

## **Absolute Competence of the State Administrative Court over Onrechtmatige Overheidsdaad Disputes in Indonesia's 2024 Election**

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### **Abstract**

Decision of the Jakarta State Administrative Court Numbers 133/G/TF/2024/PTUN. JKT declared that the claim against the General Election Commission was inadmissible, sparking a discussion about the absolute authority of the State Administrative Court (PTUN) in handling onrechtmatige overheidsdaad (OOD) cases during the electoral process. This Article explores how the PTUN's absolute authority applies to OOD cases stemming from the actions of those managing elections, centering the analysis around Decision Numbers 133/G/TF/2024/PTUN. JKT. The research employs a normative legal framework with an approach that is legislative, conceptual, and analytical, focusing on the connections between Government Administration Law, Election Law, and associated court rules and rulings. The findings indicate that the Jakarta PTUN categorizes the subject of the lawsuit as a disagreement related to the election process, falling under the specific purview of election law, thereby negating the relevance of the OOD dispute process as outlined in Government Administration Law and the Supreme Court Regulation Numbers 2 of 2019. The conduct of the General Election Commission is viewed as part of the enforcement of the Constitutional Court Decision



Numbers 90/PUU-XXI/2023, which is conclusive and binding, making it unsuitable for review via OOD frameworks in the PTUN. The application of the principle *lex specialis derogat legi generali* constrains the extent of judicial review over electoral administration activities and affects both legal certainty and the efficiency of administrative legal protection.

**Keywords:** Competence of Absolute State Police, Unlawful State Act, Election, *Lex Specialis Derogat Legi Generali*

## I. Introduction

According to Articles 1, section (3) of the 1945 Constitution of the Republic of Indonesia, it is established that Indonesia is a nation that prioritizes the rule of law in its governance. This means that all government actions or policies need to be grounded in clear legal authorities and executed in line with existing laws and regulations, effectively eliminating opportunities for random or unfair governance.

State actions are not always realized through formal written decisions. In the practice of governments Administrations, government agencies and officials often carry out factual acts that directly impact the emergence of legal consequences for the community. This kind of action often appears in the implementation of regulatory and administrative functions in strategic sectors of the state, including the holding of general elections. Potential disputes between citizens and government bodies or officials become inevitable when such actions are seen as beyond the authorities or contrary to the principle of justice and legal certainty.<sup>1</sup>

The concepts of *onrechtmatige overheidsdaad* (OOD) serves as a legal instrument to test the legality of government actions that cause harm to citizens.<sup>2</sup> OOD is perceived not merely as an activity that is unlawful in civil terms but also as a means to regulate how public authorities is exercised by government entities and officials. The actions taken by the government,

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<sup>1</sup> Jumanah, J., dkk. *Kajian hukum publik: pidana dan tata negara*. CV Edu Akademi.

<sup>2</sup> Edyanti, Yusrin, dan Anna Erliyana. "Perbuatan melawan hukum oleh penguasa dalam kerangka administrasi pemerintahan." *Dharmasiswa*, 2, no. 2: 719–734, 2022.

whether through direct intervention or lack of action, can be evaluated against the law's principle and the General Principle of Good Governance (AAUPB), which serve as a vital tool for ensuring effective legal safeguarding for the public. As developments occur, the framework governing unlawful actions by public officials (*onrechtmatige overheidsdaad/OOD*) within Indonesia's legal framework indicates a shift in paradigm, transitioning from a civil law viewpoint to one anchored in administrative state law. Initially, disputes regarding OOD are addressed through the general court following Articles 1365 of the Civil Code. This method equates the government with private law subjects, failing to acknowledge the unique attributes of governmental actions that stem from public authorities. This situation underlines the necessity for a more appropriate evaluation mechanism that aligns better with public law principle.

Before the implementation of Law Numbers 30 of 2014 regarding Governments Administrations, the general court served as the primary venue for reviewing and resolving OOD cases based a civil law related to unlawful acts. Nevertheless, once this law was enacted, and further supported by Supreme Court Regulation Numbers 2 of 2019, the exclusive power to handle these disputes was officially assigned to the State Administrative Court (PTUN). The Supreme Court clarified that conflicts resulting from government actions, whether in the form of administrative rulings or actual activities, fall under the category of unlawful acts committed by government bodies and/or officials, thereby making them solely the responsibility of the State Administrative Court. This shift signifies a significant change in Indonesia's system of administrative justice.

The presence of Law Numbers 30 of 2014 concerning Governments Administrations is a response to this need, by expanding the concepts of State Administrative Decrees to include the factual actions of government officials. This regulation emphasizes that government actions that cause legal consequences are not only limited to written determinations, but also include concrete actions in the exercise of public authorities. Furthermore,

the strengthening of the absolute authorities of the PTUN in adjudicating OOD disputes is emphasized through Supreme Court Regulation Numbers 2 of 2019 which explicitly places disputes over unlawful acts by government bodies and/or officials with the jurisdiction of the PTUN. However, in constitutional practice, the exercise of the authorities of the PTUN often faces the unclear limits of jurisdiction. Problems arise when government actions are in a wedge with other legal regimes, especially election law and constitutional law.<sup>3</sup> Disagreements among election organizers frequently lead to discussions about the boundaries of the PTUN's complete authorities. This is due to the fact that the matter is administrative in nature, yet it is also intricately tied to political and constitutional issues. The debate concerning the extent of PTUN's powers gained prominence during the 2024 Presidential Election when the Indonesian Democratic Party of Struggle (PDIP) initiated legal proceedings against the General Election Commission (KPU) at the Jakarta PTUN regarding the decision on Gibran Rakabuming Raka's eligibility as a Vice Presidential candidate.<sup>4</sup> PDIP postulates that the KPU's action is OOD. However, the Jakarta Administrative Court through a decision dated October 24, 2024 stated that the lawsuit was unacceptable (*niet ontvankelijk verklaard*) on the grounds that the absolute competence of the PTUN was not fulfilled.<sup>5</sup> The panel of judges argued that the KPU's actions were part of the election stage as well as the implementation of the Decision from the Constitutional Court Numbers 90/PUU-XXI/2023 which was binding and final.<sup>6</sup> This ruling sparked a legal discussion about how far the PTUN can assess actions taken

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<sup>3</sup> Artana Putu and Prasetyo Boedi, "Kompetensi Pengadilan Negeri Didalam pemutusan Sengketa Memilih secara umum Di Indonesia" 10, no. 2 (2025): 639–54.

