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Revolutionizing Indonesia's Administrative Court: A Bold Push for Fairness and Proportionality

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Abstract

Indonesia's administrative justice system is at a critical juncture, facing challenges of inefficiency, inconsistency, and limited access to fair legal recourse. This research examines the urgent need for a transformative approach in establishing an Indonesian Administrative Court grounded in the principles of fairness and proportionality. Despite progress in administrative reform, the current system often falls short of delivering just outcomes for citizens, leaving many marginalized and without proper redress. The novel contribution of this study lies in its comprehensive framework for integrating these foundational principles into the court's design and practice. By analyzing both international best practices and local judicial traditions, the research proposes a set of reforms that would enhance the accessibility, transparency, and responsiveness of the administrative judiciary. The principle of fairness emphasizes equal treatment and impartial decision-making, while proportionality ensures that legal outcomes align with the scale of the issues at hand. Through an in-depth case study of administrative court decisions, this work identifies critical gaps where these principles can be meaningfully implemented. The urgency of these reforms is underscored by the growing demand for public accountability and citizen trust in the judiciary, which is essential for Indonesia's democratic stability. By offering practical solutions and a conceptual shift, this research provides a timely contribution to the ongoing discourse on judicial reform in Indonesia, with the potential to reshape the administrative court system into a more equitable and effective institution for all citizens.

Keywords

Indonesia, Administrative Court, Fairness, Proportionality, Judicial Reform



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Introduction

The rule of law (*rechtsstaat*) is a principle that places law as the main basis in running the government and state life. In a state of law, all state actions must be based on applicable law, and every individual is protected by the same law without discrimination. This principle emphasizes that state power must be subject to the law, both in carrying out executive, legislative and judicial functions. (Herlambang, 2019) In general, the position of the State Administrative Court in a country depends on the legal system adopted by that country. Legal systems in the world can be classified into several categories based on the characteristics and approaches used in the field of law. The two main legal systems that are most widely recognized are Civil Law (continental law) and Common Law (anglo-saxon law). The Civil Law system is often referred to as a codified legal system because it emphasizes the importance of written law codified in legislation. The Common Law system is based more on legal precedents or previous court decisions, which are the main sources of law other than laws. Administrative courts in countries with this system usually do not have specialized courts such as the Administrative Court in Civil Law, but rather the mechanism for resolving administrative disputes is carried out in general courts. While there are differences in organizational structure, dispute resolution mechanisms and legal procedures remain. Factors such as history, legal culture, and national needs contribute to how administrative justice is organized and operated in each country.

Indonesia as a state of law is based on Pancasila and the 1945 Constitution, which emphasize the rule of law, the protection of human rights, and democratic governance. The concept of a state of law also demands an independent, transparent and accountable court to oversee the implementation of the law. The State Administrative Court is one branch of the courts in Indonesia that functions to resolve disputes between citizens and the government, particularly in relation to administrative decisions made by state administrative officials. The State Administrative Court plays a role in upholding administrative law by prioritizing the principles of justice and legal certainty. The State Administrative Court Has an important position in upholding the principle of legality and providing legal protection for citizens against government administrative actions that are considered detrimental.

The state can represent itself as a public institution and a private legal entity. The government as a private legal entity can act as a legal entity that has the rights and obligations of a legal entity in general. The authority and functions of the government have been regulated in laws and regulations and other provisions under it.

Every action of state administrative bodies or officials as a tool of state administrators in carrying out government functions with the nature of 1) actions based on law, can be in the form of actions that result in decisions and or in the form of actions that result in certain regulations; 2) factual actions. Government actions that produce decisions are called State Administrative Decisions. State Administrative Decisions Is the object of dispute in state administrative justice, disputes involving the government and the public are adjudicated through the State Administrative Court.

