THE RISE AND THE FALL OF THE JURISDICTION OF INDONESIA'S ADMINISTRATIVE COURTS:
IMPEDEMENTS AND PROSPECTS
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Abstract
If any of Indonesia's judiciary branches can be said to have been in constant flux before and after the one-roof system under the Supreme Court, it is the Administrative Court. From limited jurisdiction—by limitation from The Administrative Court Act (ACA), (Undang-Undang Tentang Peradilan Tata Usaha Negara) and others unresponsive legal policy, establishment of new court, and supreme court decision—to expansion jurisdiction by enactment of Government Administration Act (GAA), (Undang-Undang Tentang Administrasi Pemerintahan) and establishment sectoral laws, including expansion from Constitutional Court decision, has brought dynamic changing to the Administrative Court jurisdiction. In this paper, I will discuss to what extent the Administrative Courts have indeed changed, survived, and improved the administration of justice in their field. I will first provide a short overview of the original jurisdiction on the Administrative Court Act (ACA), followed by an analysis of the legal impact of the enactment of the Government Administration Act (GAA) and other relevant Law and Regulation. This paper demonstrated that Administrative Court jurisdiction expansion urgently required harmonization between the ACA and the GAA: the existing legal gap has been not sufficiently filled by the Supreme Court Regulation (SCR) or Supreme Court Circular (SCC).

Keywords: Administrative court, jurisdictional expansion, harmonization of law

Abstrak

Kata Kunci: Peradilan Administrasi, perluasan kewenangan, harmonisasi undang-undang

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I. INTRODUCTION

The concept of the rule of law requires that any government administration action be based upon the law. The law governs and rules as the “mantra” of modern constitutionalism, or as illustrated in popular jargon in the United States: “The Rule of Law, and not of Man”, to illustrate the notion that a law governs or leads a country, not men. In parallel with this expression, several other classic phrases to describe the ideal conception of the rule of law such as a government of laws, not men; the law is reason, neither desire nor passion. The concept of rule of law has a long history in the direction of human civilization. Various views about the rule of law depart and are developed from previous thoughts. As the law is the law of a country, not its citizens, that governs and leads. The rule of law formulation from Tom Bingham developed from A.V. Dicey and the great English philosopher John Locke, who said, “Wherever law ends, tyranny begins”. The same point was made by Thomas Paine in 1776: “…that in America THE LAW IS KING. For as in absolute governments the King is the law, so in free countries, the law ought to be King; and there ought to be no other.”

The concept of the rule of law underlies restrictions on the power of state organs. So that state power can be limited and controlled, by giving the legal protection for the citizens, some approaches develop in the concept of human rights, administrative justice, and so on. In line with that, constitutionalism is a concept or stream that requires limits on state power, or limited government power. Therefore, the fact that the state or the government can be sued by citizens cannot be separated from the understanding of the notions of the rule of law or rechtstaats.

The main purpose of administrative laws is to ensure that government administration can be held accountable and liable. Put another way, the aim is that the authority of the government is always within the limits of its power (intra vires) so that citizens are protected from its irregularities. The object of administrative law is the power of government. In other words, so that every decision and/or action of government administration is by the authority given and regulated by laws and regulations under the principle of legality, legal instruments are needed to ensure that the administrative decision/action is carried out whether it is by the law. In this case, the mechanism of judicial review is one of the instruments to ensure the authority of each government apparatus whether it is under the ideals and spirit of the rule of law. A country that claims to be a rule of law must have the judicial capability to oversee whether state institutions are violating the law or not. The importance of law for (administration) government (an) is illustrated by the statement that: “there is no law, the government

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1 Jimly Asshiddiqie, Konstitusi dan Konstitusionalisme Indonesia (Jakarta: Konpress, 2005), p. 18.
does not exist”; Julia Beckett put it very well and precisely in the American context:

... Law is in the foundation, values, institutions, activities, policies, and procedures of public officials and employees. Law is the authoritative and binding requirements, mandates, or orders of society, but the law is also a substantive body of knowledge and the area of professional expertise of attorneys and judges. Public law includes the constitution, statutes, rules, regulations, and court decisions that authorize, define and constrain government. Without law, the American government would not exist.10

In administrative law in Indonesia, the principle of legality is contained in the provisions: “'State Administration Agency or Official’ is a body or official carrying out governmental affairs based on applicable laws and regulations”. The principle of legality therefore regulates the basis of authority or validity in the administration of government either through the legislative body to the state administration (attribution) or given by the state administration to other state administrations through statutory regulations through delegates and sub-delegates.11