<sup>4</sup> Nikmah, S. W. (2024). "Pelanggaran Etika Pemilu oleh Penyelenggara Pemilu dan Implikasinya pada Legitimasi Status Gibran Rakabuming-Raka sebagai Wakil Presiden pada Pemilu Tahun 2024. MADANIA Jurnal Hukum Pidana dan Ketatanegaraan Islam, 14(2), 23-38."

<sup>5</sup> Pengadilan Tata Usaha Negara Jakarta, "Putusan bernomor 133/G/TF/2024/PTUN.JKT mengenai Sengketa Putusan KPU RI Bernomor 360 Tahun 2024 (2024)."

<sup>6</sup> Mahkamah Konstitusi Republik Indonesia, "Putusan bernomor 90/PUU-XXI/2023 mengenai Uji Undang-Undang Bernomor 7 Tahun 2017 mengenai Memilih secara umum (2023)."

by the government that stem from decisions made by constitutional bodies. The importance of this study stems from the lack of clear guidelines outlining the full scope of the PTUN's role in handling OOD disputes that arise from the implementation of the Constitutional Court's rulings during the election process. These uncertainties could lead to varied judicial outcomes, create confusion for those seeking justice, and result in a split of authorities among different judicial systems. As we approach the elections in 2024, this situation not only affects the legal clarity for those involved in disputes but also poses risks to the integrity of democracy and the degree of public confidence in the processes intended to ensure fair and accountable elections, in alignment with the SDGs 16 (Promoting Peace, Justice, and Strong Institutions). Thus, there is a need for a thorough and systematic legal examination to define the boundaries of the PTUN's powers clearly, while still respecting the finality of decisions from constitutional institutions.

In the progression of research concerning state administrative law, the overall authorities of the State Administrative Court and issues related to elections have been examined using different normative perspectives. Fauzi and Erliyana (2023) highlighted the legal foundation for broadening the scope of disputes regarding unlawful government actions and enhancing the overall authorities of PTUN following the introduction of the Governments Administrations Law.<sup>7</sup> Artana and Prasetyo (2025) identify conflicts of authorities between courts in election disputes which are constructed as *onrechtmatige overheidsdaad*.<sup>8</sup> Meanwhile, Arisuma et al. (2024) analyzed the implications of the Constitutional Court Decision Numbers 90/PUU-XXI/2023 on electoral democracy, but did not place it with the framework

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<sup>7</sup> Fauzi and Erliyana, "Kompetensi Mengadili Peradilan Tata Usaha Negara Pada Gugatan Perbuatan Melanggar Hukum Oleh Badan Dan/Atau Pejabat Pemerintahan (*Onrechtmatige Overheidsdaad*)."

<sup>8</sup> Artana Putu and Prasetyo Boedi, "Kompetensi Pengadilan Negeri Didalam pemutusan Sengketa Memilih secara umum Di Indonesia" 10, no. 2 (2025): 639–54.

of the administrative judiciary's authority.<sup>9</sup> However, these investigations have not specifically explored the boundaries of the absolute authority of the PTUN in OOD conflicts that arise from the execution of the Constitutional Court's ruling during the election phase. In light of this context, this Article addresses the legal issue concerning the absolute jurisdiction of the State Administrative Court (PTUN) in OOD conflicts at the election phase, particularly when the actions taken by election organizers represent the implementation of the Constitutional Court's verdict, which is definitive and authoritative. This piece assesses how the principle of *lex specialis derogat legi generali* was applied in the Jakarta PTUN's ruling on PDIP's suit against the KPU concerning the 2024 election, and examines its effects on the legal assurance and legitimacy of the election process. The objective of this study is to evaluate how the absolute competence of the State Administrative Court is applied in resolving OOD disputes, focusing specifically on the 2024 Election case study. From a theoretical perspective, this research aims to contribute to the evolution of state administrative law concepts regarding the limitations of the state administrative judiciary's authority in cases that relate to electoral law. On a practical level, the findings are anticipated to offer clear normative guidance for those seeking justice and serve as a reference for judges and election organizers in addressing disputes linked to government actions in the electoral context.

## II. Methods

This study adopts a normative legal perspective to explore the unclear nature of regulations concerning the boundaries of the State Administrative Court's (PTUN) authority in resolving different OOD disputes associated with elections and the execution of Constitutional Court rulings. The methods

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<sup>9</sup> Arisuma, Neri, Arifin Saleh, Salman Alfarisi, and Fickry Juliansyah. "Implikasi Putusan Mahkamah Konstitusi Bernomor 90/Puu-Xxi/2023 Pada Demokrasi Dan Regenerasi Kepemimpinan Nasional." *Lex Lectio Law Journals* 3, no. 2 (2024): 66-75.

employed encompass the statute approach, the conceptual approach, and the analytical approach. The legal resources utilized include several primary legal documents, notably Law Numbers 30 of 2014 regarding Governments Administrations,<sup>10</sup> Supreme Court Regulation Numbers 2 in 2019, Law No. 7 in 2017 regarding General Elections,<sup>11</sup> Constitutional Court ruling Numbers 90/PUU-XXI/2023,<sup>12</sup> and the ruling from the State Administrative Court Numbers 133/G/TF/2024/PTUN.<sup>13</sup> The additional legal sources comprise literature, academic papers, and journals pertinent to the exclusive authoritys of the PTUN and disputes over wrongful government actions.