The state administrative judicial system in Indonesia is regulated in Law Number 5 of 1986 jo. Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Justice. In Law No. 51/2009, the object of the State Administrative Court dispute can be in the form of a written decision issued by a state administrative body or official; containing state administrative legal actions that have legal consequences for individuals and / or civil legal entities; negative government actions such as omission of a request or referred to as fictitious actions of state administrative bodies or officials; and decisions of state administrative bodies or officials that are individual, concrete and final. (Habibi, 2019)

State administrative courts in Indonesia apply the principle of legality, which is the main principle that forms the basis for testing administrative decisions in the State Administrative Court. This principle emphasizes that every decision taken by a state administrative body or official must be in accordance with the provisions of applicable laws and regulations. In this context, State Administrative Court judges have a role to ensure that any administrative action or decision issued by the government does not exceed the authority granted by law. The principle refers to the examination of legal formalities, which is to ensure that administrative decisions are in accordance with the procedures prescribed by law. The judge will assess whether the decision was made based on legal procedures, such as appropriate authority, transparent process, and no abuse of power. This principle is important to

maintain legal certainty, but it often only looks at legality without considering substantive justice or a broader balance. (Siallagan et al., 2014)

Thailand applies the principles of lawfulness, fairness, and proportionality in the practice of administrative law. As a principle of reviewing administrative decisions by state administrative bodies or officials. The principle of fairness applied in Thailand broadens the perspective of administrative law examination to include aspects of justice. Any review of administrative decisions is made without discrimination and takes into account the interests of all parties involved. The decision-making process must be transparent and provide an opportunity for affected parties to be heard. Decisions must be objective, free from conflicts of interest, and impartial.

The principles of fairness and proportionality are not explicitly regulated in Indonesia's state administrative court system. This principle basically provides an additional dimension in assessing administrative decisions that are not only legally valid, but also balanced and fair to all parties involved. Through the legal system theory approach put forward by Lawrence M. Friedman, the legal structure in Indonesia's administrative justice system focuses more on aspects of formality and legality, in accordance with the principle of *rechtmatigheid*. This is in line with the components of legal structure that emphasize the importance of formal rules and procedures in administrative decision-making. However, an overly legality-oriented structure can overlook the need for fairness and balance in administrative decisions.

Indonesia's Administrative Court System

The State Administrative Court has an important position as a judicial institution tasked with resolving state administrative disputes between citizens and state administrative bodies or officials. This is explained in Article 1 point 10 of Law No. 51/2009, which states that state administrative disputes are disputes arising from state administrative decisions issued by state administrative officials, where the decision is considered detrimental to individuals or civil legal entities. Included in this dispute are employment issues relating to state administration officials. The authority of the state administrative court is absolute (Panjaitan, 2016), meaning that this court only has the authority to hear disputes related to the object of the state

administrative court dispute. If a dispute is outside the object of authority regulated in the law, the state administrative court does not have jurisdiction to examine and adjudicate it. The establishment of the State Administrative Court in Indonesia is based on a number of laws and regulations that gradually strengthen the existence and function of this court. The main legal foundations underlying the existence of the State Administrative Court include:

1. The 1945 Constitution of the Republic of Indonesia, as the highest constitution that guarantees the principle of the rule of law.
2. Law No. 5 of 1986 on State Administrative Courts, which became the first milestone in the establishment of the State Administrative Court as a specialized judicial institution in Indonesia.
3. Law No. 9 of 2004 as an amendment to Law No. 5 of 1986, which aims to strengthen and adjust the institution and authority of the State Administrative Court.
4. Law No. 51 of 2009, which is the second amendment to Law No. 5 of 1986, refined the rules related to the authority and judicial mechanism of the State Administrative Court.

The initial aspiration to create a state administrative court was first proposed through MPRS Decree No. II/MPRS/1960. This idea was then strengthened through Law No. 14/1970 on the Basic Provisions of Judicial Power. Furthermore, this commitment was emphasized in MPR Decree Number IV/MPR/1978 on the Outlines of State Policy (GBHN) in Pelita III, which emphasized the need for efforts to realize a state administrative court. After a long process, finally on December 20, 1986, the House of Representatives unanimously passed the Draft Law (RUU) on the State Administrative Court into Law Number 5 of 1986. (Fadillah et al., n.d.)

The competence of the State Administrative Court in accordance with Article 47 of Law Number 5 of 1986 is the duty and authority to examine, decide, and resolve state administrative disputes. This includes forcing State Administrative Officials who are found guilty through a State Administrative Court Decision to implement the contents of the decision. The State Administrative Court System in Indonesia applies the principle of legality (*rechtmatigheid*) which is the main foundation in upholding state administrative law. This principle demands that every administrative action or decision taken by a State Administrative Agency or Official must be based on

applicable legal rules and legitimate authority. In other words, decisions taken must not exceed the limits of authority granted by legislation, and must be in accordance with predetermined procedures.

