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**Fulfillment of the Constitutional Rights of Persons with Disabilities in  
Central Java Province Civil Servant Candidate Selection 2019  
(Case Study of State Administration Dispute Between M.Baihaqi and the Regional  
Secretary of Central Java)**

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### **Abstract**

Issuance of a State Administrative Decree by the Regional Secretariat of Central Java Province to people with disabilities on behalf of M. Baihaqi who was considered discriminatory during the 2019 Central Java National Civil Service Candidate selection who was declared not to have passed due to the requirements for the type of disability and educational qualifications being inappropriate. Administrative efforts have been taken to regain his rights but have been unsuccessful. Until finally resorting to litigation by filing a lawsuit with PTUN Semarang and an appeal to PT TUN Surabaya but it was declared not accepted. Then in the cassation the Supreme Court granted all the claims and asked the defendant to revoke the issued State Administrative Decree and process M. Baihaqi's in the Central Java National Civil Service Candidate selection 2019. The research method used is normative juridical with statutory, conceptual and case approaches. The research results show that the fulfillment of the constitutional rights of persons with disabilities in the 2019 Central Java Civil Servant Candidate Selection is considered not optimal because the solution provided by the defendant as an implementation of the Supreme Court's decision is not in accordance with the Supreme Court's decision.

**Keywords** : Constitutional Rights; Persons with Disabilities; Civil Servant Candidate Selection

### **Abstrak**

Penerbitan Keputusan Tata Usaha Negara oleh Sekretariat Daerah Provinsi Jawa Tengah kepada penyandang disabilitas atas nama M. Baihaqi yang dinilai diskriminatif pada saat seleksi CPNS Jawa Tengah 2019 yang dinyatakan tidak lolos karena syarat jenis disabilitas dan kualifikasi pendidikan yang tidak sesuai. Upaya administratif telah ditempuh untuk mendapatkan kembali hak-haknya namun tidak berhasil. Hingga akhirnya menempuh upaya litigasi dengan mengajukan gugatan ke PTUN Semarang dan banding ke PT TUN Surabaya namun dinyatakan tidak diterima atau NO. Lalu dalam kasasi MA mengabulkan seluruh gugatan dan meminta tergugat untuk mencabut Keputusan Tata Usaha Negara yang diterbitkan serta memproses kelulusan M. Baihaqi

dalam seleksi CPNS Jawa Tengah 2019. Penelitian ini merupakan penelitian yuridis normatif dengan pendekatan perundang-undangan, konseptual, dan pendekatan kasus. Hasil penelitian menunjukkan bahwa pemenuhan hak konstitusional penyandang disabilitas dalam CPNS Jawa Tengah 2019 dinilai tidak maksimal karena solusi yang diberikan tergugat sebagai pelaksanaan putusan MA tidak sesuai dengan putusan MA.

**Kata Kunci :** Hak Konstitusional; Penyandang Disabilitas; Seleksi CPNS

## **Introduction**

Civil Servants (PNS) in Indonesia are a profession that is considered prestigious and is a dream for many individuals. However, the existence of civil servants is not only a form of ordinary work, but also as a representation of the constitutional rights of every individual, including people with disabilities. This is in accordance with the legal basis stipulated in Article 28 D paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which underlines the right of every citizen to obtain appropriate work, without discrimination based on physical condition or other circumstances. Opening access for people with disabilities to become civil servants is also stated in Law Number 5 of 2014 concerning State Civil Servants and Law Number 18 of 2016 concerning Persons with Disabilities. This law strictly mandates that the physical health requirements for civil servant candidates be adjusted to the needs of the work they will undertake, providing space for people with disabilities to continue participating in selection and working as civil servants.

However, the reality on the ground is often not in line with the legal mandate. The case of M. Baihaqi, a blind person who participated in the 2019 Central Java Province Civil Servant Candidate (CPNS) selection, is a clear example. Even though he had the appropriate educational qualifications, Baihaqi was declared not to have passed the selection on the grounds that the type of disability did not match the required formation. This gave rise to a debate about fulfilling the constitutional rights of persons with disabilities in the selection of CPNS, and explained the urgency to study this issue further.

The aim of this research is to investigate and analyze the fulfillment of the constitutional rights of persons with disabilities in the 2019 Central Java Province CPNS



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selection, focusing on the Baihaqi case as a case study. It is hoped that the results of this research can provide a deeper understanding of the challenges faced by people with disabilities in achieving access to employment as civil servants, as well as provide recommendations for improving policies and implementing more inclusive CPNS selection in the future.

## Research Methods

This research is normative juridical research. This research uses a conceptual approach, a legislative approach, and a case approach. An approach to legislation is used to examine norms and principles related to the rights to employment and a decent living for persons with disabilities. A conceptual approach is used to examine relevant theories and expert opinions regarding the concept of constitutional rights. Meanwhile, the case approach is used to examine cases regarding the selection of CPNS by the government and decisions regarding selection for the acceptance of CPNS persons with disabilities.

The research data sources used include primary and secondary legal materials. The primary legal materials used include the 1945 Constitution, Law Number 51 of 2009 concerning State Administrative Courts, Law Number 5 of 2014 concerning State Civil Apparatus, and others. Meanwhile, secondary legal materials include opinions of experts and scholars, textbooks, journals, legal cases, and others. Data collection techniques were carried out through document studies and interviews. Document studies involve inventorying, systematizing, and categorizing legal materials. Meanwhile, interviews were conducted to obtain valid information from victims of discrimination involved in the cases discussed.

## Discussion

### **Judge's Considerations and Legal Consequences of the Semarang Ptun Decision and PT TUN Surabaya Not Accepting M.Baihaqi's Lawsuit in the 2019 Central Java Province National Civil Service Candidate Selection Case**

#### **A. Semarang PTUN Judge's Considerations**

The basis of the TUN dispute between M. Baihaqi (as the plaintiff) and the Central Java Regional Secretariat (as the defendant) is basically the result of the issuance of a state administrative decision (KTUN). In article 1 paragraph (3) of Law No. 5 of 1986, state administrative decisions that can be challenged in the State Administrative Court must meet the requirements, namely a written decision issued by a state administrative body or official, clear in the contents of the intent and Who is it aimed at, is concrete in that the object being decided has a certain form, is individual in nature, that is, it is intended for a particular person or legal entity, not for the general public, and is final, that is, it is definite and therefore can give rise to legal consequences <sup>1</sup>.

The 2019 Formation of Candidates for Civil Servants (CPNS) for people with disabilities is regulated based on the Letter of the Minister of State Apparatus Empowerment, Bureaucratic Reform of the Republic of Indonesia No.B/1236/M.SM.01.00/2019 explaining that people with disabilities may register in special formations for disabilities, special formations other or general formations provided that they have a diploma with appropriate educational qualifications.

One of the people with disabilities in the category of blind disabled registrants who took part in the Central Java Provincial Civil Servant Candidate (CPNS) selection test in the name of M. Baihaqi in accordance with announcement Number. 810/1156 concerning the acceptance of regional civil servant candidates for the mid-year Java provincial government In 2019, the plaintiff registered for a mathematics teacher formation at Randublatung State High School where in the applicant's statement it was stated " *generally can be filled with disabilities and physical disabilities* " <sup>2</sup>.