### III. Result and Discussion

#### 1. The Dynamics of Absolute Jurisdiction in Disputes over Unlawful Government Acts

The transformation of OOD dispute jurisdiction reflects a shift in the legal paradigm from the civil sphere to the sphere of state administration. Historically, the resolution of these disputes adopted the legal construct of Articles 1365 of the Civil Code, which placed the government on an equal footing with civil law subjects. However, over time, this approach has been deemed theoretically flawed because it disregards the specific characteristics of public authoritys. According to Indroharto, administrative actions (*bestuurshandelingen*) have public characteristics that require a clear separation from private law, so their legality must be tested based on the parameters of authoritys and public law principle. The legal implication

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<sup>10</sup> “Undang-Undang Bernomor 30 Tahun 2014 Mengenai Administrasi Pemerintahan, Pasal 87” (2014).

<sup>11</sup> “Undang-Undang Republik Indonesia Bernomor 7 Tahun 2017 Mengenai Memilih secara umum” (2017).

<sup>12</sup> “Mahkamah Konstitusi Republik Indonesia, Putusan bernomor 90/PUU-XXI/2023 mengenai Uji Undang-Undang Bernomor 7 Tahun 2017 mengenai Memilih secara umum.”

<sup>13</sup> “Pengadilan Tata Usaha Negara Jakarta, Putusan bernomor 133/G/TF/2024/PTUN.JKT mengenai Sengketa Putusan KPU RI Bernomor 360 Tahun 2024.”

is that absolute competence in resolve these disputes has been transferred entirely to the State Administrative Court (PTUN) in order to ensure substantive accountability in governments Administrations.<sup>14</sup>

Legal certainty regarding these changes in competence is explicitly stated in Articles 87 of Law Numbers 30 of 2014 concerning Governments Administrations.<sup>15</sup> This piece verifies that Administrative Decisions (KTUN) ought to be understood as “documented provisions that encompass actual actions as well. “ The way this Articles is phrased suggests that the UUAP fully incorporates two types of actions, specifically administrative actions (*bestuurshandelingen*) and factual actions (*feitelijke handelingen*), as one unified matter for contention. Consequently, the focus of legal disputes in the State Administrative Court has broadened. The formal foundation for this is subsequently governed in a restrictive way by Articles 2 paragraph (1) of Supreme Court Regulation (PERMA) Numbers 2 of 2019,<sup>16</sup> which states that cases of unlawful acts by government agencies and/or officials (OOD) are under the absolute jurisdiction of the Administrative Court. The presence of this regulation not only ends the dualism of judicial authorities, but also brings about a paradigm shift in testing from a conventional civil approach to testing oriented towards authorities and the General Principle of Good Governance (AAUPB) in order to guarantee the protection of citizens' rights.<sup>17</sup>

The mechanism for expanding the scope of the dispute was strategically used by the Indonesian Democratic Party of Struggle (PDIP) as

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<sup>14</sup> Edyanti, Yusrin, dan Anna Erliyana. “Perbuatan melawan hukum oleh penguasa dalam kerangka administrasi pemerintahan.” *Dharmasiswa*, 2, no. 2: 719–734, 2022.

<sup>15</sup> “Undang-Undang Bernomor 30 Tahun 2014 Mengenai Administrasi Pemerintahan, Pasal 87” (2014).

<sup>16</sup> Mahkamah Agung Republik Indonesia, “Aturan Mahkamah Agung Bernomor 2 Tahun 2019 Mengenai Pedoman Penyiapan Sengketa Tindakan Pemerintahan Dan Wewenang Mengadili Perbuatan Melanggar Hukum Oleh Badan Dan/Atau Pejabat Pemerintahan” (2019).

<sup>17</sup> H. Yulius et al., “*Tindakan Melanggar Hukum Oleh Badan Pejabat Pemerintahan Negara* (Inteligensia Media, 2024): 76-82.”

a gateway to file a lawsuit against the General Elections Commission (KPU) in the State Administrative Court. In its arguments, the plaintiff was careful to avoid discussing the election result dispute, which fall under the jurisdiction of the Constitutional Court. Instead, the lawsuit highlighted the factual actions (*feitelijke handelingen*) of the defendant, specifically the acceptance of the vice presidential candidate's registration without prior revision of the implementing regulations. This incident was not considered a normal election process dispute, but rather an unlawful act by a government agency or official (OOD). In way, a new understanding of Administrative Decisions (KTUN) in the era of the UUAP has been used as a legal instrument to bring political issues into the realm of administrative justice in order to test the legality of such government actions.<sup>18</sup>

Articles 87 of the UUAP concerning the Expansion of Dispute Objects is a guarantee of legal protection for Indonesian citizens against all actions of the government related to policy formulation. Government actions in the process of formulating public policy are one of the government's authorities that can lead to the government's arbitrariness in exercising its power in every action. Government legal actions cannot be referred to as private law because, from a legal perspective, the government can be a representative of an office that is subject to public law and a representative of a legal entity that is subject to private law. The concrete reason why government law cannot be categorized as private law is because government actions do not fulfill the characteristics of private law. These characteristics include the equal status of the parties, based a will and agreement, individual in nature and not unilateral. Therefore, private law is often referred to as contract law, while government legal actions are often referred to as authorities.

The legal relationships between the government and the community is also the reason why government legal actions cannot be categorized as

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<sup>18</sup> Pengadilan Tata Usaha Negara Jakarta, "Putusan bernomor 133/G/TF/2024/PTUN.JKT mengenai Sengketa Putusan KPU RI Bernomor 360 Tahun 2024."

private law. The legal relationships between the government and society is a vertical relationships and is not an equal one. This is because when the government issues a decision or decree, the public must comply with it because it is binding on society. However, the government's legal actions are still categorized as normative public actions, even though some decisions can sometimes be detrimental to the public.<sup>19</sup>

Based a the unequal relationship between the government and the people, all legal actions taken by the government must be carry out in accordance with the principle of legality, meaning that all government actions must be based a valid and applicable laws and regulations.<sup>20</sup> The application of the principle of legality is enforced as an effort to protect the human rights of every citizen so that there is no legal arbitrariness. This is a key aspect of administrative law, so that OOD disputes are considered appropriate to be enforced as the jurisdiction of the State Administrative Court.