The establishment of the state administrative court in Indonesia reflects the implementation of the principle of the rule of law (*Rechtsstaat*), where government actions must always be subject to applicable law. The state administrative court acts as an instrument of control over government administrative actions so as not to violate the rights of individuals and legal entities. Thus, the state administrative court is a mechanism that guarantees legal protection for the community against potential abuse of authority by state administrative bodies or officials. The presence of the state administrative court also emphasizes the separation between executive and judicial powers in the Indonesian government system. Through its supervisory function, the state administrative court helps ensure that every administrative decision issued by the government is in accordance with the principles of legality, justice and legal certainty. (Panjaitan, 2016)

As is well known, the object of dispute in the State Administrative Court is the State Administrative Decision. To understand the scope of state administrative decisions, it is necessary to know the criteria or elements that make an administrative action a valid state administrative decision. Based on the applicable provisions, state administrative decisions have the following characteristics:

- a. In the form of administrative determinations that are declarative or regulating in nature.
- b. Issued by a state administrative body or official that has authority within the scope of state administration.
- c. Written, state administrative decisions must have a written form so that they can be identified, reviewed, and used as a basis for dispute resolution in court.
- d. Government legal action
- e. Based on laws and regulations, has a clear legal basis and must not conflict with applicable laws and regulations.
- f. Concrete, individual, and final. State administrative decisions must be concrete (determine something specific), individual (addressed to a specific subject), and final (completed in its decision making).

g. Give rise to legal consequences in the form of both rights and obligations.

Article 53 paragraph (2) of Law Number 9/2004 on the Amendment to Law No. 5/1986 on State Administrative Courts explains that the reason for a lawsuit in a state administrative court is if the state administrative decision issued is not in accordance with the applicable laws and regulations, or is not in accordance with the general principles of good governance. Although the law does not provide an explicit definition of a state administrative decision that is contrary to laws and regulations, further interpretation shows that a state administrative decision can be considered invalid if it is contrary to the procedural provisions stipulated in laws and regulations. For example, a state administrative decision is issued without following formal procedures such as consultation or notification stages. Violates material provisions relating to the substance or content of the decision, which violates applicable legal norms or principles. Issued by an official who is not authorized in accordance with applicable legal provisions. This can occur if the administrative decision is outside the scope of authority of the state administrative body or official.

Settlement of State Administrative disputes through lawsuits is carried out by taking into account the object of the dispute, the reason for the lawsuit, and the predetermined filing period of the lawsuit, which is 90 days after the State Administrative Decision is received or announced. This process involves a series of systematic procedures. Filing a lawsuit is the first step in resolving a state administrative dispute. A lawsuit is filed by an aggrieved party, be it an individual or a civil legal entity, over a state administrative decision issued by a state administrative official or body. The plaintiff has the obligation to prepare a clear lawsuit, including stating the identity of the party being sued, the object of the dispute, and the reason for the lawsuit that refers to the incompatibility of the state administrative decision with the law or general principles of good governance. (Elsye, 2016) Then there is the dismissal procedure or deliberation meeting which is the initial research stage of the lawsuit. This process is carried out to evaluate the administrative completeness and fundamental elements of the lawsuit, such as formal and material requirements. The president of the court has the authority to declare a lawsuit inadmissible if the lawsuit is deemed defective or does not meet the legal requirements. If the lawsuit is declared inadmissible, the plaintiff has the right

to file an opposition within 14 days of the dismissal decision.