However, in the end, M.Baihaqi's CPNS selection decision resulted in the decision that M.Baihaqi's type of visual disability was not in accordance with the requirements

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<sup>1</sup>Rozali Abdullah, "Procedural Law on State Administrative Courts", (Jakarta: Raja Grafindo Persada, Ed.1 Cet.6, 1999), 20

<sup>2</sup>Copy of Semarang PTUN Decision Number 85/G/2020/PTUN.SMG, 9



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for the type of disability in the formation of a mathematics teacher position at Randublatung State High School <sup>3</sup>.

Apart from that, the plaintiff also attached an Educator Certificate Number 1091618002179 from the Ministry of Research, Technology and Higher Education (Kemenristekdikti) RII which stated that the plaintiff PASSED the professional mathematics teacher certification. And has been declared to have passed the administrative selection. However, it was declared that they did not pass after the SKD test stage was declared ineligible because the requirements for the type of disability and educational qualifications applied for were not in accordance with the issuance of the Decree of the State Administration official, namely by the Central Java Regional Secretary which was the object of the State Administration dispute, namely: 1) Announcement letter No. . 811/982 concerning the results of the 2019 Central Java Provincial Government CPNS Basic Competency selection and 2) Announcement letter No. 811/983 regarding participants who were declared ineligible because the requirements for the type of disability and educational qualifications applied for did not match the 2019 Formation <sup>4</sup>Candidates for Civil Servants ( CPNS) of the Central Java Provincial Government .

According to the Regional Secretary, M. Baihaqi was declared not to have passed the selection of Candidates for Civil Servants ( CPNS ) because he did not comply with the requirements needed to fill in the required disability formation, namely in the requirements it was stated that what was needed was a physical disability, whereas M. Baihaqi himself was included as disabled. blind. This is the reason for the issuance of a Decree stating that M.Baihaqi was declared not to have passed the 2019 selection of Candidates for Civil Servants ( CPNS) of the Central Java Provincial Government.

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<sup>3</sup>Ardhiyatul Wasi'ah, Thesis, "Analysis of the Judge's Legal Considerations in the Supreme Court Cassation Decision Number 471 K/TUN/2021 Regarding Discrimination of Persons with Disabilities in the 2019 Central Java Province Regional CPNS Admissions " , 2022, 92

<sup>4</sup>Copy of Semarang PTUN Decision Number 85/G/2020/PTUN.SMG, 10

With the issuance of the *a-quo decision* , the plaintiff's rights to obtain decent work without discrimination have been hampered. This is contrary to article 27 paragraph 2 of the 1945 Constitution which states " *every citizen has the right to work and a living worthy of humanity* ". By being declared failed in the selection process, it shows that there is discrimination against the requirements requested <sup>5</sup>.

Legal Efforts taken by M. Baihaqi as Plaintiff That on April 16 2020, M. Baihaqi as plaintiff through his attorney, namely LBH Semarang, sent a letter to the governor of Central Java regarding a request for legal protection against discriminatory treatment due to restrictions on types of disabilities in special formations for people with disabilities position of expert mathematics teacher at SMA Negeri 1 Randublatung from the 2019 CPNS selection committee within the Central Java Provincial Government;

On May 14 2020, the plaintiff, represented by legal counsel LBH Semarang, sent an objection to the Acting. Regional Secretary of Central Java Province as chairman of the CASN Procurement Team for the Central Java Government Formation in 2019.

On May 18 2020, Acting. The Regional Secretary of Central Java Province as head of the CASN Procurement Team for the Central Java Government Formation in 2019 through letter Number 800/04573 provided an answer to M.Baihaqi's objection note to LBH as legal representative which essentially explained that the process of implementing the 2019 CPNS Central Java Province recruitment process contained fraud. and discrimination;

On June 9 2020, the plaintiff's attorney sent an Administrative appeal letter to the governor of Central Java as chairman of the CASN Procurement Team for the 2019 Formation of the Central Java Government regarding the *a-quo* Administrative decision . Because the defendant never received an answer

On October 13 2020, the plaintiff in the name of M. Baihaqi, through his attorney, namely LBH Semarang, filed a lawsuit at the Semarang PTUN against the Regional Secretary of Central Java Province as the Chair of the CASN Procurement Team for the Central Java Provincial Government as the Defendant, because he felt

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<sup>5</sup>Copy of Semarang PTUN Decision Number 85/G/2020/PTUN.SMG, 11



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that there was an act of discrimination against him, until finally filed a lawsuit with the Semarang PTUN in the hope that the court decision issued by the Semarang TUN court could restore the rights of a disabled person who was lost in the CPNS selection process, but apparently the Semarang PTUN judge instead stated that he did not accept the plaintiff's lawsuit (a disabled person in the name of M. Baihaqi) on the grounds that the lawsuit has expired.

The lawsuit filed by the plaintiff through his attorney has been decided NO ( *niet ontvankelijke verklaard* ) by the Semarang State Administrative Court because it was deemed to be formally flawed, namely that the lawsuit submitted was considered expired because it exceeded the deadline for filing a lawsuit which as of October 12 2020 had passed 90 days calculated from dated 23 June 2020 as regulated in the provisions of article 5 paragraph (1) of Perma Number 6 of 2018, but the lawsuit was declared not accepted by the Semarang Administrative Court with Decision Number 85/G/2020/PTUN.SMG, dated 24 February 2021 with a ruling containing:

- In a delay that rejects the Plaintiff's Request for Postponement;
- In the exception that accepts the defendant's exception regarding the expired claim;
- In the main dispute stating that the Plaintiff's claim is not accepted, and punishing the Plaintiff to pay court costs of Rp. 342,500 ,- (Three hundred forty two thousand five hundred rupiah) <sup>6</sup>.

With the judge's considerations including: Considering, the exceptions raised by the defendant in his answer are as follows:

1. Expired Lawsuit;
2. Premature Lawsuit;
3. *Error In Objecto*;
4. The lawsuit lacks parties;

With the judge's consideration stating that based on legal facts connected with the legal rules that regulate it, the plaintiff could find out after knowing the objects

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<sup>6</sup>Copy of Semarang PTUN decision Number 85/G/2020/PTUN.SMG, 84

of dispute 1 and 2 on March 22 2020 and had made administrative efforts in the form of an objection to the official who issued dispute objects 1 and 2 (the defendant ) dated May 14 2020, and the defendant answered this objection on May 18 2020. The defendant resolved the plaintiff's objection within 3 (three) days and less than 10 days.

Furthermore, the plaintiff submitted an administrative appeal to the governor of Central Java as the defendant's superior on June 9 2020 and regarding this appeal during the trial there was no evidence regarding the governor of Central Java resolving the plaintiff's appeal.

That because the plaintiff's appeal dated 9 June 2020 was not mandatory or resolved by the governor of Central Java as the defendant's superior, based on the provisions of article 78 paragraph (4) of the AP Law jo. Article 5 paragraph (1) PERMA Number 6 of 2018 legally the grace period for filing a lawsuit in court is 90 (ninety) days starting from the time the appeal is submitted plus 10 working days with details of 9 June 2020 plus 10 (ten) working days then the on Tuesday, June 23, 2020<sup>7</sup>

Furthermore, the 90-day grace period for filing a lawsuit is calculated from June 23 2020, so it falls on Monday, September 21 2020, while in fact the plaintiff's lawsuit was registered at the state administrative court clerk's office on October 12 2020;

From the description of the legal considerations above, the panel of judges concluded that the plaintiff's lawsuit which was registered on 12 October 2020 had passed 90 days calculated from 23 June 2020 as regulated in the provisions of article 5 paragraph (1) of Perma Number 6 of 2018, thus the exception the defendant regarding the expired claim has legal grounds to be accepted and therefore other exceptions do not need to be considered <sup>8</sup>.