The Administrative Court is concerned with the application of the Principle of Good Governance (AAUPB) as the basis and procedure for proper governance.<sup>21</sup> AAUPB serves as a normative guideline for government officials whose validity can be tested in court proceedings. The concepts of AAUPB is not only based a whether or not the government has violated any rules. According to Crince le Roy, it encompasses a numbers of fundamental principle, including the principle of legal certainty, the principle of balance, prudence in action, the obligation to provide reasons for every decision made by a government agency or official, the prohibition

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<sup>19</sup> Al Rhega Kolang et al., "Problematika Teoretis–Doktriner Hak Gugat Perdata Oleh Pemerintah Didalam undang-Undang Mengenai Perlindungan Dan Pengelolaan Lingkungan Hidup," *Jurnal Mimbar Hukum*, no. 1989 (2025): 1–28.

<sup>20</sup> Tanti Utami et al., "Menganalisis Yuridis Pada Penerap Prinsip Legalitas Pada aturan Perundang Undangan Di Indonesia," *Journals Customary Law* 2, no. 3 (2025): 10, <https://doi.org/10.47134/jcl.v2i3.4048>.

<sup>21</sup> Ahmad Sobari, "Menguji Asas-Asas Umum Pemerintahan Yang Baik Pada Undang-Undang Bernomor 9 Tahun 2004 Menjadi Norma Hukum Yang Bisa menentukan Kesalahan Pada Praktik Di PTUN" 8, no. 1 (2023): 93.

of abuse or mixing of authorities, the principle of equality in decision-making, the principle of fair play, the principle of fairness or propriety, the obligations to respects reasonable expectations, the principle of legal remedy for decisions that are declared invalid, and the principle of protections of individuals beliefs or worldviews.<sup>22</sup>

Based a this, it can be seen that the change in jurisdiction of OOD disputes to the State Administrative Court is part of a series of institutionalization processes of the AAUPB to prevent arbitrary actions by the government as a form of improving governance.

OOD in the realm of civil law tends to be detrimental. Such actions are classified as factual acts (*feitelijke handelingen*) which are equated with unlawful acts by the authorities (*onrechtmatige overheidsdaad/OOD*), which at that time could not be brought before the State Administrative Court (PTUN) as an administrative court.<sup>23</sup> Based a this, the Administrative Court is considered relevant to adjudicate unlawful acts committed by the government because it has legal instruments designed to adjudicate government actions based a the public law framework. The competence of the Administrative Court states that the state cannot take refuge in administrative power, meaning that the government, as the law enforcement agency, can be held accountable through judicial mechanisms.

OOD disputes with the absolut jurisdiction of the State Administrative Court have dynamics related to government actions with the scope of special legal regimes, such as election law. Articles 87 of the UUAP and PERMA 2/2019 are procedural implications that deal with special provisions due to the narrow scope of the PTUN's absolute authoritys, which is limited to

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<sup>22</sup> Shelly Asrika Fazlia, Arrie Budhiartie, and Fauzi Syam, "Menimbang Kembali Peran Asas-Asas Umum Pemerintahan Yang Baik (Aaupb) Dalam Formulasi Kebijakan Publik," *Pendidikan Tambusai* 9 (2025): 13246–57.

<sup>23</sup> Dewi Asimah, Zainal Muttaqin, and Dewi Kania Sugiharti, "Pngmplementasian Perluasan Kompetensi Ptun Didalam mengadilikan aksi Faktual (Onrechtmatige Overheidsdaad/Ood)," *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan Dan Ke-PPAT-An* 4, no. 1 (2020): 152–70, <https://doi.org/10.23920/acta.v4i1.531>.

examining and reviewing norms that are individual and concrete in nature. Therefore, a systematic interpretation is needed to avoid misunderstandings in the interpretation of law in the judicial system.

## **2. Application of the Principle of Lex Specialis Derogat Legi Generali in Disputes over the Determination of Presidential and Vice Presidential Candidates in the 2024 Elections**

The Indonesian Democratic Party of Struggle (PDIP) explicitly positioned its lawsuit as a dispute over *onrechtmatige overheidsdaad* (OOD) to avoid being classified as an election process dispute subject to special mechanisms. In its argument, the General Elections Commission's (KPU) action in accepting the candidate pair's registration is qualified as a factual action (*feitelijke handelingen*) that is against the law.<sup>24</sup> This argument reflects the Plaintiff's attempt to place the actions of the election organizers with the framework of administrative law testing, rather than simply understanding them as part of the election process. This approach is close related to developments in administrative law following the enactment of the Administrative Government Law, which broadened the scope of disputes in the State Administrative Court.<sup>25</sup> Against this backdrop, the PDIP's lawsuit can be understood as a form of strategic litigation to open up judicial control over the KPU's actions, which are considered detrimental.

Based on the administrative law regime, the expansion of the subject matter of disputes allows for both factual actions and passive actions (*omission*) by government officials to be subject to review. Passive actions (*omission*) can in principle be understood as a failure to carry out the legal

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<sup>24</sup> A. Melantik Rompegading, Dian Wardani, and Gazali, "Onrechtmatige Overheidsdaad Sebagai Objek Sengketa Didalam peradilan Tata Usaha Negara" 32, no. 3 (2021): 167–86.