In the modern context, the implementation of the rule of law theory can be seen specifically and specifically from the possibility of judicial oversight of government actions through various legal means that develop in various models and mechanisms, such as administrative efforts, judicial review, constitutional complaints, constitutional review, etc. including lawsuits through civil law. In the contemporary context, the judicial oversight by *Peradilan Tata Usaha Negara*, the Administrative Court, is a *conditio sine qua non* for the realization of good governance and legal protection for citizens. Aside from being a guardian of the rule of law, the Administrative Court is also responsible for the upholding of good governance.12 The existence and function of the Administrative Court are expected and directed as a means of judicial control of government legal actions to avoid the abuse of power. Judicial review is the main means of control for the decisions and actions of government administration: “one of the main purposes of judicial review is to hold the government to account”.13

The organization of court systems and division of jurisdiction regarding judicial review of administrative action is by no means uniform. In some countries, administrative courts and tribunals coexist with ordinary courts. In other countries, general courts resolve administrative law disputes, while specialized administrative chambers can be established within these general courts.14 Moreover, a division of jurisdiction between ordinary and Administrative Courts sometimes entail complementary and overlapping jurisdiction.15 However, the judiciary of each country

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10 Ibid.
12 Ibid. p. 80
15 For comparison of administrative jurisdiction (judicial, non-judicial and hybrid models) and how developments and comparative frameworks of the autonomous administrative jurisdiction under the Latin American constitutions, please see Ricardo Perlingeiro, *A Historical Perspective on Administrative...*
has the same mission of imposing appropriate sanctions on illegal administrative decisions or administrative acts by finding facts concerning contested issues and applying laws based on those facts through fair judicial procedure. The final purpose is to realize social justice and protect fundamental human rights.

The Administrative Court Act (ACA), the law on administrative justice of 1986 (Undang-Undang Peradilan Tata Usaha Negara), may prove to be a landmark in Indonesia’s legal status as a negara hukum (nation of law). However, Bedner argued that the main “ideological” idea underlying the establishment of the Administrative Courts in Indonesia was that the general courts by their nature were considered ineffective in redressing unlawful acts by the government. The jurisdiction of the general courts in administrative matters was indeed limited and the prevailing opinion was that they had failed to fully exercise the powers assigned to them. Administrative courts with specialized judges were thought of as the most logical solution to this problem. This idea is rooted in civil law history, where Administrative Courts developed as the best institution to deal with claims against the government and reached Indonesia through the ideas of colonial jurists. Limited jurisdiction of the Administrative Court under New Order (Orde Baru) regime’s, raised conclusion from Adriaan Bedner about the failure of the Administrative Court as special court;
he said:

“This (limited jurisdiction—author) raises the question of whether it would be better to simply abolish the Administrative Courts and return to a unified system of jurisdiction. However, despite all these unfavorable observations the Administrative Courts also have had notable achievements. Their function as a symbol against government power should not be underestimated, while their existence has propelled many government officials and institutions to operate more carefully. But apart from that, their record in cases for which they had originally been invented may not be bad at all – in fact, we simply do not know by the absence of analyses.”

The dynamics and latest developments in the Indonesian justice system cannot be separated from the events of the Reformation (Reformasi) at the end of the 1990s. Following the end of the Soeharto era in 1998, there has been a renewed focus on the Indonesian judiciary. The Indonesian Judiciary entered the new era, consolidating judiciary power through the so-called satu atap (literally “one roof”), to fully uphold judiciary independence and increased public accountability. A Constitutional Court was formed not long after. The branch of judicial power became increasingly significant in determining the journey of the nation and state. In the General Courts, several new courts were born: the Commercial Court, the Industrial Relations Court, the Fisheries Court, the Human Rights Court, the Anti-Corruption Court, etc. Meanwhile, within the Administrative Court, there is only a Tax Court.

A head-to-head comparison between the significance and relevance of the General Court with the Administrative Court is certainly not proportional and has its paradox. Therefore, the sharp criticism of Adriaan Bedner should be understood in the context of whether the judicial power system, in carrying out its duties as a pillar of the rule of law, contains innate disability elements, so that the integration of the system does not work as it should. As stated at the beginning of this paper, the judicial power system varies in its model in enforcing administrative justice. A unified system of the jurisdiction (unity jurisdiction) does not distinguish judicial bodies that adjudicate disputes between the citizen versus the government; while duality of the jurisdiction (duality jurisdiction) distinguishes it: Administrative Court and the General Court have their jurisdiction boundaries.

The basic question is thus: regardless of the system adopted in one country,
will the guarantee of legal protection and the enforcement of administrative justice be better with or without one choice of the unification or dual model (duality of jurisdiction)? This paper will demonstrate the significance of administrative justice in Indonesia so that by itself the relevance of the dual justice system (duality of jurisdiction) in our legal system can be used to assuage doubts over the benefits of the presence of administrative justice; and at the same time, it is expected that criticism of Administrative Court need not always lead to pragmatic conclusions by integrating it into the general court section within judicial unification system.

