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Can the State Administrative Court Shield Citizens from Government 'Tort'? A Path to Justice in Dispute Resolution

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Abstract

In democratic governance, protecting citizens from wrongful acts by the government is crucial to maintaining public trust and ensuring justice. In Indonesia, the State Administrative Court (PTUN) serves as the primary forum for resolving disputes between individuals or legal entities and government authorities. However, when these disputes involve acts of "*government tort*"—illegal or wrongful actions by the state—citizens often face significant challenges in seeking redress. This research explores the role of the PTUN in protecting citizens against government torts, focusing on its capacity to provide timely and effective remedies. Using a normative juridical approach, this study analyzes the current legal framework and procedural mechanisms within the PTUN, highlighting the barriers citizens face when challenging government actions. The findings reveal that while the PTUN offers a critical platform for redress, its effectiveness is hindered by procedural complexities, limited legal remedies, and slow judicial processes. The research argues that reforms are urgently needed to enhance the PTUN's role as a protector of citizens' rights in the face of government torts. This research introduces the novel concept of "government tort" within the context of Indonesia's administrative justice system, offering fresh insights into its application in legal practice. The urgency of reform lies in ensuring that citizens can effectively challenge government actions that harm their rights and freedoms. The study's contribution is significant in providing recommendations for legal and procedural reforms aimed at strengthening the



PTUN, ensuring that it can offer timely and accessible remedies for individuals harmed by government misconduct.

Keywords

State Administrative Court (PTUN), Government Tort, Citizen Protection, Dispute Resolution, Legal Reform

Introduction

The relationship between the government and its citizens is an essential aspect of modern democratic governance.¹ In Indonesia, the legal framework mandates that all actions taken by public officials and government institutions must comply with the principles of legality (*rechtmatigheid*), accountability, and good governance. However, instances of *perbuatan melawan hukum oleh pemerintah* (unlawful acts by the government) continue to occur, reflecting either procedural irregularities, abuse of power (*detournement de pouvoir*), or actions beyond the limits of legal authority (*ultra vires*). Such acts not only undermine the rule of law but also infringe upon the fundamental rights of citizens, necessitating a robust system of legal protection. The Administrative Court, or *Peradilan Tata Usaha Negara*, established under Law No. 5 of 1986, serves as a judicial institution designed to adjudicate disputes arising from administrative decisions (*beschikking*) and actions taken by government officials.² This court plays a pivotal role in ensuring that public administration operates within the bounds of legality and respects the rights of individuals. Through its functions, the Administrative Court embodies the principles of constitutional governance, acting as a guardian of the balance between public authority and individual rights.³

¹ Ulriksen, Marianne S., and Sophie Plagerson. "Social protection and state-citizen relations: A review of the literature." *Social Policy & Administration* 57, no. 6 (2023): 841-854; Kent, Andrew. "Citizenship and Protection." *Fordham Law Review* 82 (2014).

² Lopa Baharuddin, *Mengenai Peradilan Tata Usaha Negara*, Jakarta, Sinar Grafika, 1991.

³ Yasa, Putu Gede Arya Sumerta, Wita Setyaningrum, and Kadek Agus Sudiarawan. "Unlawful Administrative Act: Indonesian Administrative Law Perspective." *Varia Justicia* 17, no. 2 (2021): 160-170; Aditya, Agung, Devi Rakhmatika, and Nabila Faradany Saputri. "Unlawful Acts According to Civil Law and Criminal Law." *The*

The protection of citizens against unlawful acts by the government is not merely a procedural matter but a fundamental aspect of administrative law (*administratief recht*). This protection is rooted in principles such as *due process of law*, the presumption of legality (*vermoeden van rechtmatigheid*), and the obligation of public officials to act in good faith (*beginsel van goede trouw*). In the Indonesian context, these principles are integrated into a legal framework that includes constitutional provisions, statutory regulations, and judicial precedents, all of which guide the resolution of administrative disputes. This article aims to analyze the theoretical foundations and practical implementation of legal protections against unlawful government actions in Indonesia. It explores the role of the Administrative Court in adjudicating disputes, the procedural mechanisms available to citizens, and the remedies provided by the court to address administrative misconduct. The discussion is situated within the broader context of Indonesian administrative law, with a focus on the interplay between the principles of justice, legal certainty (*rechtzekerheid*), and expediency (*doelmatigheid*).⁴