<sup>25</sup> Andrianantenaina Fanirintsoa Aime and Pradistya Purnama Aji, "Interpretation of the Expansion of the Application of the Authority of the State Administrative Court in Adjudicating Factual Legal Actions of the Government," *Indonesian State Law Review* 6, no. 2 (2023): 253–76,

obligations attached to a position, thus potentially qualifying as unlawful acts by government agencies and/or officials (*onrechtmatige overheidsdaad*).<sup>26</sup> Therefore, actions by the KPU that are deemed to be procedurally improper or fail to meet the principle of administrative prudence can be tested using the parameters of the principle of legality and the Principle of Good Governance (AAUPB).<sup>27</sup>

The plaintiff in case sought to place the KPU's actions with the framework of *lex generalis*, namely the general provisions of administrative law that apply to all government actions. Based on this approach, the dispute was not directed at the election result, but rather at the alleged improper administrative actions during the nomination stage. In other words, the focus of the lawsuit is shifting from the realm of electoral politics to the legality of government actions. The argument regarding OOD conflicts with the principle that the KPU's actions related to the acceptance of registrations and the determination of candidate pairs are part of the election process. Under the electoral legal regime, the implementation of elections has its own dispute resolution mechanism that is specifically and restrictively regulated, both in terms of procedure and the forum for resolution.<sup>28</sup> Electoral administrative disputes, for example, must be pursued through specific channels, beginning with the Election Supervisory Agency (Bawaslu) and continuing to the State Administrative Court (PTUN) and the Supreme Court in accordance with the provisions of the law.<sup>29</sup>

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<sup>26</sup> Edyanti, Yusrin, dan Anna Erliyana. "Perbuatan melawan hukum oleh penguasa dalam kerangka administrasi pemerintahan." *Dharmasiswa*, 2, no. 2: 719–734, 2022.

<sup>27</sup> Universitas Muhammadiyah Mataram, "Unlawful Acts ( Onrechtmatige ) in the Formulation of Administrative Disputes : A Perspective From the Law on Governments Administrations in Indonesia" 2, no. 1 (2025): 1–10.

<sup>28</sup> Muhammad Daniel Arifin, "Menganalisis Wewenang PTUN Didalam memberi penanganan Sengketa Proses Pemilu," *Journals of Public Administration and Management Studies* 3, no. 2 (2025): 20.

<sup>29</sup> Ayib Rosidin and Asri Sarif, "Problematika Penyiapan Sengketa Proses Memilih secara umum Presiden Republik Indonesia Tahun 2024 Di Mahkamah Konstitusi Republik Indonesia Problems in resolving Disputes in the 2024 Presidential Election Process of the Republic of Indonesia at the Constitu," *Halu Oleo Law Review. Faculty of Law* 9, no. 1 (2025): 27–41.

This mechanism differs in character from the testing of government actions based on the general Governments Administrations Law. On that basis, when the object of the dispute is directly related to the election stages, a jurisdictional debate arises regarding the most authoritative forum to examine and decide the case. The difference in the regulatory regime demonstrates the principle of *lex specialis derogat legi generali*, namely that election law as a special provision overrides the general provisions in the Administrative Government Law.

The presence of specific election procedures acts as a limit to the overall power of the State Administrative Court. Here, the concepts of *lex specialis derogat legi generali* comes into play, meaning that particular rules with the election framework override the general rules found in the Administrative Government Law.<sup>30</sup> The application of this principle aims to maintain the consistency of the electoral system, which has strict deadlines, while ensuring certainty in the implementation stages. If actions in the electoral stages can be tested without limits through general government administrative mechanisms, then the electoral stages have the potential to be disrupted and the finality of the electoral process will be weakened.

According to legal aspects, the Jakarta Administrative Court believes that the nature of the dispute involved pertains to an election process issue, which has specific guidelines for resolution. The judges stressed that: “The court finds that the nature of the legal matter/dispute in question falls into the category of an election process issue, the resolution of which is explicitly defined in Articles 470 of Law Numbers 7 of 2017 of the Republic of Indonesia regarding General Elections, along with Articles 2 of the Regulation of the Supreme Court of the Republic of Indonesia Numbers 5 of 2017 concerning the Procedures for Resolving Election Process Disputes in the Administrative Court. Thus, the current dispute cannot be viewed as a

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<sup>30</sup> Mataram, “Unlawful Acts ( *Onrechtmatige* ) in the Formulation of Administrative Disputes : A Perspective From the Law on Governments Administrations in Indonesia.”

matter concerning unlawful actions as mentioned in Articles 1(4) of PERMA No. 2 of 2019.<sup>31</sup> With reference to these provisions, the court affirmed that the authority of the Administrative Court in the context of elections is limited and cannot be expanded through OOD construction. This consideration was the main basis for the court in declaring the Plaintiff's lawsuit inadmissible.

Substantively, the Panel of Judges constructed its reasoning by placing the KPU's actions that were being challenged as an integral part of the series of stages in the 2024 election candidacy process. The object of the lawsuit, which is the KPU's passive action (*omission*), such as not rejecting registrations, not rejecting medical examination result, and not preventing the determination of candidate pairs, is considered to be inherent in the context of the election administration and therefore cannot be separated from the election stage mechanism itself.

However, even though these actions could conceptually be construed as government actions that potentially violate the principle of legality and the AAUPB, the court still prioritized the classification of disputes based on the context of the election stages. This shows that the court tends to use a formal approach in determining the category of disputes, namely by assessing the position of the action in the series of election stages, without first examining in depth the substance of the alleged administrative violation. With these considerations, the dispute *a quo* is deemed not to fall under the OOD regime based on PERMA Numbers 2 of 2019, but is subject to the election process dispute resolution mechanism.<sup>32</sup>

The activities of the KPU being examined in case are fundamentally a direct response to the Constitutional Court's ruling Numbers 90/PUU-XXI/2023. This ruling altered how the age criteria for presidential and vice-

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<sup>31</sup> Pengadilan Tata Usaha Negara Jakarta, Putusan bernomor 133/G/TF/2024/PTUN.JKT mengenai Sengketa Putusan KPU RI Bernomor 360 Tahun 2024.