By applying the expiration provisions when filing lawsuits at the PTUN, on the one hand, it is intended to provide legal certainty, but on the other hand, the application of these provisions actually limits the rights of those seeking justice. This

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<sup>7</sup>Copy of Semarang PTUN Decision Number 85/G/2020/PTUN.SMG, 82

<sup>8</sup>Copy of Semarang PTUN decision No 85/G/2020/PTUN,SMG



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statute of limitations does not provide an opportunity for justice seekers to present the main points of their lawsuit<sup>9</sup>.

In fact, if you calculate 90 (ninety) days starting from the time the appeal is submitted plus 10 working days with details of 9 June 2020 plus 10 (ten) working days then it falls on Tuesday, June 23 2020 until the date of filing the lawsuit at the Semarang PTUN on the 12th October 2020 is still within 80 working days and has not exceeded the intended 90 day deadline.

In the *Ratio Decidendi Theory*, it is a theory that connects the subject of a disputed case by considering all its aspects, then in passing a decision by examining the regulations deemed appropriate to the disputed case. The judge's consideration should include:

1. The main issues and things that have been acknowledged and not denied
2. There is a juridical analysis of decisions involving all aspects based on facts
3. All parts of the plaintiff's petition are considered one by one and a conclusion is drawn whether they are proven or not.

However, the PTUN decision does not reflect the judge's consideration of matters from all aspects. Because we only pay attention to the formal aspect, namely the time limit for filing a lawsuit. Because the defendant's objection regarding the expired claim has been declared accepted, then the subject matter of the dispute no longer needs to be considered further, so it has legal grounds for the panel of judges to declare that the plaintiff's claim is not accepted and the plaintiff's request for a postponement is no longer relevant for consideration and has legal grounds. request for postponement rejected. In fact, if we examine the main points of the case in the lawsuit, the PTUN is also contrary to the general principles of good governance as regulated in article 10 of Law Number 30 of 2014 concerning Government Administration regarding:

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<sup>9</sup> Felishella Earlene, "Analysis of the Application of Expiry Dates in Filing Lawsuits Against the Right to Obtain Work for Persons with Disabilities in the Civil Servant Recruitment System (Decision Study Number 85/G/2020PTUN.SMG)", *Adigama Law Journal* 2021, 2784

1. Principle of legal certainty

It was proven that the plaintiff had registered for a formation that could be filled by people with disabilities and had been declared to have passed the administrative selection, but the defendant issued a new decision not to pass the plaintiff in the next selection without a clear legal basis which was contrary to announcement number 810/1156 concerning the acceptance of civil servant candidates. Central Java provincial government area in 2019.

2. The principle of benefit

*a-quo* decision has weakened the interests of the plaintiff who also experienced discriminatory behavior where the defendant contradicted the announcement Number 810/1156 regarding the acceptance of CPNS Central Java. Apart from that, there are also restrictions on the plaintiff's right to get work organized by the government.

3. Principle of impartiality

With the issuance of the KTUN, the object of the *a-quo lawsuit* by the defendant has positioned the defendant's side so that not considering the interests of the plaintiff, including discriminating against disabled people.

4. The principle of accuracy

That the defendant was not careful in issuing the KTUN for the object of the lawsuit where the plaintiff had passed the administrative selection, supported by the teacher certification. Including the SKD test results with the highest scores in the mathematics teacher formation at SMA Negeri 1 Randublatung.

5. Principle of trust

The defendant was proven to have damaged public trust because the plaintiff had been declared to have passed the administrative selection but the defendant made a decision to announce administrative passing which was contrary to announcement Number 810/11156 regarding the acceptance of Central Java National Civil Service Candidates which allowed all people with disabilities to be filled. The defendant's actions were inconsistent and unprofessional and have damaged public trust. If the plaintiff's lawsuit has been declared not accepted, then in



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accordance with the provisions of article 110 *in conjunction with* article 112 of Law Number 5 of 1986 concerning state administrative justice, the plaintiff is sentenced to pay court costs in the amount as stated in the Decision. The reason why the plaintiff feels that he has not received justice in the decision of the Semarang PTUN Court is that the plaintiff, through his attorney, namely LBH Semarang, submitted an appeal to the State Administrative High Court (PT TUN) Surabaya on May 31 2021, and the PT TUN Surabaya appeal decision with decision number 113/B/2021/PT.TUN.SBY, stated that it had strengthened the decision issued by the Semarang PTUN.

## **B. PT Surabaya Judge's Considerations**

The decision of the Semarang PTUN panel of judges is very detrimental to the plaintiff, because it has eliminated the plaintiff's right to get a decent job opportunity in the CPNS selection, and the plaintiff is also entitled to equal opportunities before the law. In terms of obtaining equal opportunities before the law, the plaintiff has the right to receive equal treatment before the law, and for the reason that the judge stated that because the lawsuit was formally flawed, the object of the lawsuit no longer needed to be considered again, the judge's decision was not touching the object of the dispute is very detrimental to the plaintiff.

The next legal action taken is to submit an appeal to PT TUN Surabaya. However, the judge's decision at PT TUN Surabaya stated that the lawsuit submitted by the plaintiff had expired 90 (ninety) days as regulated in article 55 of Law Number 5 of 1986 which had been amended by Law Number 9 of 1994 jo. Law Number 51 of 2009 concerning the second amendment to Law Number 5 of 1986 concerning state administrative justice.

The appeal efforts submitted in the hope of being able to restore the plaintiff's rights in the CPNS selection include canceling the Semarang PTUN decision and granting the appeal submitted by the plaintiff. However, on the contrary, the PT TUN

Surabaya appeal decision actually strengthened the Semarang PTUN decision by confirming the considerations of the Semarang PTUN judge who decided that the lawsuit submitted by the plaintiff was not accepted (NO) on the grounds that it was formally flawed because the lawsuit had passed the time limit when submitting the lawsuit to the Semarang PTUN. The PT TUN Surabaya panel of judges took over and accepted the dispute in the Semarang PTUN decision with the following verdict <sup>10</sup>:

- a. In a delay that rejects the plaintiff's request for a delay
- b. In the exception that accepts the defendant's exception regarding the expired claim
- c. In the main dispute stating that the Plaintiff's lawsuit is not accepted and punishing the plaintiff to pay court costs of Rp. 342,500,- (Three Hundred Forty Two Thousand Five Hundred Rupiah)

With legal considerations including:

That the appeal request is still within the 14 (fourteen) day grace period, namely from the decision of the Semarang State Administrative Court which was pronounced electronically with the delivery of a copy of the electronic decision to the parties via the Surabaya TUN court information system on Wednesday, February 24 2021, with as stipulated in Article 123 paragraph (1) of Law Number 5 of 1986 concerning State Administrative Courts, therefore the appeal request from the appellant/plaintiff can formally be accepted;

That the panel of judges at the Surabaya State Administrative High Court, hereinafter referred to as the appeal panel of judges, after reading, researching, carefully studying the case files consisting of; lawsuit letter, minutes of preparatory examination, trial minutes, letters of evidence from the parties, witnesses, and letters related to this state administration dispute, then at the deliberation meeting of the panel of judges on Monday, May 31 2021, this was achieved unanimously agree that the legal considerations of the first level panel of judges in handing down decision Number 85/G/2020/PTUN.SMG were appropriate and correct, because the lawsuit filed by the plaintiff had already passed the 90 (ninety) day period as stipulated in the

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<sup>10</sup>Copy of PT TUN Surabaya decision No.113/B/2021/PT TUN SBY, 4-5



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article 55 Law Number 5 of 1986 which has been amended by Law Number 9 of 1994 jo. Law Number 51 of 2009 concerning the second amendment to Law Number 5 of 1986 concerning state administrative justice <sup>11</sup>.

