about the judiciary of state enterprises and Act Number 30. In 2014, when government administration made the application of these administrative efforts obsolete. It will be different if the applicant presents the lawsuit in the form of non-litigation litigation ruling, then The ordinance court will claim to have authority to prosecute The question of state-owned enterprises is based on basic regulations The public information commission.

In view of the case that has been going on, the application of the *lex specialis derogat legi generali* is unapplicable. This is due to the basic rules of the public information commission, which if one wishes to raise an objection to the decision of the chairman of central Java provincial information commission Number: 01/KEP/KI-JTG/III/2022, They need to refer to the terms within Ninth down, number 1 decision chairman, central information number: 01/KEP/KIP/V/2018 On a dissolution process that is not done conscientiously and with good faith. The provision explained that the applicant who felt objection to the decision of the information chairman had the right to object in accordance with the regulations of the legislation.

Legislation used as a reference by the provincial information commission covers Act number 5 in 1986 about judiciary State enterprises and Act Number 30 in 2014 about administration The government. Both laws state that the agency or state-owned business officials must settle disputes through effort Administrative work comes first, before the court can examine, disconnect, And settle disputes over national governance.

However, as the central Java provincial information commission does not have a basic rule that states that an objection effort can be made in view of the expulsion of a decree from the institution itself, and refers only to the Act number 5 in 1986 state administration and Act number 30 in 2014 on administration The government, this causes the process of implementing administrative efforts to become Not clear.

Based on these factors, the plaintiff's claim is not accepted and is consistent with the provision in section 110. Article 112 the Act number 5 in 1986 on the judiciary of state enterprises. For the issue of state enterprises must be settled Through administrative efforts that have been set up according to the

rules The agency or the administration of the state itself. As a party to Declared defeated in dispute a quo, objectors are punished for Paid the cost used in veckups of these issues Rp 325,500, (three hundred twenty-five thousand five hundred rupiah.).

### **Conclusion**

Based on the above exposure it may be concluded that legal procedures for administrative efforts in settling governance issues based on my field studies indicate that the application of administrative efforts is mandatory under guidelines the act Number 30 in 2014 About government administration, regulations The Supreme Court of the republic of Indonesia number 6 in 2018 on guidelines The settling of disputes for administration after a road trip Administrative efforts, basic rules of the agency or administrator The state that issued the affidavit, and some regulations Existing new regulations and governing administrative efforts. Applying these administrative efforts can afford an opportunity For the body or administration of state enterprises to settle disputes internally. Check whether the government's actions are really against the law before filing a lawsuit in the state enterprises court, so the lawsuit filed with the state enterprises court does not accumulate.

Application suit on behalf of jusri sihombing, s. si is not accepted, given that the object being sought by the petitioner is not a "judiciary" decision, it is the commissioner's decision Central Java province information number: 01/KEP/KI-JTG/III/2022 About stopping a process of settling a question of public information not being taken seriously and of good faith. Thus the applicant should be aware of objects of action in the settlement, by making a administrative effort according to the provision of a state agency or administrator. In this case the *lex special derogat legi generalis* principle could not be applied because in filing administrative efforts, given the central Java provincial information commission making the act Number 5 in 1986 on the judiciary of state enterprises and act number 30 in 2014 on government administration as guidance for administrative applications with the previous to take note of the ninth down on the number 1 decision of the central information chairman number: 01/KEP/KIP/V/2018 About a dissolving process involving public information that wasn't done properly Genuine and good faith.

From those conclusions the authors suggest suggest socializing new rules, especially handbill The number 2 in 2019, for the completion of the pleno office in 2019 as a guide to the handling of duty for the court, was done to ensure that the public had a better understanding of the new rule. The purpose is to prevent any confusion in filing a lawsuit, either in the high court of state governance or the state governance court, such as That happens a lot in the field. and There is clarity in one rule of legislation So it can be established that one rule governing is only related Administrative efforts, so that people promote Administrative efforts see only the rules and no longer need to see some rules relating to administrative efforts, either special regulations or general rules. Given the difficulties of society's understanding and observance of legislation.

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