<sup>32</sup> Pengadilan Tata Usaha Negara Jakarta, Putusan bernomor 133/G/TF/2024/PTUN.JKT mengenai Sengketa Putusan KPU RI Bernomor 360 Tahun 2024.

presidential aspirants are understood, which subsequently formed the foundation for approving Gibran Rakabuming Raka's candidacy as a vice-presidential nominee for the upcoming 2024 elections.<sup>33</sup> Given that the Constitutional Court's decision is binding and final, the KPU is administratively obliged to adjust the nomination stages through the acceptance of registrations, the verification of requirements, and the determination of candidate pairs based on these new norms. On that basis, the KPU's actions in case cannot be viewed as administrative actions that are entirely born of discretion or independent policy, but rather as imperative actions because they are the implementation of a constitutional institution's decision. This situation shows that the dispute in question has a strong constitutional dimension, particularly in relation to the authority between the election organizer and the Constitutional Court.<sup>34</sup>

The principle of *lex specialis* in electoral law should not be understood as a total closure of administrative control mechanisms, but rather as a setting of testing limits so that the judicial forum does not enter into the substance of norms or election result. In case, the main issue is not the re-examination of the Constitutional Court's decision, but rather the scope of evaluation of the specific administrative actions taken by the KPU in implementing the decision. The finality of the Constitutional Court's decision is inherent in the norms and provisions of the decision that must be complied with, but this does not automatically make every implementative action immune from review if there are deviations from the principle of legality or the AAUPB.<sup>35</sup> This clarification of boundaries is important so that the application of *lex specialis* does not develop into an

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<sup>33</sup> "Mahkamah Konstitusi Republik Indonesia, Putusan bernomor 90/PUU-XXI/2023 mengenai Uji Undang-Undang Bernomor 7 Tahun 2017 mengenai Memilih secara umum."

<sup>34</sup> Riska Ari Amalia Sofwan, Rusnan, "Bentuk Putusan Mahkamah Konstitusi Yang Sifatnya Final Dan Mengikat (Suatu Kajian Filosofis)" 1, no. 1 (2022): 1–16.

<sup>35</sup> Ridwan, "Uji Tindakan Faktual Dan Perbuatan Melanggar Hukum Oleh Pemerintah Dalam Sistem Peradilan Tata Usaha Negara," *Jurnal Magister Hukum Udayana (Udayana Master Law Journals)* 11, no. 1 (2022): 90–92, <https://doi.org/10.24843/JMHU.2022.v11.i01.p07>.

absolute restriction that precludes judicial control over government actions. With these limitations, the implementation of the special election regime can continue to run in line with substantive legal protection guarantees for citizens.

The rejection of lawsuits by the Administrative Court on the grounds of absolute competence has an impact on the effectiveness of legal protection because it encourages those seeking justice to pursue electoral disputes, the procedures for which are strictly bound by certain stages and time limits. Problems arise when crucial stages, such as nominations, have already passed, rendering such mechanisms ineffective. This situation has the potential to create a legal remedy gap, which is when the forum for OOD lawsuits is closed through a *niet ontvankelijk verklaard* (NO) ruling, while the electoral dispute process is no longer practically accessible. As a result, the government actions that are at the heart of the matter lose adequate judicial review. This situation not only reduces legal certainty but also has the potential to weaken the guarantee of access to justice in the implementation of elections, especially at stages that determine the quality of electoral democracy.<sup>36</sup>

Based on the debate over absolute competence, the application of the principle of *lex specialis derogat legi generali* in the dispute *a quo* shows a tug-of-war between the expansion of the PTUN's authority in the OOD regime and the limitation of authority in the electoral law regime. The Jakarta Administrative Court's decision to dismiss the lawsuit affirms the dominance of the electoral regime as *lex specialis* in determining the forum for dispute resolution, while limiting the scope for reviewing the administrative actions of election organizers. However, this limitation is not without legal consequences in the form of potential legal vacuums and weakened judicial control over government actions during the election

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<sup>36</sup> Putri Masbait, Hendrik Salmon, and Dezonda Pattipawae, "Legal Force of Administrative Remedies in the Settlement of State Administrative Disputes Kekuatan" 12, no. 2 (2025): 9–10, <https://doi.org/10.21070/jihr.v13i2.1082>.

stages. Furthermore, this discussion will examine the implications of this ruling on legal certainty and the legitimacy of elections in the Indonesian constitutional system.<sup>37</sup>

### **3. Implications of the Administrative Court's Decision on Legal Certainty and the Legitimacy of the Election Process**

The ruling made by the Jakarta Administrative Court in case numbers 133/G/TF/2024/PTUN. JKT essentially showcases the evolving interplay between the administrative law framework and the electoral law framework within Indonesia's legal system, and it cannot merely be viewed as a definitive judgment on jurisdiction.<sup>38</sup> Analyzing the consequences of this judgment is essential as it clearly indicates the restrictions on the Administrative Court's authority in matters concerning the electoral process. In light of this, a more thorough examination is required regarding how these restrictions align with the principle of the rule of law, which necessitates a balance between legal certainty and adequate legal protection for individuals. Additionally, this judgment suggests that categorizing a government action as an *onrechtmatige overheidsdaad* (OOD) does not automatically release it from the specific legal guidelines that apply to it, particularly when the action is a key component of the electoral phases governed by *lex specialis*.

The Jakarta Administrative Court's ruling in case No. 133/G/TF/2024/PTUN. JKT reveals that the scope of dispute actions with

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<sup>37</sup> Maria Prayitno and Kartika Utama, "Implementation of the Principle of 'Lex Specialis Derogates legi Generalis' in Regulations on Administrative Measures of State Administrative Disputes (State Administrative Decision Case Study Numbers: 23/G/KI/2022/PTUN.SMG)," *International Journals of Social Science Research and Review* 5, no. 1 (2022): 113–28, <http://dx.doi.org/10.47814/ijssrr.v6i11.642%0AAbstract>.