Based on these legal considerations, the panel of judges at the Surabaya High State Administrative Court is of the opinion that the decision of the panel of judges at the Semarang State Administrative Court Number 85/G/2020/PTUN.SMG dated 24 February 2021 which is being appealed must be upheld. Because the decision of the panel of judges at the Semarang State Administrative Court was upheld, the appellant/plaintiff as the losing party in the case, in accordance with the provisions of article 110 of Law Number 5 of 1986 must be sentenced to pay the court costs at the head of the court level, which is for the level appeal in the amount specified in the decision below;

Pay attention to the articles in Law Number 5 of 1986 which have been amended by Law Number 9 of 1994 jo. Law Number 51 of 2009 concerning the second amendment to Law Number 5 of 1986 concerning state administrative justice PT TUN Surabaya, including: <sup>12</sup>

- a. Receive appeals from appellants/plaintiffs;
- b. Strengthening the Semarang State Administrative Court Number 85/G/2020/PTUN.SMG, dated 24 February 2021 which requested an appeal;
- c. Sentencing the appellant/plaintiff to pay court costs at both levels of the Court, which at the appeal level is set at Rp. 150,000,- (one hundred and fifty thousand rupiah);

If viewed from the procedural law perspective of the State Administrative Court, the decisions of the Semarang PTUN and PT TUN Surabaya court judges are not in line with several principles of PTUN procedural law, including:

- 1) The principle of active judge

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<sup>11</sup>Copy of PT TUN Surabaya decision No.113/B/2021/PT TUN SBY, 8-9

<sup>12</sup>Copy of decision Number 113/B/2021/PT.TUN.SBY, 10

In both decisions the judge should have been more active in looking at the main issues. Judges must also actively seek material truth and balance the positions between the defendant and the plaintiff. Applying this principle should give the judge the authority to decide on cases by not only looking at the lawsuit from a formal perspective, but also looking at the main points of the issue. However, in this case the judge only looked at the case from a formal perspective without considering the object of the dispute or the main issues being raised.

2) Hearing both sides ( *audi et alteram partem* )

With this principle, judges must provide equal opportunities and act fairly to receive and listen to both parties to protect and defend the interests concerned. However, in both decisions the judge did not hear both parties because the judge only looked at the formal aspect.

3) The principle of material truth that is sought

This principle requires the existence of truth based on valid evidence according to statutory regulations to discover and determine actual material events. However, in this case we only look at the case from its formal aspect without first looking at and considering the actual incident and the valid evidence according to statutory regulations.

4) The principle of independence of judicial power

This principle shows that the existence of judges who are independent in their judicial power in examining and deciding cases, however in this case it does not show the existence of the principle of independence of the judge's power, in this case the appeal decision actually strengthens the decision of the Semarang PTUN without first considering the object of the dispute, only see the matter from its formal aspect.

5) Principle of objectivity

This principle requires the objectivity of judges in examining and passing decisions impartially, fairly and honestly, non-discriminatory, equality before the law. However, these two decisions show that the decisions of the two courts were detrimental to the plaintiff and were considered unfair because with litigation



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efforts the plaintiff hoped to restore the plaintiff's rights which had been lost, but instead the lawsuit submitted was declared unacceptable.

### C. Legal Consequences of the Decision of PTUN Semarang and PT TUN Surabaya Not Accepting M.Baihaqi's Lawsuit in the 2019 Central Java Province National Civil Service Candidate Selection Case

Decision NO ( *Niet Ontvankelijke Verklaard* ) is a decision stating that the lawsuit cannot be accepted because it contains formal defects. According to M. Yahya Harahap, the formal defects that may exist in the lawsuit include:

1. The lawsuit signed by the attorney is based on a power of attorney that does not meet the requirements outlined
2. The lawsuit has no legal basis
3. A lawsuit *for error in persona* in the form of disqualification or *plurium litis consortium*
4. The lawsuit contains *obscuur libel*, *ne bis in idem*, or violates absolute or relative jurisdiction (competence) <sup>13</sup>.

In decisions that have not reached the point of the case such as this case, the plaintiff can still file a lawsuit by improving the formalities considered by the panel of judges as a basis for declaring the lawsuit inadmissible. The legal remedy for an appeal decision is cassation. The cassation request is submitted within 14 days after PT TUN's decision is notified to the cassation applicant.

After taking a legal appeal at PT TUN Surabaya and resulting in decision No.113/B/2021/PT.TUN.SBY with the result of the decision confirming the decision of PTUN Semarang No. 85/G/2020/PTUN.SMG which states that the decision cannot be accepted (NO) on the grounds that the lawsuit is formally defective in the form of an expired lawsuit.

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<sup>13</sup>M. Yahya Harahap, "Civil Procedural Law", (Jakarta: Sinar Graphics, 2017), 811

The legal consequence of the PT TUN Surabaya decision which upholds the Semarang PTUN decision stating NO is that the case must be stopped and the status of the court decision becomes legally binding if no cassation action is filed after 14 days after the decision was pronounced or notified to the applicant. Meanwhile, the resulting decision has not touched on the subject matter of the case at all, only looking at the case from its formal aspect. The result for the plaintiff is that the plaintiff will lose his rights in the Central Java Province CPNS selection if the next legal remedy, namely cassation, is not taken by the plaintiff as the party who has been harmed by the court decision issued by the judge. Apart from that, the plaintiff is also charged with paying court costs at both levels of court, namely PTUN Semarang and PT TUN Surabaya.

The appeal attempt at PT TUN Surabaya did not restore the plaintiff's rights as expected but instead eliminated the plaintiff's rights. Therefore, the Plaintiff still has to fight to obtain justice through legal action, which can be done next, namely cassation/application for cassation submitted to the Supreme Court.

On June 17 2021, the plaintiff, through his attorney, submitted a cassation request to the Supreme Court, followed by a cassation memo which was received by the Supreme Court clerk on July 1 2021. The cassation request was submitted by the plaintiff for the reasons, among others, that the Semarang PTUN judge's consideration was considered inappropriate, stating that the lawsuit has expired with the consideration that the plaintiff's lawsuit which was registered on 12 October 2020 has passed 90 (ninety) days calculated from 23 June 2020 as regulated in article 5 paragraph (1) of Perma Number 6 of 2018. Even if it is calculated from 12 October 2020 - 23 June 2020 is still within the grace period of 80 working days and not yet 90 working days have passed, but PTUN Semarang and PT TUN Surabaya calculate the total day of the anniversary of the lawsuit being filed as having passed 90 days from the deadline for filing an appeal against the filing of the lawsuit. to PTUN Semarang.