Additionally, this study examines the challenges faced by the Administrative Court, including issues of institutional capacity, the complexity of administrative cases, and the influence of bureaucratic practices. By incorporating comparative insights from other jurisdictions, the analysis seeks to provide recommendations for strengthening the role of the Administrative Court in promoting accountability and protecting the rights of citizens. The findings underscore the importance of a well-functioning administrative justice system in upholding the rule of law and fostering public trust in government institutions. This article contributes to the development of administrative law in Indonesia by highlighting the critical need for continuous legal reform and capacity-building within the judiciary to address the evolving demands of governance and citizen protection.

Digest: Journal of Jurisprudence and Legisprudence 4, no. 2 (2023): 197-210; Rusdiana, Emilia, Rena Arya Febrianti, and Dandi Akbar Putra. "The Judge's Perspective on Material Unlawfulness in Cases of Illegal State House Control (Case of Decision Number 2002/Pid. B/2011/PN. Jkt. Pst)." *The Digest: Journal of Jurisprudence and Legisprudence* 4, no. 2 (2023): 183-196.

⁴ Ali Achmad, *Menguak Tabir Hukum*, Jakarta, PT. Toko Gunung Agung Tbk, 2002

This study employs a normative legal research method, focusing on the analysis of laws, doctrines, principles, and judicial decisions related to the protection of citizens against unlawful acts by the government in the context of administrative dispute resolution in Indonesia. The normative approach is complemented by doctrinal and conceptual methods to provide a comprehensive understanding of the legal framework and its application. This research aims to provide a scholarly contribution to the field of Indonesian administrative law by offering a critical assessment of the existing legal framework and its implementation. The findings are intended to inform policymakers, legal practitioners, and scholars about the strengths and weaknesses of the current system, with the ultimate goal of enhancing the protection of citizens' rights and improving the effectiveness of the Administrative Court as a mechanism for justice.

Legal Framework for Protecting Citizens Against Government's Unlawful Acts

The protection of citizens against unlawful acts by the government represents a critical aspect of administrative justice in Indonesia. As a legal mechanism designed to address disputes arising from administrative decisions (*beschikking*) or omissions, the Administrative Court plays a pivotal role in ensuring that public officials act within the bounds of legality (*rechtmatigheid*). This aligns with the broader principles of the rule of law and accountability, as mandated by the 1945 Constitution. However, the practical implementation of these principles often encounters challenges, ranging from procedural inefficiencies to the limited understanding of administrative law by affected parties. The effectiveness of the Administrative Court in safeguarding citizens' rights, therefore, depends on its ability to provide accessible, timely, and equitable remedies while maintaining the balance between judicial oversight and administrative discretion (*freies Ermessen*).⁵

The protection of citizens against *perbuatan melawan hukum oleh pemerintah* (unlawful acts by the government) is grounded in the legal principles of administrative law in Indonesia. The foundation lies in the 1945

⁵ Ridwan H.R, *Hukum Administrasi Negara*, Jakarta, PT. RajaGrafindo Persada, 2014

Constitution, which mandates adherence to the *rule of law* (*rechtsstaat*) and guarantees citizens' rights to legal protection. This constitutional mandate is operationalized through statutory instruments, including Law No. 5 of 1986 on Administrative Courts, which provides the procedural framework for resolving disputes arising from governmental actions or decisions.⁶ Key principles identified in the legal framework include:

1. **Legality Principle:** Public officials must act strictly within the bounds of law. Any deviation, including acts *ultra vires* or breaches of statutory obligations, constitutes an unlawful act.
2. **Due Process of Law:** Citizens are entitled to a fair trial, proper notice, and an impartial adjudication process to challenge administrative decisions or omissions.
3. **Accountability and Transparency:** The government is obligated to justify its decisions and provide redress for any harm caused by unlawful actions.⁷