<sup>38</sup> "Pengadilan Tata Usaha Negara Jakarta, Putusan bernomor 133/G/TF/2024/PTUN.JKT mengenai Sengketa Putusan KPU RI Bernomor 360 Tahun 2024."

the administrative domain can be evaluated through the framework of the State Administrative Court. However, conflicts that emerge during the electoral process cannot be examined via the State Administrative Court, as they follow a distinct legal resolution process. Until now, the Indonesian legal system has not clearly defined the Administrative Court's role in addressing disputes with the electoral framework.<sup>39</sup>

The decision made by the Administrative Court regarding the election procedure outlines the difference between conflicts about the procedure, which are handled by the Administrative Court, and conflicts concerning the result, which are within the domain of the Constitutional Court. In its judgment, the Jakarta Administrative Court declared that the lawsuit could not be accepted since it was deemed a dispute over election result, which lies beyond the exclusive authority of the Administrative Court. This determination was founded on the guidelines provided in Supreme Court Regulation (PERMA) Numbers 5 of 2017 pertaining to the Resolution of Disputes Related to Election Processes in the Administrative Court.<sup>40</sup> which confirms that the Administrative Court only has the authority to adjudicate election process disputes based on lawsuits against KPU or Bawaslu decisions that are administrative and final in nature in the stages of conducting elections in accordance with applicable procedural law.<sup>41</sup> This led to the closure of courtrooms to transfer legal disputes during the election period to the general government's administrative channel. Disputes over *a quo* matters in the election process are a form of protection for election order.

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<sup>39</sup> "Muhammad Daniel Arifin, "Menganalisis Wewenang PTUN dalam memberi penanganan Sengketa Proses Pemilu," *JPAMS: Journals of Public Administration and Management Studies* 3, no. 2 (Agustus 2025): 20.

<sup>40</sup> Mahkamah Agung Republik Indonesia, "Aturan Mahkamah Agung Republik Indonesia Bernomor 5 Tahun 2017 Mengenai Tata Cara Penyiapan Sengketa Proses Memilih secara umum Di Pengadilan Tata Usaha Negara" (2017).

<sup>41</sup> Muhammad Daniel Arifin, "Menganalisis Wewenang PTUN dalam memberi penanganan Sengketa Proses Pemilu," *JPAMS: Journals of Public Administration and Management Studies* 3, no. 2 (Agustus 2025): 20.

The rejection of legal claims during the election process raises fundamental legal issues that have far-reaching implications. Problems with the mechanism for resolving election process disputes through the State Administrative Court include time effectiveness, legal certainty, and a lack of understanding among judges about the dynamics of electoral politics. As a result of these problems, there will be a polemic between substantive examination and the lawsuits that arise in order to resolve disputes quickly but still with fair and comprehensive legal examination. In addition, it will also lead to inconsistencies in the application of the law and a weakening of legal protection guarantees due to the absence of explicit rules on the basis for rejection, and the potential for decisions to be unresponsive to the need to protect the political rights of election participants in the reality of elections.<sup>42</sup> Based on this, lawsuits that fall under administrative actions are not examined through the principle of legality and the General Principle of Good Governance (AAUPB).

Based on the UUAP and PERMA No. 2 of 2019, passive actions (omissions) are actions by the government that have the potential to violate the law. Omissions are passive actions taken by the government, meaning that the government does not carry out its responsibilities.<sup>43</sup> The issue becomes more complex during elections because the Administrative Court is not an effective institution for resolving election issues due to time constraints. This results in a legal vacuum that reduces access to justice.

The application of the principle of *lex specialis derogates legi generali*, or the principle of special regulations taking precedence over general regulations, has the potential to eliminate judicial control over the electoral administration process. In principle, this principle affirms that more

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<sup>42</sup> Muhammad Daniel Arifin, "Menganalisis Wewenang PTUN dalam memberi penanganan Sengketa Proses Pemilu," *JPAMS: Journals of Public Administration and Management Studies* 3, no. 2 (Agustus 2025): 20.

<sup>43</sup> Abrianto, Bagus Oktavian, Xavier Nugraha, Julienna Hartono, dan Indah Permatasari. "Masalah putusan Administrasi Negara yang Berkarakter Positif Fiktif Sesudah Berlakunya Undang-Undang Bernomor 11 Tahun 2020" 16, no. 3 (2023): 532–56.

specific norms must take precedence over general norms when both regulate the same matter. Therefore, as *lex specialis*, election regulations will be implemented with the election regime, thereby sidelining the State Administrative Court as the authority granting judicial control to the State Administrative Court.<sup>44</sup> The KPU (General Elections Commission) is a state institution responsible for regulating and conducting general elections, as well as implementing Constitutional Court Decision Numbers 90/PUU-XXI/2023.<sup>45</sup>

In implementing Constitutional Court Decision Numbers 90/PUU-XXI/2023, the KPU has a role as the technical administrator of elections as well as a subject of state administration to exercise public authority in a normative manner. In practice, this decision will give rise to various administrative decisions and actions that impact constitutional electoral rights, making it important to review the interpretation and application of the decision from the perspective of legality and legal protection guarantees.<sup>46</sup>

Reviewed from a legal protection perspective, the NO decision in the case in question presents several conceptual challenges, one of which is that the Articles in question are declared conditionally unconstitutional.<sup>47</sup> The Administrative Court is an administrative judicial institution responsible for ensuring that government actions that impact the

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<sup>44</sup> Eny Kusadarini, Anang Priyanto, and Sri Hartini, "The Process and Role of the Judiciary in Election Administration Dispute Resolution in Indonesia," *Jurnal Civics: Media Kajian Kewarganegaraan* 18, no. 2 (2021): 334–44, <https://doi.org/10.21831/jc.v18i2.44175>.