In deciding the cassation case submitted by the cassation applicant/ plaintiff, the Supreme Court took several considerations into account, including:



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That *Judex Facti* was mistaken and wrong in applying the law with the following considerations <sup>14</sup>:

That even though the cassation applicant/plaintiff is late in submitting administrative measures, the cassation applicant/plaintiff has already submitted an objection and appeal, as intended in article 5 of Supreme Court Regulation Number 6 of 2018 which confirms that before filing a State Administrative lawsuit, administrative measures must first be taken. Because from the time the appeal was submitted (even though it was not proven to have been answered by the official concerned), until the registration of the *a-quo lawsuit* it had not passed 90 (ninety) days as intended in article 55 of Law Number 5 of 1986, so it met the requirements for examination and considered down to the essentials of the matter;

Whereas based on the facts at trial, it shows that on November 23 2019 the plaintiff registered for CASN with the formation of Persons with Disabilities and the formation of a mathematics teacher position at SMA Negeri 1 Randublatung, Central Java with the category of blind disabled registrants and obtained Register Number 44000682060305733. Then took the basic competency selection test with a score of 401. This means that the cassation applicant/plaintiff meets the specified requirements;

That the plaintiff had the highest score from the basic competency selection results in the mathematics teacher formation at SMA Negeri 1 Randublatung, but was declared ineligible by the defendant, this is contrary to the provisions of article 16 paragraph (1) of Central Java Provincial Regulation Number 11 of 2014 concerning Fulfillment of Rights people with disabilities, which states: "*people with disabilities have equal and equal rights and opportunities to get work and/or do decent work and get salaries/wages in accordance with statutory regulations*".

Whereas based on the considerations above, the KTUN object of dispute is in conflict with Central Java Province Regional Regulation Number 11 of 2014

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<sup>14</sup>Copy of Supreme Court Decision No.471/K/TUN/2021, 5

concerning Fulfillment of the Rights of Persons with Disabilities as well as Central Java Governor Regulation Number 11 of 2017 concerning the Implementation of Central Java Province Regional Regulation Number 11 of 2014 concerning Fulfillment of the Rights of Persons with Disabilities. disability and the principle of prohibition of discrimination. Therefore, the cassation respondent/defendant is ordered to further process the approval of the cassation applicant/plaintiff in accordance with statutory regulations <sup>15</sup>.

Based on the considerations above, according to the Supreme Court there are sufficient reasons to grant the cassation request without needing to consider other reasons for cassation. Therefore, the decision of the Surabaya State Administrative High Court No.113/B/2021/PT.TUN.SBY, which upholds the decision of Semarang PTUN No. 85/G/2020/PTUN.SMG, the date cannot be maintained and must be cancelled. The panel of supreme judges has read and studied the answers to the cassation memorandum, but found nothing that could weaken the applicant's reasons for cassation. The Supreme Court issued a decision with a ruling containing:

- Grant the plaintiff's claim in its entirety;
- Declare null and void the decision letter of the Regional Secretary of Central Java Province as Chair of the CASN Procurement Team for the Central Java Provincial Government for the 2019 Formation, specifically on behalf of the plaintiff in the form of:
  - a. Announcement letter no. 811/982 concerning the results of the 2019 Central Java Provincial Government CPNS Basic Competency selection dated March 20 2020;
  - b. Announcement letter no. 811/983 concerning participants who were declared ineligible because the requirements for the type of disability and educational qualifications applied for did not match the 2019 Formation of Central Java Provincial Government Civil Servant Candidates ( CPNS) dated 20 March 2020;
- As well as requiring the Defendant to issue a state administrative decision stating that the plaintiff has passed and fulfilled the requirements for the Basic

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<sup>15</sup>Copy of MA DECISION No.471/K/TUN/2021, 6



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Competency selection for Civil Servant Candidates for the Central Java Provincial Government Formation in 2019 and to further process the plaintiff's graduation in accordance with statutory regulations;

- Sentencing the cassation respondent to pay court costs at all levels of justice, which at the cassation level is set at Rp. 500,000.00 (five hundred thousand rupiah) <sup>16</sup>;

From the Supreme Court's decision, it shows that the considerations of the Semarang PTUN and PT TUN Surabaya which stated that the lawsuit filed by the plaintiff was formally flawed/the lawsuit had expired was inaccurate in that the Supreme Court stated that from the time the appeal was filed (although it was not proven to be answered by the relevant official), until registration *a-quo's* lawsuit has not yet passed 90 (ninety) days as intended in article 55 of Law Number 5 of 1986, so it meets the requirements to be examined and considered down to the main part of the case. And after the Supreme Court examined and considered the main case filed, it was proven that there was nothing that weakened the plaintiff's reasons in the lawsuit filed and the plaintiff was indeed proven guilty and mistaken in issuing a KTUN which caused an act of discrimination against the plaintiff in the selection of CPNS Java. Middle of 2019.

## **Fulfillment of the Constitutional Rights of Persons with Disabilities in the 2019**

### **Central Java Province Civil Servant Selection**

#### **A. Fulfillment of the Right to Obtain Justice**

As a constitutional right, the legal form of the rights of persons with disabilities is regulated in three forms, namely:

1. Regulated by the constitution, stated in article 281 paragraph (2) of the 1945 Constitution of the Republic of Indonesia;

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<sup>16</sup>Copy of MA DECISION No.471/K/TUN/2021, 7-8

2. Laws are regulated along with sanctions for those who violate them. For example: regulated by Law Number 39 of 1999 concerning Human Rights (UU No. 39 of 1999) and Law No. 8 of 2016);
3. Regulated in Regional Regulations <sup>17</sup>. In this case, it is Central Java Province Regional Regulation Number 11 of 2014 concerning Fulfillment of the Rights of Persons with Disabilities

The right to obtain justice is an inherent human right that every individual has, equally and without discrimination for any reason such as belief, race, gender, ethnicity, age, religion, sexual orientation, language, political views, marital status and disability. The right to justice is a guideline for everyone whose rights have been violated to take remedial efforts using formal or informal mechanisms based on human rights norms and principles. Every individual has the right to receive recognition as a legal subject as a basis for exercising their rights in obtaining justice. This also includes everyone who is not legally competent, including people with disabilities and children. Assistance for victims who cannot become legal subjects is carried out based on the form of defending the interests and rights of victims.

The right to obtain justice also applies to every individual, including applicant or respondent, plaintiff or defendant, reporter or respondent, defendant, suspect, witness and convict. Among these people there are also people with special needs, so the right to obtain justice before the law applies to people with special needs.

The right to obtain justice is closely related to the principles of non-discrimination and affirmation. The principle of non-discrimination can be realized in the form of not making a difference in each individual's position in the legal process, in a person's reasons before the law and not making a difference in the outcome of the legal process (guilty or not in a case). Meanwhile, if the principle of affirmation is realized by differentiating each individual based on special needs and treatment

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<sup>17</sup>Arie Purnomosidi, "The Concept of Protecting the Constitutional Rights of Persons with Disabilities in Indonesia", *Journal of Legal Reflections* Vol. 1 No. 2, 2017, 5



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(affirmation), including parents, pregnant and breastfeeding women, children, and people with disabilities.

