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Comparative Study of the Application of the 'Conseil d'État' Concept in State Administrative Courts in Indonesia

Muhammad Adzkiya Azam^{1*}, Moch. Andry Wikra Wardhana Mamonto²,
Arif Hidayat¹, Ristina Yudhanti¹

¹ Faculty of Law, Universitas Negeri Semarang, Semarang, Indonesia

¹ Faculty of Law, Universitas Muslim Indonesia, Makassar, Indonesia

* Corresponding author: adzkiya.azam@gmail.com

Abstract

The State Administrative Court (PTUN) in Indonesia plays a crucial role in resolving disputes between individuals or legal entities and state administrative bodies or officials, serving as a protector of justice in the relationship between government and society. Similarly, France's *Conseil d'État*, established in 1799, serves as the highest administrative judicial body, resolving conflicts between citizens and the government, while also advising the government on legislative matters. This article presents a comparative study of the application of the *Conseil d'État* concept in the context of Indonesia's State Administrative Courts. Using a normative juridical research method, the study examines whether the structures, functions, and practices of the *Conseil d'État* can be adapted to enhance the Indonesian legal system. The research explores key differences and similarities in the roles of these institutions, focusing on procedural, institutional, and advisory aspects. The findings suggest that while both institutions share a common goal of ensuring accountability and fairness in state administration, the application of the *Conseil d'État* model in Indonesia may face challenges due to differences in legal traditions, governance structures, and administrative practices. Nevertheless, adopting certain aspects of the *Conseil d'État*, such as its advisory role and specialized procedural mechanisms, could improve the efficiency and authority of the PTUN. This research contributes to the ongoing discourse on legal reforms in Indonesia's administrative justice system, offering



valuable insights into potential reforms that could enhance judicial independence and promote better governance. The study's novelty lies in its focus on cross-national legal comparisons, offering a fresh perspective on the adaptation of foreign legal models in Indonesia. Given the urgent need for judicial reform in Indonesia, the findings of this study could guide future policy changes aimed at strengthening administrative justice.

Keywords

The State Administrative Court, Conseil d'État, Concept

Introduction

The State Administrative Court (PTUN) in Indonesia is a judicial institution that has an important role in the legal system and state administration. Established to resolve disputes arising between individuals or legal entities and state administrative bodies or officials, the PTUN functions as a guardian of justice in the context of the relationship between the government and society. The establishment of the State Administrative Court is regulated in Law Number 5 of 1986, which then underwent several changes through Law Number 9 of 2004 and Law Number 51 of 2009. Thus, the Administrative Court is an integral part of the judicial system in Indonesia, which aims to ensure legal certainty and protection of citizens' rights. PTUN has the main task of receiving, examining, deciding, and resolving state administrative disputes, covering various aspects ranging from disputes related to administrative decisions to employment issues. The function of PTUN is not only limited to dispute resolution but also includes the guidance of structural and functional officials and other employees in the administrative and technical fields. As a judicial institution that handles administrative disputes, PTUN plays an important role in realizing justice for the community by providing access to citizens to file a lawsuit against government decisions that are considered detrimental. Nonetheless, the State Administrative Court faces various challenges, including issues of decision implementation and the public's lack of understanding of their rights in the context of administrative disputes. Therefore, improving the quality of judges and judicial officers is necessary so that they can perform their duties properly and produce high

quality decisions. Through improving the quality of services and the public's understanding of their rights, it is hoped that the Administrative Court can function optimally as a law enforcement institution in Indonesia¹.

The Conseil d'État in France is the highest administrative judicial institution that plays a crucial role in the country's legal and administrative system. Since its establishment in 1799, the Conseil d'État has served as the guardian of administrative justice, resolving disputes between individuals or legal entities and the government, as well as providing legal advice to the government in formulating laws and regulations. With these dual functions, the Conseil d'État not only safeguards compliance with the law and the protection of citizens' rights, but also ensures that government actions are in accordance with the principles of the rule of law.

The history of the Conseil d'État begins with its creation under the 8th Constitution (1799) which aimed to create a better mechanism for managing the country's administration. At first, it served as a consultative body that advised the government on public policy and administration. However, over time, the role of the Conseil d'État evolved into an administrative tribunal with the authority to decide administrative disputes independently. In 1872, the Conseil d'État acquired the power to hear administrative cases, marking a significant change in its function as a judicial institution. In its capacity as an administrative court, the Conseil d'État handles various types of disputes involving administrative decisions, such as business license denials, taxation decisions, and other issues relating to the rights of individuals against government actions. Citizens can file a lawsuit against administrative actions deemed to be detrimental to them at the Conseil d'État after going through the first instance administrative court process. This process reflects the principle of access to justice, whereby individuals have the right to challenge adverse government decisions. As a legal advisor, the Conseil d'État provides opinions on draft laws and regulations before they are passed by parliament. It aims to ensure that all proposed regulations comply with the constitution and national laws and can be effectively applied in practice. Thus, the Conseil d'État contributes to the establishment of a stable and predictable legal framework for society.