The protection of citizens from *perbuatan melawan hukum oleh pemerintah* (unlawful acts by the government) is a fundamental aspect of administrative law in Indonesia, grounded in the principles of the rule of law (*rechtsstaat*) as enshrined in the 1945 Constitution. This constitutional framework guarantees legal protection and emphasizes the government's accountability to the law.⁸ The operationalization of these guarantees is primarily facilitated through Law No. 5 of 1986 concerning Administrative Courts (*Peradilan Tata Usaha Negara*), which establishes the procedural and institutional mechanisms for adjudicating disputes arising from governmental actions or omissions.⁹

Key legal principles underscore the framework for protecting citizens' rights. The *principle of legality* mandates that public officials act strictly within

⁶ Fuady Munir, *Perbuatan Melawan Hukum Pendekatan Kontemporer*, Citra Aditya Bakti, 2002.

⁷ Marbun S.F., *Peradilan Administrasi Negara dan Upaya Administratif di Indonesia*, Yogyakarta, Liberty, 2003

⁸ Herlambang, P. H., Sulistiyono, T. Peran Pengadilan Dalam Proses Eksekusi Putusan Yang Berkekuatan Hukum Tetap Di Pengadilan Tata Usaha Negara Semarang. *Indonesian State Law Review* (ISLRev), 3(1). 2020.

⁹ Herlambang, P. H., *Pengantar Hukum Acara Peradilan Tata Usaha Negara*. Depok, PT RajaGrafindo Persada, 2024

the scope of their statutory authority. Actions that exceed this authority (*ultra vires*) or violate statutory obligations constitute unlawful acts. This ensures that administrative actions are grounded in legal authority and subject to judicial review. Furthermore, the principle of *due process of law* guarantees that individuals have the right to a fair and impartial hearing, adequate notice, and the ability to challenge governmental decisions or omissions that adversely affect their rights. These safeguards are instrumental in upholding procedural justice in disputes between citizens and the state.¹⁰

Additionally, the principles of *accountability* and *transparency* impose a duty on governmental authorities to justify their decisions and provide redress for any harm caused by unlawful acts. Administrative courts play a pivotal role in this context, offering a platform for judicial scrutiny over government actions to ensure compliance with legal norms. The judiciary's oversight serves not only as a mechanism for dispute resolution but also as a means of reinforcing public trust in government institutions by holding them to legal and ethical standards. In sum, the legal framework for protecting citizens against governmental unlawful acts in Indonesia is underpinned by robust statutory and constitutional principles, with administrative courts serving as the cornerstone for ensuring accountability, fairness, and adherence to the rule of law in administrative governance.

Role of the Administrative Court in Resolving Disputes

The Administrative Court (*Peradilan Tata Usaha Negara*) is tasked with adjudicating disputes between citizens and the government arising from administrative decisions (*beschikking*). The court serves as a crucial mechanism for judicial review, offering remedies such as annulment of unlawful decisions, compensation, or reinstatement of rights. Judicial Practices and Challenges: Case analysis reveals that the Administrative Court has been instrumental in

¹⁰ Alfons Saartje Sarah, "Konsekuensi Yuridis Terhadap Diabaikannya Pelaksanaan Putusan Pengadilan Tata Usaha Negara Yang Telah Memiliki Kekuatan Hukum Tetap", *Jurnal Hukum*, Vol.24, (2018)

upholding the rule of law and protecting citizens' rights. However, several challenges persist:

1. Burden of Proof: Citizens often face difficulties in substantiating claims due to limited access to evidence held by government institutions.
2. Delay in Justice: Prolonged litigation processes undermine the effectiveness of redress mechanisms, leaving citizens without timely remedies.
3. Institutional Constraints: Limited resources and varying interpretations of legal principles by judges affect the consistency and quality of decisions.¹¹