In all judicial environments below the Supreme Court: general courts, state administrative courts, military courts and religious courts, the right to obtain justice applies. These rights also cover the judicial process and results. What is manifested in an impartial judicial process can be seen in an attitude that is independent and free from interference from parties outside the judicial authority of law enforcers. The judicial process is related to the principle of legality, the principle of equality before the law, the principle of presumption of innocence, the principle of non-retroactivity and *non-self-incrimination*.

The right to a correct and fair decision can be found in the judge's argumentation by considering all the facts and opinions at trial, as well as prioritizing humanity, imposing a sentence on the perpetrator and restoring the victim's losses.<sup>18</sup>. However, in fact in this case the right to a correct and fair decision was not obtained because in the legal reasoning arguments, the PTUN and PT TUN Surabaya judges did not consider all the facts but only looked at the formal aspect.

The right to obtain justice can also be exercised by parties by filing lawsuits by citizens and class action lawsuits. to defend the interests of the community and restore their violated rights<sup>19</sup>. In the state administration dispute between M. Baihaqi as the plaintiff and the Central Java Regional Secretariat as the defendant, the plaintiff made efforts to obtain the right to obtain justice because he was disadvantaged by a State Administration decision with administrative efforts, namely submitting an appeal to a higher level official and Litigation/judicial efforts were the efforts that he finally took because there was no answer/follow-up to the administrative efforts taken. He filed a lawsuit with PTUN Semarang and an appeal to

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<sup>18</sup>Indonesian National Human Rights Commission, "Draft 02 Standard Norms and Regulations Concerning the Right to Obtain Justice" 15-16

<sup>19</sup>Komnas HAM RI, "Draft 02 Standard Norms and Regulations Concerning the Right to Obtain Justice", 26

PT TUN Surabaya as a form of effort to obtain justice as a person with disabilities because these two decisions did not fulfill his right to obtain justice as a victim, so in the end he submitted a cassation request to the Supreme Court.

From the Supreme Court's decision as mentioned above with the decision issued by the Supreme Court which granted the entire lawsuit, the granting of the cassation petition has restored the rights of the respondent/plaintiff that had been lost. This shows that the fulfillment of the right to obtain justice in the judicial process has been fulfilled because the Supreme Court issued a decision which annulled the two subordinate court decisions, namely the Semarang PTUN decision and the PT TUN Surabaya decision and has been *finalized* .

#### **B. Fulfillment of the Right to be Free from Discrimination**

Persons with disabilities are every individual who has physical, mental or intellectual limitations. Legal protection for people with disabilities is an effort to meet their needs from things that could cause harm to people with disabilities. This protection is a form of recognition that discrimination against people with disabilities is a form of violation of the values and dignity of every individual<sup>20</sup>.

There are two provisions which constitutionally become the legal source for the right to be free from discrimination, namely first, every individual without qualifications and second, namely citizens. Provisions related to the right to be free from discrimination apply to human rights and the rights of citizens.

The provisions on the right to be free from discrimination which are included in human rights are regulated in the constitution, article 28 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which reads "Everyone has the right to discriminatory treatment on any basis and has the right to obtain protection against such discriminatory treatment". which means that every individual has the right to fair legal protection, guarantees, recognition and certainty as well as equal treatment before the law.

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<sup>20</sup>Zulkarnain Ridlwan, "Protection of the Constitutional Rights of Persons *with Disabilities* ", *Fiat Justisia Legal Science Journal* Vol 7 No 2, 2013, 8



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Article 28 I paragraph (2) of the 1945 Constitution of the Republic of Indonesia reads "every person has the right to be free from discriminatory treatment on any basis and has the right to receive protection against such discriminatory treatment " which determines that every individual is free from discriminatory treatment and has the right to receive protection from the consequences of such treatment. discriminatory.

The regulation regarding the rights of citizens to be free from discrimination is in article 27 paragraph (1) of the Constitution of the Republic of Indonesia which reads "all citizens have the same position under the law and government and are obliged to uphold the law and government without exception" meaning that every individual has the same position. and must uphold it before the law and the government without exception. Article 28 D paragraph (3) of the 1945 Constitution of the Republic of Indonesia means that every individual has the right to equal opportunities in government.

Provisions on the right to be free from discrimination also include special protection for certain groups of people in vulnerable categories. Article 28 H paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that every person has the right to receive special facilities and treatment to get the same opportunities and benefits to achieve justice and equality. What is further emphasized in article 5 paragraph (3) of Law No. 39 of 1999 is that every person in a vulnerable group has the right to receive treatment and protection that is more favorable to their specific characteristics <sup>21</sup>.

Talking about the right to obtain justice is closely related to the right to be free from all forms of discrimination. Persons with disabilities constitutionally have equal rights and standing before the law and government because they are part of humanity and as Indonesian citizens. Therefore, people with disabilities have the right to be free from all forms of discrimination. In this case, it is freedom from

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<sup>21</sup>Titon Slamet Kurnia, "The Constitutional Court and the Right to be Free from Discriminatory Treatment", *Constitutional Journal* Volume 12 Number 1 2015, 3

discrimination in the implementation of Central Java National Civil Service Candidate selection and as a form of fulfillment of the right to be free from discriminatory treatment and can be carried out by judicial institutions because the case has reached litigation efforts, namely the State Administrative Court because the non-litigation efforts taken have not been implemented. produce results.

In this case, the issuance of the Supreme Court's decision which restored the plaintiff's rights in the CPNS selection also shows that the role of the judicial power institution, in this case the Supreme Court, has demonstrated an independent attitude of judicial power by not taking sides with government agencies which have been proven guilty but deciding disputes with consideration. careful and wise and from this it can be said that the fulfillment of the right to be free from discrimination has been fulfilled.

### **C. Fulfillment of the Right to Obtain Work**

In terms of fulfilling the right to work, in this case it is related to how the judicial decision is implemented which has permanent legal force, namely how the defendant implements the Supreme Court decision.

After the Supreme Court's decision was issued on November 30 2021. One year later on November 4 2022 the BKD ( Regional Civil Service Agency) held a meeting inviting the defendant in order to socialize solutions to the implementation of the Supreme Court's decision in the CPNS selection case with the plaintiff M. Baihaqi. The plaintiff attended the socialization accompanied by his attorney from LBH Semarang and representatives from Rumah Divable Semarang. However, there is a discrepancy between the Supreme Court's decision and the solution provided by the BKD.

In the Supreme Court's decision requiring the defendant to issue a state administrative decision stating that the plaintiff had passed and fulfilled the requirements for the Basic Competency selection for Civil Servant Candidates for the Central Java Provincial Government Formation in 2019 and requiring the defendant



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to further process the plaintiff's graduation in accordance with statutory regulations<sup>22</sup>,

From the Supreme Court's decision, it is clear that in an effort to implement the Supreme Court's decision, the defendant is required to issue a new KTUN stating that the plaintiff has passed the SKD selection and further process the plaintiff's graduation as a CPNS.

However, the solution given by BKD in an effort to implement the Supreme Court's decision is to provide a special formation solution for First Aid Teachers. The solution provided by the BKD was for reasons including: The government no longer recruits CPNS and the age of the plaintiff/applicant for cassation is over 35 years.