Before entering the examination stage of the main dispute, the judge conducts a preparatory examination to ensure that the lawsuit meets the requirements and to correct deficiencies if necessary. If the plaintiff fails to correct or complete the lawsuit within the specified time, the lawsuit will be declared inadmissible. However, the plaintiff is still given the opportunity to file a new lawsuit after fulfilling the required conditions. Case examination which is the core stage in the settlement of state administrative disputes. In this process, the court conducts an in-depth examination of the subject matter to determine whether or not the disputed state administrative decision is valid. The case examination is conducted by a panel of three judges. After the examination process is complete, both parties are given the opportunity to submit written conclusions. This conclusion contains a summary of the arguments, evidence, and legal opinions of each party to be considered by the judge in making a decision. (Batu & Hayati, 2023)

Decisions in the State Administrative Court can take several forms, namely: the lawsuit is rejected, the lawsuit is granted, the lawsuit is not accepted, and the lawsuit is cancelled. If one of the parties in the dispute is dissatisfied with the decision given by the administrative court judge, then that party has the right to file a higher legal remedy, namely an appeal that can be filed at the High Administrative Court and Cassation submitted to the Supreme Court. (Harahap Zarina, 2015) Every decision of the State Administrative Court that has obtained permanent legal force must be implemented by the losing party, in this case including the defendant who is an official or state administrative body. Permanent legal force means that the decision is final, inviolable, and cannot be reviewed through ordinary legal remedies. This is in accordance with the provisions of Article 115 of Law Number 5 Year 1986. Decisions that have permanent legal force are binding and generally applicable in which the parties to the dispute are obliged to comply with and implement the contents of the decision. The obligation of the defendant to implement a decision that has permanent legal force reflects the principle of legal certainty and the rule of law in the administrative justice system. (Fajlurrahman, 2021)

In the practice of state administrative justice, dispute resolution in the State Administrative Court applies the principle of *rechtmatigheid* through

formal legal examination, namely ensuring that every administrative decision is in accordance with the provisions of the applicable laws and regulations. Administrative Court judges are tasked with assessing whether the decision is legally valid, both in terms of authority, procedure, and substance regulated in administrative law. Basically, this principle covers three important aspects that are the focus of the examination of Administrative Court judges, namely:

1. Assess whether the state administrative body or official has the legal authority to make the decision. If the authority is exceeded or used not in accordance with the stated purpose, then the decision can be declared invalid.
2. Examine whether the administrative decision-making process has followed the applicable legal procedures. Significant procedural deviations may be grounds for invalidating the decision.
3. Evaluate the content or substance of the administrative decision to ensure that it does not contradict applicable law and does not cause harm to affected parties. (Sari & Iskandar, 2019)

If an administrative decision does not comply with the principle of *rechtmatigheid*, it may be annulled or revised. The principle of *rechtmatigheid* also *provides* a guarantee of legal certainty, where any individual or private legal entity in dispute with the government can access the courts to assess whether or not the decision taken is valid. The principle of *rechtmatigheid* acts as a control mechanism against potential abuse of authority, ensuring that state administrative bodies or officials cannot act arbitrarily and are always subject to applicable law.

Principles of Fairness and Proportionality

In the administration of government, the principles of administrative law play an important role in ensuring that every action or decision taken by State Administrative bodies or officials is in accordance with applicable law, protects individual rights, and creates justice. So far, the principle of *rechtmatigheid* or legality has been the main foundation in state administrative courts, which ensures that every administrative decision is based on applicable laws and

regulations. However, the development of public needs and the complexity of governance have led to the importance of applying the principles of fairness and proportionality. These two principles play a role in providing substantive justice and preventing abuse of authority by state administrative officials.

As a comparison, for example, Thailand has first applied the principles of lawfulness, fairness and proportionality in its administrative justice system. These principles prioritize transparency, fairness, and balance in every decision made by administrative officials. The Administrative Court of Thailand has the role and authority to conduct judicial review of the legality of various administrative actions. This court serves to resolve disputes that occur between state officials and administrative bodies. The disputes dealt with cover a wide range of matters, including actions relating to the law, other administrative actions, or negligence in carrying out official duties that have been established by law. In addition, the court is also authorized to handle cases related to unreasonable delays in the performance of duties or disputes arising in administrative contracts.