The Administrative Court (*Peradilan Tata Usaha Negara*) serves as a pivotal institution for adjudicating disputes arising from administrative decisions (*beschikking*) issued by government officials. This court provides a vital mechanism for judicial review, offering remedies such as the annulment of unlawful decisions, compensation for damages, or the reinstatement of violated rights. By scrutinizing the legality of administrative actions, the court ensures that governmental authority is exercised within the boundaries of law, thereby reinforcing the principles of accountability and the rule of law.¹²

Judicial practices within the Administrative Court underscore its role in safeguarding citizens' rights. Case analysis reveals that the court has been instrumental in affirming legal protections and curbing abuses of power. However, several challenges hinder its effectiveness in delivering justice. One significant issue is the *burden of proof*, where claimants often face obstacles in substantiating their allegations due to limited access to critical evidence retained by government agencies. This evidentiary imbalance places citizens at a disadvantage in legal proceedings. Moreover, *delays in justice* remain a persistent challenge. Prolonged litigation processes, often caused by procedural inefficiencies, undermine the timely resolution of disputes and can erode public

¹¹ Mustafa Bachsan, *Pokok-Pokok Hukum Administrasi Negara*, Bandung: PT Citra Aditya Bakti, 1990.

¹² Abrianto Bagus Oktafian dkk, , "Perkembangan Gugatan Perbuatan Melanggar Hukum oleh Pemerintah Pasca Undang-Undang Nomor 30 Tahun 2014", *Jurnal Hukum*. Vol.11, No. 1. Juni (2020).

confidence in the court's ability to provide effective remedies.¹³ These delays are particularly detrimental in cases where immediate relief is necessary to mitigate harm or restore rights.

The Administrative Court also contends with *institutional constraints*, including resource limitations and disparities in the interpretation of legal principles by judges. These challenges affect the consistency and quality of judicial decisions, leading to variability in outcomes and potentially undermining the predictability and reliability of the legal system. In addressing these challenges, reforms aimed at enhancing access to evidence, streamlining judicial procedures, and strengthening institutional capacity are essential. Such measures would not only improve the court's efficiency but also fortify its role as a guardian of citizens' rights against unlawful governmental acts. Ultimately, the Administrative Court's efficacy in resolving disputes is integral to upholding the rule of law and ensuring that the government remains accountable to its legal obligations.

Conclusion

The protection of citizens against unlawful acts by the government in Indonesia is a fundamental aspect of administrative justice, underpinned by the principles of legality, accountability, and the rule of law. The Administrative Court serves as the primary judicial mechanism for resolving disputes arising from administrative actions or decisions, providing remedies such as annulment, compensation, and the restoration of rights. Despite its critical role, the Administrative Court faces significant challenges, including procedural delays, the burden of proof on citizens, and institutional constraints that limit its efficiency and effectiveness. These challenges underscore the need for continuous legal and institutional reforms to strengthen the court's capacity to deliver justice.

Key findings highlight that while the existing legal framework offers substantial protection to citizens, its practical implementation requires

¹³ Ridwan, Heryansyah, D., & Pratiwi, D. K. (2018). Perluasan Kompetensi Absolut Pengadilan Tata Usaha Negara dalam Undang-Undang Administrasi Pemerintahan. *Jurnal Hukum Ius Quia Iustum*, 25(2).

enhancements, particularly in ensuring timely access to justice, consistent judicial interpretation, and improved procedural fairness. Comparative insights from other jurisdictions emphasize the importance of transparency, streamlined procedures, and judicial specialization in improving administrative dispute resolution. To advance the protection of citizens' rights, it is essential to reform the legal framework governing administrative law, invest in the institutional capacity of the Administrative Court, and promote public awareness of administrative justice mechanisms. By addressing these issues, Indonesia can ensure a more robust and equitable administrative justice system that aligns with international standards and strengthens public trust in government accountability.

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“The most sacred of the duties of government is to do equal and impartial justice to all its citizens.”

Thomas Jefferson

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