To answer the reasons given by the defendant, the plaintiff provided arguments including<sup>23</sup>:

To answer the first defendant's reason that the government no longer recruits CPNS, there should be some kind of special policy discretion to recruit CPNS for the cassation applicant/plaintiff. Meanwhile, to answer the second reason that the plaintiff/cassation applicant is over 35 years old, According to the plaintiff, when the plaintiff registered for CPNS, he was still 33 years old and still met the requirements to become a civil servant and if he had not experienced discrimination during the CPNS selection, of course he would have now received a civil servant decree in the formation applied for by the plaintiff.

Apart from that, all plaintiffs quite appreciate and accept the solutions provided by the central and regional governments. According to him, the solution provided by the defendant in the form of implementing the Supreme Court's decision was an answer and a bright spot for the dispute that had occurred to him. Although if you compare P3K with CPNS, CPNS is more guaranteed for a lifetime, whereas P3K is a

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<sup>22</sup>Copy of Supreme Court Decision Number 471/K/TUN/2021

<sup>23</sup>M. Baihaqi as the plaintiff was interviewed by Dwi Latipah, May 25 2023 at 10.00 WIB

contract, although it can be extended, but does not provide a guarantee of lifelong welfare.

The formation of PPPK was based on the government needing employees who have special abilities that civil servants do not have as regulated in the ASN Law Number 5 of 2014 which includes employees other than civil servants, namely PPPK. In implementing this law, a PP on PPPK management was formed in 2018 and a Presidential Decree on the types of positions that could be filled by PPPK <sup>24</sup>.

There are different rights for civil servants and PPPK which are regulated in the ASN Law in articles 21 and 22. In article 21 civil servants have the right to:

- a. Salary, allowances and facilities,
- b. paid leave,
- c. Pension security and old age security,
- d. Protection and,
- e. Competency development.

Meanwhile, in article 22 PPPK has the right to obtain:

- a. Salaries and allowances,
- b. paid leave,
- c. Protection and,
- d. Competency development <sup>25</sup>.

From the solution provided by the defendant, 1 formation has been prepared which has been locked and can only be filled by the plaintiff in the name of M. Baihaqi and in the Decree of the Minister of PAN RB which will be placed at SLB N 1 Pernalang with the formation of a mathematics teacher. plaintiffs still have to follow a series of P3K recruitment procedures starting from the registration process to tests and other processes <sup>26</sup>.

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<sup>24</sup>Novi Savarianti Fahrani, "Analysis of the Existence of Non-Civil Servant Government Employees from the ASN Management Perspective", *Civil Service Journal* Vol.14 No.2 of 2020, 5

<sup>25</sup>UU no. 5 of 2014

<sup>26</sup>M. Baihaqi as the plaintiff was interviewed by Dwi Latipah, May 25 2023 at 10.00 WIB



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The solution given by the defendant to the plaintiff, namely by forming a P3K Mathematics Teacher at SLB Negeri 1 Pemalang, has shown that the defendant has implemented the Supreme Court decision Number 471/K/TUN/2021 but there is a discrepancy with the sound of the Supreme Court decision which requires the defendant to withdraw the object of the lawsuit and stated that the plaintiff in the name of M. Baihaqi passed and processed the plaintiff's graduation to the next stage in the CPNS selection, but the solution given by BKD was to provide P3K formation.

In terms of fulfilling the constitutional rights of citizens, including people with disabilities, which are regulated in article 27 paragraph 2 of the 1945 Constitution which states "*every citizen has the right to work and a living worthy of humanity*". The implementation of the Supreme Court's decision by the defendant can be said to be maximal if it is in accordance with the words of the Supreme Court's decision. Meanwhile, the defendant's implementation of the Supreme Court's decision in this case did not comply with the ruling in the Supreme Court's decision.

If we look at the implementation of the Supreme Court's decision by the defendant, in this case the BKD which provided the solution as described above, it can be said that the defendant has implemented the Supreme Court's decision but it has not been implemented optimally because there is a discrepancy between the ruling and the implementation of the Supreme Court's decision by the defendant. This discrepancy is possible because there is no stricter regulation regarding the implementation of PTUN decisions and the absence of a special executorial institution for implementing PTUN decisions.

According to Pridly Nataniel, what causes the low level of official compliance with the implementation of PTUN decisions is because there are no sanctions imposed if there is a violation of the PTUN decision, apart from that, it is also because there is no guarantee of interests if you obey the law. The losing party will feel that if they obey the court's decision, their interests will not be guaranteed, so they will

prefer not to comply with the decision. This then causes the implementation of PTUN decisions to not run optimally <sup>27</sup>.

## **Conclusion**

The reason why the Semarang PTUN and PT TUN Surabaya judges upheld the Semarang PTUN decision which stated that M. Baihaqi's lawsuit was declared NO ( *Niet Ontvankelijke Verklaard* ) or not accepted was because the lawsuit submitted had expired/exceeded the time limit for filing the lawsuit. So it can be said that the lawsuit submitted is formally flawed so that the object of the case no longer needs to be considered.

The legal consequences of the Semarang PTUN decision which states that it does not accept it and the PT TUN Surabaya decision which confirms that the decision can have permanent legal force if within 14 days of the decision being pronounced or notified to the applicant if no legal action is submitted, the plaintiff has lost his rights. - his right to become a CPNS in the 2019 Central Java CPNS selection. The plaintiff then submitted a cassation request to the Supreme Court and granted the entire lawsuit. By granting the cassation request, the respondent's lost rights were restored. This shows that the fulfillment of the right to obtain justice in the judicial process has been fulfilled because of the issuance of the Supreme Court decision.

Fulfillment of the constitutional rights of persons with disabilities in the 2019 Central Java CPNS selection is considered not optimal because the solution provided by the defendant as an implementation of the Supreme Court's decision is not in accordance with the Supreme Court's decision.

## **Bibliography**

### **Book**

Abdullah, Rozali. 1999. *Hukum Acara Peradilan Tata Usaha Negara*. Jakarta: Raja Grafindo Persada

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<sup>27</sup>Prildy Nataniel Boneka, "Legal Review of PTUN Decisions in the Context of Executing Decisions that Have Obtained Permanent Legal Force" *Lex Administration Vol.2 No.2*, 2014