In a previous study entitled “Comparison of the State Administrative Court System and Conseil d'etat as an Institution for Supervising State Administrative Legal Actions”, the author discussed the institution of supervising state administrative legal actions, which in this paper emphasizes whether the concept of Conseil d'etat can work in Indonesia in general. In this article the author uses the Normative Juridical research method, which is legal research that places the law as a system of norms. This includes an assessment of the principles, norms, and rules of legislation and legal doctrine, and this article aims to find out whether the concept of Conseil d'etat in France can be applied in Indonesia or not and in this paper, we will slightly mention the theory of legal goals from Lawrence M. Friedmann.

In this article the authors use the Normative Juridical research method, which is legal research that places the law as a system of norms. This includes the study of principles, norms, and rules from legislation and legal doctrine. This method aims to identify and understand basic concepts in law as well as the application of legal norms in a particular context. This includes an analysis of the application of a rule in practice as well as the interaction between legal theory and applicable regulations. And in this research method using three data collection techniques, namely, primary legal materials such as applicable laws and regulations, secondary legal materials such as literature and opinions of experts and tertiary legal materials such as dictionaries and legal encyclopedias that provide additional explanations.

Administrative court in Indonesia

In the introduction, it has been mentioned about the beginning of the history of the establishment of PTUN in Indonesia, then this discussion will explain the functions, duties and legal processes that occur in PTUN. PTUN has several important functions in the Indonesian legal system. First, the PTUN is tasked with examining, deciding, and resolving state administrative disputes. This includes various types of administrative disputes between individuals or legal entities and state administrative bodies or officials. Second, the PTUN serves as a watchdog of government actions to ensure that all administrative decisions issued by public officials are in accordance with applicable law. The main purpose of the establishment of PTUN is to provide protection for

people's rights. With this court mechanism, individuals have a legal channel to challenge government decisions that are deemed detrimental to them. This is in line with the principle of the rule of law, where every government action must be accountable before the law.

The main duties of the PTUN include several important aspects, such as receiving claims from individuals or legal entities who feel aggrieved by administrative decisions. After receiving a lawsuit, the PTUN will examine the merits of the case and determine whether or not to proceed with the process². If accepted, it will decide the dispute based on the facts of the case as well as in-depth legal analysis. It is also tasked with resolving disputes in a fair and transparent manner. The organizational structure of the PTUN consists of several key elements, including the Chairman and Vice Chairman who preside over the court and are responsible for administrative duties; member judges who hear and decide cases; clerks who manage the administration of the court and assist judges in the trial process; and secretaries who are responsible for the general administration of the court. PTUN is under the Supreme Court of the Republic of Indonesia and has branches in various regions, including major cities and provincial capitals³.

The legal process at the PTUN begins when an individual or legal entity files a lawsuit against an administrative decision. Before a case is filed with the PTUN, it usually has to go through the administrative court of first instance. If a party is not satisfied with the decision of that court, they can appeal to the PTUN. This process reflects the principle of access to justice, where every individual has the right to challenge government decisions that are deemed detrimental. Upon receiving a lawsuit, the PTUN will examine the merits of the case and determine whether or not to proceed with the process. If accepted, the process will involve an examination of the facts of the case as well as an in-depth legal analysis before finally reaching a decision. The decision of the PTUN is final and binding for all parties involved. In the State Administrative Court (PTUN) in Indonesia, there is a significant difference between the examination of cases under the ordinary, rapid and brief procedures. Ordinary proceedings are more comprehensive and involve several stages, including a preparatory hearing, where the judge gives the plaintiff the opportunity to amend the complaint within a certain time. This process usually involves a three-judge panel and takes longer to complete. In contrast, fast-track hearings

are conducted in situations where the interests of the plaintiff are particularly pressing, such as in cases relating to government decisions that can immediately impact on the rights of individuals, for example a building demolition order. In a fast-track hearing, the hearing is conducted by a single judge without going through the preparatory hearing procedure, and a decision must be made within a shorter period of time, usually within a certain period of time after the application is filed. In addition, there are also summary proceedings aimed at handling challenges to dismissal proceedings. This process does not focus on resolving the merits of the dispute but rather on determining whether or not the claim is admissible. Thus, the main difference between these three types of hearings lies in the procedure, the number of judges involved, and the urgency and purpose of each process.