<sup>45</sup> Bimo Febriyanto and Hisyam Asyiqin, "Implikasi Hukum Pada Batas Usia Capres Dan Cawapres Pasca Putusan Mahkamah Konstitusi Bernomor 90 / PUU-XXI / 2023," *Seminar Nasional FHSIP*, 2024, 123–30.

<sup>46</sup> Firdaus Arifin, "Memberi integrasi Hukum Pemilu: Harmonisasi Aturan KPU Pada putusan Mahkamah Konstitusi Didalam menyelenggarakan Pemilihan Kepala Daerah Firdaus," *Rio Law Jurnal* 3 (2022): 18–19.

<sup>47</sup> Bagus Hermanto and Nyoman Mas Aryani, "Quo Vadis Pengadilan Khusus Di Indonesia Dalam Batasan Putusan Mahkamah Konstitusi," *Jurnal Penelitian Hukum De Jure* 23, no. 4 (2023): 403–18, <https://ejournals.balitbangham.go.id/index.php/dejure/Articles/view/3943>.

rights of citizens are carry out as they should be in accordance with applicable legal provisions.

Restrictions on the authoritys of the State Administrative Court through the principle of special regulations that override general regulations (the principle of *lex specialis derogates legi general*) must be interpreted correctly, meaning that any restriction on access must be accompanied by a safeguard for parties who feel aggrieved. If the limitation of authoritys is deemed to preclude examination of the substance of the violation, it could eliminate judicial control over the electoral administration process. The loss of such control would have serious legal and constitutional consequences.

The loss of judicial control could weaken the rule of law, which would affect the implementation of elections with abstract legal correction mechanisms. In addition, this condition will open up space for arbitrary actions in active decisions and omissions, thereby further diminishing public trust in both the electoral process and its result. The public's perception of elections will change to one of opacity and unfairness, thereby calling into question the legitimacy of the result.

Judicial control over administrative actions is an important component in ensuring the compliance of organizing bodies with the principle of the rule of law and the protection of the constitutional rights of election participants. However, if a norm governing formal aspects is used as a limitation on the authoritys to examine the substance of electoral actions, the function of legal control will be hampered. The effectiveness of judicial control by the State Administrative Court will be weakened because the scope for investigating the substance of administrative disputes is too narrow, especially when specific norms do not provide sufficient scope for testing the material aspects of an administrative decision.

The actions of the state institution KPU that were reported were related to omissions associated with passive actions by state institutions.

This means that the state institution KPU did not carry out its legal obligations as it should have to ensure that the candidacy process ran in accordance with applicable legal provisions. When the lawsuit is declared in the NO decision, this condition indicates that clearer legal parameters are needed regarding election administration so that it can be accounted for through the applicable judicial mechanisms.

Restrictions on the authority of the State Administrative Court based on the principle of *lex specialis derogates legi generali* must be followed by a systematic assessment in accordance with legal norms and strengthening the role of administrative courts as guardians of the legality of government actions as part of efforts to build accountable legal institutions, as emphasized in SDG 16 (Peace, Justice and Strong Institutions). Legal confirmation is necessary so as not to change the function of the Administrative Court as a judicial institution that oversees the legality of government actions, because substantively, the Administrative Court has the primary function of assessing government decisions or actions. Such assessments may include the basis of legitimate authority, the absence of violations of the General Principle of Good Governance (AAUPB), compliance with legal procedures, and the absence of harm to the rights of the people.

The legal uncertainty surrounding the election as stated in Jakarta Administrative Court Decision Numbers 133/G/TF/2024/PTUN.JKT indicates that there is a discrepancy between specific regulations and general regulations. Therefore, clarity is needed between the Election Law and the Government's Administration Law in order to clarify the parameters of the dispute and enable objective review.<sup>48</sup> This aims to minimize arbitrary government actions that infringe on citizens' rights.

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<sup>48</sup> Pengadilan Tata Usaha Negara Jakarta, Putusan bernomor 133/G/TF/2024/PTUN.JKT mengenai Sengketa Putusan KPU RI Bernomor 360 Tahun 2024.

## IV. Conclusion

According to the findings from a study on the full powers of the State Administrative Court (PTUN) related the legals matter of onrechtmatige overheidsdaad (OOD) with the Indonesian judicial framework, enhancing the authoritys of the PTUN is among the outcomes stemming from changes in administrative law, particularly Law No. 30 of 2014 on Administrative Governance (UUAP). This UUAP highlights that governmental actions leading to authoritys misuse can be examined in administrative courts, grounded in the rule of law and the Principle of Good Governance (AAUPB). This is in line with the objectives of **SDGs 16 (Peace, Justice and Strong Institutions)**.

The government's resolution of legal matters is underscored in PERMA No. 2 of 2019. Nonetheless, the increased jurisdiction of the PTUN has restricted its legal effectiveness during election periods. This is illustrated by the Jakarta Administrative Court's Decision Numbers 133/G/TF/2024/PTUN. JKT, where the judges decided that the complaint against the KPU, a state agency, was an electoral issue governed by the Election Law, which takes precedence over the general rules established by the Administrative Court Law and PERMA No. 2 of 2019.

The Administrative Court lacks the power to address electoral matters through OOD interpretations. From this explanation, two outcomes stemming from the restrictions on the Administrative Court's authoritys are identified. The limitation of the Administrative Court's authoritys signifies the presence of legal certainty in elections, ensuring that the electoral process is free from outside influence and preventing prolonged disputes. However, these constraints on the PTUN's jurisdiction have created a legal gap, which result in insufficient administrative legal protection and diminished access to justice. Consequently, this resolution highlights the necessity for a clearer understanding of the role, purpose, and interaction between the Election Law and the Governments Administrations Law. The

Election Law, as a specialized statute, must specifically address the conduct of elections, while the Governments Administrations Law will act as a general statute, ensuring that all electoral decisions and actions align with the legal protection principle. Both laws are interconnected, so it is essential to achieve harmony to maintain a balance between effective election administration and ongoing judicial oversight of electoral administrative actions.

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