Submitted: 15/01/2024 | Reviewed: 28/02/2024 | Approved: 10/03/2024

- Amiruddin, Asikin, Zainal. 2012. *Pengantar Metode Penelitian Hukum*. Jakarta: Raja Grafind Persada
- Anggrayni, Lysa. 2017. *Pengantar Ilmu Hukum*. Yogyakarta: Kalimedia, Cet- I
- Diantha, I Made Pasek. 2017. *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*. Jakarta: Prenada Media Group, Cet- 2
- Efendi, Jonaedi. Ibrahim, Johnny. 2016. *Metode Penelitian Hukum Normatif dan Empiris*. Depok: Prenada Media Group
- El-Muhtaj, Majda. 2007. *Hak Asasi Manusia dalam Konstitusi Indonesia*. Jakarta: Kencana
- Fence M. *Hukum Acara Peradilan Tata Usaha Negara*. Gorontalo:
- Harahap, M.Yahya. 2017. *Hukum Acara Perdata*. Jakarta : Sinar Grafika
- Januri, Moh.Fauzan. 2018. *Analisis Yurisprudensi*. Bandung: Pustaka Setia
- Komnas HAM RI, "Draf 02 Standar Norma dan Pengaturan Tentang Hak Memperoleh Keadilan"
- M.D., Mahfud. 2003. *Demokrasi dan Konstitusi di Indonesia*. Jakarta: Rineka Cipta
- Marzki, Peter Mahmud. 2009, *op.cit*,
- Neno, Victor Yaved. 2006. *Implikasi Pembatasan Kompetensi Absolut Peradilan Tata Usaha Negara*. Bandung: Citra Aditya Bakti
- Panjaitan, Budi Sastra. 2016. *Hukum Acara Peradilan Tata Usaha Negara*. Manhaji Medan: UIN Sumatera Utara
- Rifai, Achmad. 2020. *Menggapai Keadilan dengan Hukum Progresif (Sebuah Upaya Menyempurnakan Putusan Hakim pada Keadilan*. Makassar : Nas Media Pustaka, Cet-1
- Setiadi, Wicipto. 1994. *Hukum Acara Peradilan Tata Usaha Negara Suatu Perbandingan*. Jakarta: Raja Grafindo Persada
- Simanjuntak, Enrico. 2018. *Hukum Acara Peradilan Tata Usaha Negara*. Jakarta: Sinar Grafika
- Soemitro, Rochmat. 1998. *Peradilan Tata Usaha Negara*. Bandung: Refika Aditama
- Tim penyusun kamus puat pembinaan dan pengembangan bahasa. 1998. *Kamus Besar Bahasa Indonesia*. Jakarta: balai pustaka

Wantu, Fence M. 2014. *Hukum Acara Peradilan Tata Usaha Negara*. Gorontalo: Reviva Cendekia

Widyawati, Anis. 2014. *Hukum Pidana Internasional*, Jakarta: Sinar Grafika

Zulkarnaen, Mayaningsih, Dewi. 2018. *Hukum Acara Peradilan Tata Usaha Negara di Indonesia*. Bandung: Pustaka Setia

### **Journal**

Asshiddiqie, Jimly . 2010. *Merawat dan Memenuhi Jaminan Hak Konstitusional Warga Negara*. Jakarta: Makalah dalam kegiatan Lokakarya Nasional Komnas Perempuan

Boneka, Prildy Nataniel. 2014. *Tinjauan Hukum Putusan PTUN dalam Rangka Eksekusi Putusan Yang telah Memperoleh Kekuatan Hukum Tetap*. Jurnal Lex Administration Vol.2 No.2

Fahrani, Novi Savarianti. 2020. *Analisis Keberadaan Pegawai Pemerintah Non Pegawai Negeri Sipil dalam Perspektif Manajemen ASN*. Jurnal Civil Service Vol.14 No.2

Kurnia, Titon Slamet. 2015. *Mahkamah Konstitusi dan Hak Untuk Bebas dari Perlakuan Diskriminasi*. Jurnal Konstitusi. Volume 12 Nomor 1

M. Baihaqi sebagai penggugat diwawancarai oleh Dwi Latipah, tanggal 25 Mei 2023 pukul 10.00 WIB

Nursyamsi, Fajri , dkk. 2015. *Kerangka Hukum Disabilitas di Indonesia: Menuju Indonesia Ramah Disabilitas*. Jakarta: Pusat Studi Hukum Kebijakan Indonesia (PSHK)

Prasetyo, Bayu, dkk. 2021. *Argumantasi Hukum Terhadap Pertimbangan Hakim dalam Putusan Perkara Sengketa Kepegawaian*. Jurnal PALAR Pakuan Law Review. Volume 07 Nomor 02

Purnomosidi, Arie. 2017. *Konsep Perlindungan Hak Konstitusional Penyandang Disabilitas Di Indonesia*. Jurnal Refleksi Hukum, Vol 1 No 2

Putrijanti, Aju. 2015. *Kewenangan Serta Obyek Sengketa Di Peradilan Tata Usaha Negara Setelah Ada Uu No. 30 / 2014 Tentang Administrasi Pemerintahan*. Jurnal MMH Jilid 44 No. 4



Submitted: 15/01/2024

Reviewed: 28/02/2024

Approved: 10/03/2024

- Rahman, Abdul. Bakri, Riani. 2019. *Penataan Pengelolaan Aparatur Sipil Negara (ASN) Melalui Dynamic Governance*. Jurnal Konstituen Vol.1 No.1
- Ridlwani, Zulkarnain. 2013. *Perlindungan Hak-Hak Konstitusional Penyandang Disabilitas (Rights Of Person With Disabilities)*. Jurnal Ilmu Hukum Fiat Justisia Vol 7 No 2
- Sagiharto, Hari. Abrianto, Bagus Oktafian. 2018. *Upaya Administratif Sebagai Perlindungan Hukum bagi Rakyat dalam Sengkerta Tata Usaha Negara*. Jurnal Arena Hukum Volume 11 No 1
- Windrawan, Puguh dkk. 2015. *Aksesibilitas Peradilan Bagi Penyandang Disabilitas*. Yogyakarta: Cet. Pertama. PUSHAM UII
- Yaman, Muhammad. 2021. *Kebijakan Pemerintah dalam Memberikan Kesempatan Penyandang Disabilitas dalam Penerimaan Calon Aparatur Sipil Negara*. Jurnal Sol Justicia. Vol.4 No.1
- Widjaja, Alia Harumdani. Dkk. 2020. *Perlindungan Hak Penyandang Disabilitas dalam Memperoleh Pekerjaan dan Penghidupan yang Layak bagi Kemanusiaan*. Jurnal konstitusi. Jakarta: Pusat Penelitian dan Pengkajian Perkara Mahkamah Konstitusi RI
- Nabila, Fathia. Skripsi 2019. *Tinjauan Yuridis Terhadap Hak Pekerja Penyandang Disabilitas sebagai ASN berdasarkan UU Nomor 8 tahun 2016 tentang Penyandang Disabilitas*.
- Earlene, Felishella. 2021. *Analisis Penerapan Daluwarsa dalam Pengajuan Gugatan Terhadap Hak untuk Memperoleh Pekerjaan Bagi Penyandang Disabilitas dalam Sistem Perekrutan Pegawai Negeri Sipil (Studi Putusan Nomor 85/G/2020PTUN.SMG)*. Jurnal hukum Adigama
- Wasi'ah, Ardhayatul. 2022. Skripsi. *Analisis Pertimbangan Hukum Hakim Pada Putusan Kasasi Mahkamah Agung Nomor 471 K/TUN/2021 Terhadap Diskriminasi Penyandang Disabilitas pada Penerimaan CPNS Daerah Provinsi Jawa Tengah Tahun 2019*.

## Legislation

Undang-Undang Dasar 1945;

Undang-Undang Nomor 51 Tahun 2009 Tentang Peradilan Tata Usaha Negara Undang-

Undang Nomor 5 Tahun 2014 Tentang Aparatur Sipil Negara

Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan

Undang-Undang Nomor 8 Tahun 2016 Tentang Penyandang Disabilitas

**Putusan Pengadilan**

Salinan Putusan PTUN Semarang Nomor 85/G/2020/PTUN.SMG

Salinan Putusan PT TUN Surabaya No.113/B/2021/PT TUN SBY

Salinan Putusan MA No.471/K/TUN/2021