

# Pergeseran Penerapan Teori Oplossing Dalam Penanganan Sengketa Keputusan Tata Usaha Negara Terkait Pengadaan Barang/Jasa Pemerintah (Studi Banding Indonesia-Prancis) = Shift in the Application of Oplossing Theory in Handling Disputes on State Administration Decisions Related to the Procurement of Government Goods/Services (Indonesia-France Comparative Study)

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## Abstrak

Teori oplossing diterapkan Peradilan Tata Usaha Negara Indonesia dimana keputusan terkait perdata dianggap melebur dalam tindakan perdata sehingga bukan merupakan kewenangan absolut peradilan tata usaha negara melainkan peradilan umum. Melalui Undang-Undang Administrasi Pemerintahan, didapati adanya perluasan makna keputusan yang dapat diuji di Peradilan Tata Usaha Negara sehingga perlu peninjauan terhadap pelaksanaan teori oplossing dalam menangani sengketa di Peradilan Tata Usaha Negara di Indonesia. Metode penelitian yang diterapkan adalah metode penelitian yuridis normatif. Dalam penelitian dihasilkan simpulan bahwa terjadinya ketidakpastian hukum dalam penanganan sengketa di Peradilan Tata Usaha Negara di Indonesia dikarenakan terdapat sebagian putusan pengadilan tata usaha negara yang menerapkan teori oplossing dan sebagian putusan pengadilan tata usaha negara yang tidak menerapkan teori oplossing. Sebagai perbandingan, Peradilan Administrasi di Prancis tidak menerapkan teori oplossing melainkan teori acte detachable du contrat yang diartikan bahwa keputusan yang menghasilkan kontrak pemerintahan dapat digugat secara terpisah dari kontraknya sehingga perbuatan melawan hukum yang dilakukan dalam proses penerbitan keputusan dapat ditangani oleh peradilan Administrasi. Dengan mengesampingkan teori oplossing, akan jelas kompetensi absolut peradilan tata usaha negara dan dapat menyerupai praktik penanganan perkara kontrak pemerintahan di Peradilan Administrasi Prancis.

.....The oplossing theory is applied by the Indonesian State Administrative Court where decisions related to civil matters are considered to be merged into civil actions so that they are not the absolute authority of the state administrative court but the general court. Through the Government Administration Law, it is found that there is an expansion of the meaning of decisions that can be tested in the State Administrative Court, so it is necessary to review the implementation of the oplossing theory in handling disputes in the State Administrative Court in Indonesia. The research method applied is a normative juridical research method. The research concludes that the occurrence of legal uncertainty in handling disputes at the State Administrative Court in Indonesia is due to some decisions of the state administrative courts that apply oplossing theory and some decisions of state administrative courts that do not apply oplossing theory. In comparison, the Administrative Court in France does not apply the oplossing theory but the acte detachable du contrat theory which means that decisions that result in government contracts can be sued separately from the contract so that unlawful acts committed in the process of issuing decisions can be handled by the Administrative Court. By setting aside the oplossing theory, the absolute competence of the state administrative court will be clear and can resemble the practice of handling government contract cases in the French Administrative Court.