Despite its important role in Indonesia's legal system, the Administrative Court also faces various challenges. One of the main challenges is the issue of decision implementation. There are often obstacles in the implementation of decisions by government parties, which can result in frustration for justice seekers. In addition, the lack of public understanding of their rights in the context of administrative disputes is also an obstacle to optimizing the function of the Administrative Court. In addition, the quality of human resources within the PTUN is also a concern. Improving the quality of judges and judicial officers is necessary so that they can perform their duties properly and produce high quality decisions. Therefore, training and education for judges and other employees must continue so that they are able to face the dynamics of increasingly complex legal developments.

Overall, the State Administrative Court (PTUN) in Indonesia plays a crucial role in upholding administrative justice and protecting the rights of citizens against government actions. With its clear duties and functions, the Administrative Court aims to create a fair and transparent justice system. Despite facing various challenges, the existence of PTUN remains a hope for the community in seeking justice for administrative disputes. Through improving the quality of services and the public's understanding of their rights, it is hoped that the PTUN can function optimally as a law enforcement institution in Indonesia.

Administrative courts in France

The Conseil d'État in France is the highest administrative judicial institution that plays an important role in the country's legal and administrative system. Established in 1799, the Conseil d'État serves as a court that resolves disputes between individuals or legal entities and the government, as well as providing legal advice to the government on draft laws and regulations. The administrative justice structure in France consists of several levels, including the Conseil d'État, the Cour d'administration d'appel (High Administrative Court), and Les Tribunaux Administratifs (Administrative Courts of First Instance). As such, the Conseil d'État functions not only as a court but also as a legal advisor to the government, meaning it is involved in the legislative process and provides input on the validity of proposed laws.

One important aspect of the Conseil d'État is its function in safeguarding the principle of the rule of law in France. By providing a channel for individuals to challenge government decisions, it helps prevent abuse of power by public authorities. Decisions made by the Conseil d'État are binding on the public administration, thus ensuring that all government actions are in accordance with applicable laws and policies. In addition, the Conseil d'État is also responsible for resolving administrative disputes relating to government decisions that may harm the rights of individuals. In this sense, the Conseil d'État acts as a watchdog of administrative action, ensuring that all decisions taken by public officials are subject to applicable legal principles⁴.

Legal proceedings at the Conseil d'État begin when an individual or legal entity files a lawsuit against an administrative decision. Before a case is filed with the Conseil d'État, it usually has to go through an administrative court of first instance. If a party is not satisfied with the decision of that court, they can appeal to the Conseil d'État. This process reflects the principle of access to justice, whereby every individual has the right to challenge government decisions that are deemed adverse. Upon receiving a lawsuit, the Conseil d'État will examine the merits of the case and determine whether or not to proceed with the process. If accepted, the process will involve an examination of the facts of the case as well as an in-depth legal analysis before finally producing a judgment⁵.

The Conseil d'État also has an important role in providing legal advice to the government, which is one of its main functions. In this capacity, the Conseil d'État is involved in the legislative process by providing opinions on draft laws and regulations before they are adopted by parliament. This process ensures that all proposed regulations comply with the constitution and applicable legal principles, and can be effectively applied in practice. Thus, the Conseil d'État contributes to the establishment of a stable and predictable legal framework for society. Decisions made by the Conseil d'État also have far-reaching effects, not only on the parties involved in the dispute but also on public policy as a whole. For example, rulings on environmental policy or health regulation can affect the way the government manages natural resources or provides health services to the public. The Conseil d'État therefore functions not only as a court, but also as an institution that helps shape public policy through in-depth legal interpretation.

The decision-making process at the Conseil d'État involves a careful analysis of the facts of the case and the application of relevant legal principles. This reflects the institution's commitment to fairness and transparency in its decisions. In addition, the Conseil d'État also has the ability to issue interim decisions (*ordonnances*) in urgent situations, which allow for the protection of individuals' rights before a final decision is made. This demonstrates the Conseil d'État's flexibility and responsiveness to the needs of society.

In carrying out its functions, the Conseil d'État also acts as a legal education institution. Through the publication of decisions and legal opinions, the Conseil d'État provides the public and legal practitioners with insights into the interpretation of the law and the application of the principles of justice. This helps improve people's understanding of their rights as well as the legal procedures available to pursue justice.