The implementation of the principle of fairness in Thailand's administrative justice system has broadened the scope of administrative law examinations by integrating aspects of substantive justice into the process. The principle of fairness emphasizes that any decision taken by an administrative body or official must be fair, transparent and non-discriminatory. This principle ensures that no party is unilaterally disadvantaged without going through a clear and objective process, the decision-making process takes into account the rights of individuals and provides opportunities for affected parties to be heard. Ensure that decisions are free from conflicts of interest, are objective and impartial. And transparency is a key aspect, where every administrative action must be legally and morally accountable. The application of the principle of fairness in state administrative courts provides more comprehensive legal protection to individuals or legal entities who feel aggrieved by administrative decisions. Thus, this principle creates a more inclusive judiciary, actively involving all parties, and promoting a transparent and fair legal process. (Batu & Hayati, 2023)

The principle of proportionality refers to the balance between the objectives to be achieved by the administrative action and the impact on the affected parties. This principle aims to ensure that the decision of the

Administrative Court is not excessive and in accordance with the underlying needs. Referring to the legitimate objectives of a decision of a state administrative body or official must be achieved in the most effective and efficient way. And any policy or decision must take into account its impact on the public interest and the rights of the individuals involved. In situations of conflict between public and individual interests, there needs to be a fair and proportional balance. The principle of proportionality serves as a control mechanism to prevent abuse of authority or arbitrary actions by state administrative officials. Judges consider the impact of administrative decisions on society, as well as the balance of interests (proportionality).

Administrative justice in Indonesia and administrative justice in Thailand have similar functions, which aim to prevent and monitor abuses of power by government officials. Both countries rely on administrative courts as a means to ensure that administrative decisions and actions taken by the government do not exceed the limits of authority granted by law. (Jiwantara & Hasanah, 2021) The existence of administrative courts in both countries also reflects how the legal system has evolved to adapt to the needs of society and strengthen the principles of good governance. Administrative justice acts as an independent watchdog that maintains integrity and compliance with the law, as well as protecting the rights of the public from possible arbitrary actions by state administrative officials or bodies. In this context, administrative courts not only function as courts that examine the legality of decisions, but also play a role in promoting the principles of substantive justice, transparency and accountability in every government administration process. In addition, the existence of administrative courts as a representation of the legal system that develops in each country also reflects how legal values are continuously updated and adapted to the challenges faced by modern society.

In an effort to realize good governance, the application of the principles of fairness and proportionality needs to be explicitly regulated in the administrative justice system in Indonesia, with an emphasis on these principles can have a significant positive impact on the justice system. These principles aim to create a legal mechanism that is more inclusive, transparent and responsive to the substantive justice needs of society. The application of the principle of fairness in the decision-making process of the State Administrative Court judges ensures that every party involved in an

administrative dispute receives fair and non-discriminatory treatment. By adopting this principle, every decision made by the court is not only oriented towards compliance with formal law, but also considers the impact felt by the community. Proportionality plays a role in ensuring a balance between the purpose of the law and its impact on the individuals or groups affected by the decision. Decision-making becomes more open and transparent. This helps reduce the potential for abuse of power or unilateral decisions that do not consider all affected parties. This transparency also gives the public confidence that the justice system is accessible and subject to public scrutiny. The principle of proportionality provides room for the court to tailor decisions in accordance with the real conditions faced by the community. In this sense, the decisions taken are not only formal legal in nature, but also consider the real needs that exist in the community, so that they are more responsive to the demands of justice.

Explicit application of the principle ensures that court decisions are not only based on the law, but also consider the resulting social and economic impacts. This helps create a balance between the public interest and individual rights. With clarity in the application of the principles of fairness and proportionality, the public feels more confident that the administrative justice system can provide fair and non-discriminatory solutions. In addition, the application of these principles will strengthen transparency, accountability and inclusiveness in the justice system, which are important pillars in building good and democratic governance. By doing so, the administrative justice system in Indonesia can be more inclusive, responsive, and provide better guarantees of substantive justice for the community.

Conclusion

The application of the principles of fairness and proportionality in the Indonesian Administrative Courts, adopted from Thai administrative judicial practice, has had a significant positive impact on the judicial system in Indonesia. Both principles are instrumental in creating a legal mechanism that is more inclusive, transparent and responsive to the substantive justice needs of the community. By integrating these principles, the Indonesian Administrative

Court can ensure that every administrative decision is not only in accordance with the law, but also considers the social impact and justice for all parties involved. In addition, the application of the principles of fairness and proportionality helps to strengthen transparency, accountability and the protection of individual rights, thereby creating a fairer and more reliable justice system. Along with this strengthening, the Indonesian Administrative Judiciary is increasingly able to anticipate the needs of society and maintain a balance between public interest and private rights, ultimately strengthening the foundations of good and democratic governance.

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