As such, the Conseil d'État serves not only as the highest administrative court but also as an important pillar in the French legal system. Through its role as a watchdog of government actions, legal advisor, and educational institution, the Conseil d'État ensures that the principles of the rule of law are upheld and that the rights of individuals are effectively protected. The existence of this institution is crucial to maintaining the integrity of the French legal system and to ensuring that the government acts in accordance with the applicable legal provisions.

Differences in the Concept of State Administrative Courts in Indonesia and France

According to the book *Legal System in Indonesia* by Pasisol Burlian (2015), the legal system consists of various parts of the law that work together to achieve legal goals such as justice, order, and benefits for society⁶. Lawrence M. Friedman, in his book *American Law An Introduction*, puts forward the theory of Legal System. According to him, A legal system in actual operation is a complex organism in which structure, substance, and culture interact. A legal system is the union of “primary rules” and “secondary rules.” Primary rules are norms of behaviour, secondary rules are norms about those norms - how to decide whether they are valid, how to enforce them, etc. This theory states that the legal system consists of elements of legal structure, legal substance, and legal culture structure), legal substance, and legal culture. Furthermore, the legal system is a unity between primary regulations in the form of customary norms and secondary regulations in the form of norms that will be applied to the legal system. in the form of customary norms with secondary regulations in the form of norms that will determine whether the norm of habit is valid. determine whether the norm of habit is valid and can be applied or not.

Based on Lawrence M. Friedmann's theory to achieve legal objectives, three important components are needed, namely legal structure, legal substance and legal culture. Where if you look at the structure of the state administrative court in Indonesia, it is under the authority of the Supreme Court, while the state administrative court in France is an independent institution like the Constitutional Court in Indonesia. In terms of function, while both institutions aim to maintain administrative justice, the Conseil d'État functions not only as a court but also as a legal advisor to the government. This allows the Conseil d'État to be directly involved in the law making process and provide input on public policies before they are passed. Meanwhile, the Administrative Court is more focused on resolving administrative disputes without an active role in the law making process which gives the Conseil d'État more power than the PTUN. Furthermore, if we look at the history of France, it is very understandable that the Conseil d'État is an independent institution because starting from the French revolution which changed France from a

monarchy to a republic was also based on the people who did not approve of the regulations formed at that time, while in Indonesia itself it is quite difficult to adopt the concept of Conseil d'État because if the state administrative court is made an independent institution and is no longer under the Supreme Court, it will require a long series of time and changes to the law to adopt the concept.

Thus, while there are similarities in the basic objectives between the Conseil d'État in France and the PTUN in Indonesia in maintaining administrative justice and protecting citizens' rights, the fundamental differences in their organizational structures, functions, and procedures reflect the characteristics of each country's legal system and it is quite difficult to adopt the concept of the Conseil d'État concept that already exists in France, but the existence of these two institutions is crucial in ensuring that government actions remain within the framework of applicable laws and that the rights of individuals are protected from abuse of power by public authorities.

Conclusion

A comparison between the State Administrative Court (PTUN) in France and Indonesia shows fundamental differences in structure, function and procedure. In France, the Conseil d'État serves as the highest administrative court and legal advisor to the government. The Conseil d'État's structure includes several tiers of administrative courts, including administrative tribunals and courts of appeal, which allows for a more streamlined process. Meanwhile, the PTUN in Indonesia was established under Law No. 5 of 1986 and functions to adjudicate state administrative disputes between individuals or legal entities and state administrative officials. In terms of procedure, the Conseil d'État is known for its faster dispute resolution process, often using a single judge for specific cases. On the other hand, the PTUN often faces challenges in the settlement time of cases that can last a long time. The Conseil d'État is also involved in providing input to the government on public policies and draft laws, while the PTUN is more focused on resolving administrative disputes. The implementation of the Conseil d'État decision is generally more respected by the government than the implementation of the PTUN decision in Indonesia, which often faces implementation constraints. Overall, while both institutions share the same goal of maintaining administrative justice,

differences in structure, functions, and procedures reflect the characteristics of each country's legal system. The PTUN is under the Supreme Court and has a simpler structure. And if we look at Lawrence M. Friedmann's theory, it is quite difficult for Indonesia to adopt the values of the Conseil d'État.

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*“The state must be based on kinship,
not domination.”*

“Negara harus bersifat kekeluargaan,
bukan kekuasaan.”

Soepomo

One of founding fathers of Indonesia, constitutional scholar

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