Since 2008, alternating laws have expanded or emphasized the Administrative Court attribution authority. The peak was in 2014, with the presence of GAA, which opened a new chapter for the prospects and future of the Administrative Court. In the normative level, measured by the number of changes in regulations related to the Administrative Court, there is no doubt as to the significance and relevance of administrative justice as the guardian of administrative justice. Unfortunately, the expansion or affirmation of Administrative Court jurisdiction is still not well understood by most legal practitioners or academics, let alone by ordinary people. Textbooks on Administrative Courts are still focused on ACA. The role of academic institutions is very important to bridge the flow of information with the community’s legal knowledge, especially related to their fundamental rights in the field of public services. This paper will explain the dynamics and development of the Administrative Court, because even though it is a well-established presence in the Indonesian legal landscape, many are still unaware of its jurisdiction, and how it has provided relief to citizens looking for a resolution to a dispute with the government. The objectives are to ensure a general understanding of jurisprudence, regulation, and legal policy before the Administrative Court is disseminated systematically and thoroughly to target groups.

This study uses a firsthand qualitative approach to examine the recent development of Administrative Court. This research will be prepared using a type of normative juridical research, which is research focused on examining the application of the rules or norms in positive law. This study uses a statutory approach and case approach. The statutory approach is used to find out all the relevant legal regulations. In research of this type, a distinction is made between data obtained directly from the community and library materials. The types of data sources for this research include primary legal materials, especially GAA and ACA; including some other sectoral laws relating to Administrative Court jurisdiction, SCR, SCC and SCD; secondary legal materials including thesis and legal dissertation; legal journals; books and papers relating to
Administrative Court; Internet. To obtain relevant and accurate data in this study a literature was taken.

II. ORIGINAL JURISDICTION WITHIN LAW OF THE ADMINISTRATIVE COURT ACT (ACA).

The jurisdiction of the Administrative Court based on the ACA was relatively minor, as it only includes state administration decisions that are issued by state administration agency/official that is concrete, individual and final in character, which in turn is limited by ACA itself, by the enactment of new laws or by the SCD. Art. 47 ACA stipulates the jurisdiction of Administrative Courts in Indonesia’s judiciary system, which is the jurisdiction to examine, decide and resolve state administration disputes.

The Administrative Courts have the jurisdiction to resolve administrative disputes at first instances, Administrative High Courts for second instances, and the Supreme Court for cassation and judicial reviews. In some cases, administrative High Court and/or Supreme Court are used as a first-instance court. As stipulated in Art. 48 ACA, administrative disputes that must first need to be resolved through administrative process are examined, decided upon and resolved by the Administration High Courts, which will act as first-instance courts and the only legal remedies that are available for these court’s decisions are appeals of cassations to the Supreme Court. According to Art. 1 No. 3 ACA, a state administrative decision (beschikking) is defined as a written decision that is issued by a state administration agency/official, which contains state administration legal actions based on applicable laws; it is concrete, individual and final in character, and carries legal consequences for a person or a civil legal entity. Also, Art. 3 ACA also defines the court’s original jurisdiction, where a state administration agency/official did not issue a decision upon request and which was within its scope of the obligation. However, along with the presence of GAA, and confirmed by the SCR No. 5/2017, the Administrative Court is no longer authorized to hear negative fictitious cases because of the presence of positive fictitious cases. The presence of SCR No. 4/2015 concerning Proceedings of Testing Abuse of Power and SCR No. 8/2017 on positive fiction modifying the authority of the Administrative Court, from only adjudicate controversial case but also hear the non-controversial case—commensurate with the case for a request permohonan (voluntary, ex parte proceeding) in the legal lexicon. In practice, examples of the decisions of state administration agenciesofficials that have the potential to create disputes include: (a) decisions on permits; (b) decisions on legal statuses, rights, and obligations; (c) decisions on employee affairs. Theoretically, in the non-controversial case, the interests party is one-sided.27

Back to the court’s jurisdiction as stipulated in Art. 1 No. 9 ACA, the jurisdiction

27 The term contentious is derived from the Latin word contentiosus, which means “quarrel”, “debate”, or “discussion”. The term “administrative litigation” (contentious administrative) can therefore refer to all disputes that arise from the activities of the administration, either legal (a unilateral action or contract), or material (for example, public works, medical care). But in the second meaning, the term “administrative litigation” refers to a series of processes that make it possible to obtain legal solutions to disputes relating to administrative activities. Michel Rousset and Olivier Rousset, Droit Administrative II, Le contentieux administratif, Deuxième edition (Grenoble: Presses Universitaires de Grenoble, 2004), p. 9: “L'origine du mot contentieux se trouve dans un mot Latin, contentiosus, qui signifie « Querelle », « débat », « discussion », donc contestation. L'expression « contentieux administratif » peut donc désigner, dans un premier sens, l'ensemble des litiges qui naissent de l'activité administrative, que celle-ci soit juridique (acte unilateral ou contrat), ou qu'elle soit matérielle (par exemple travaux publics, soins médicaux).”
is limited by the provisions in Art. 2, Art. 48, Art. 49 and Art. 142 of the same law. Therefore, Professor Paulus E. Lotulung argued the limitations on what constitutes an object of dispute within Administrative Courts can be categorized into three limitations: direct, indirect, and temporary direct limitation.\textsuperscript{28} Direct limitation renders absolutely no possibilities for Administrative Courts to examine, decide, and resolve disputes. This is clearly stated in the Elucidation of ACA as follows:

a. Art. 2

1. State administration decisions that are civil law actions.
2. State administration decisions that are general regulations.
3. State administration decisions that still require approval.
4. State administration decisions that are issued based on criminal law or civil law or other criminal regulations.
5. State administration decisions that are issued based on the examination of a judiciary body based on applicable laws.
7. Decisions of the central and regional General Election Commission on general election results.

b. Art. 49

The court has no jurisdiction to examine, decide, or resolve state administration specific disputes, in which the decisions were issued:

a. At times of war, peril, natural disasters or perilous extraordinary situations, which were based on applicable laws.

b. At times of urgent public interest, which were based on applicable laws.

Contrast to direct limitation, an indirect limitation is one that still provides the opportunity for administrative high courts to examine, decide and resolve administrative disputes in the condition that all available administrative remedies have been exhausted by a person or a civil legal entity. Indirect limitations are provided for in Art. 48 ACA, which states that:

(1) A state administration agency or official that was given the authority by or based on applicable laws to administratively resolve a state administration dispute must do so under available administrative remedies.

(2) The court may only have the jurisdiction to examine, decide and resolve a state administration dispute as according to paragraph (1) only if all administrative remedies are exhausted.

If all available administrative remedies (administratief beroep) have been exhausted and the claimant's interest is still impaired, then based on the above indirect limitation and Art. 51 Paragraph 3 ACA: “The Administrative High Court has the duty and jurisdiction to examine, decide and resolve state administration dispute at first instance and as stipulated in Art. 48”.

Since December 4, 2018, there was a “revolution” in the proceedings for filing

\textsuperscript{28} Paulus Effendi Lotulung, “The Jurisdiction of State Administration Courts in Indonesia’s Judiciary System”, 10\textsuperscript{th} Congress of ASAJ (Association of Supreme Administrative Jurisdictions), Sydney in March 2010., p. 5.
contentious disputes in the Administrative Court. Now as long as it is not determined otherwise by its basic rules, based on SCR No. 6/2018, every lawsuit to the Administrative Court from *premum remedium* is changed to *ultimum remedium*. The regulation requires that the Administrative Court only can accept, examine, decide upon, and resolve government administrative disputes after administrative review within the government itself. The court examines, decides, and settles lawsuits on government administrative disputes according to the provisions of the procedural law applicable at the Court unless otherwise stipulated in the provisions of the applicable laws and regulations. Therefore, based on SCR No. 6/2018 on Administrative Efforts, completion of administrative effort before initiating litigation in the administrative Courts is an imperative, and carries a more or less identical meaning with provisions of Art. 48 of ACA, which sees the completion of administrative effort before litigation effort as a necessity essentially governed by regulations, the difference is that in the context of this SCR: if a basic regulation does not regulate administrative review, the provisions of the GAA apply, as stipulated by the SCR as follows: “In the case of the basic regulations issuing decisions and/or actions not regulating administrative review, the Court uses the provisions outlined in Law No. 30/2014 concerning Government Administration”.

**III. LIMITATION OF JURISDICTION**

**A. The Case Law (Supreme Court’s Decision).**

The statutory interpretation by the Administrative Court has demonstrated the narrowed construction of the ACA in answering concrete legal issues, plus the absence of law codification of general administrative laws (at that time) as well as the characteristics of administrative law, which is indeed jurisprudential. Nevertheless, the two amendments of ACA have not been able to synchronize the broader court jurisdiction by Administrative Court’s judges’ interpretation (*rechtsvindings*) into the revision of the ACA. On the contrary, the case law demonstrated a lot of *judex juris* corrections to *judex factie* in determining the *objectum litis* of administrative disputes and other matters relating to procedural law. This is seen in matters relating to political

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30 Ibid. Art. 2 Paragraph (2).
31 In the event that a administrative Agency or Officer is authorized by or based on statutory regulations to administratively settle certain administrative disputes, then it is invalid or invalid, with or without accompanying compensation and/administrative claims available (Art. 48 paragraph (1) ACA). The new court has the authority to examine, decide upon and resolve the administrative dispute as referred to in paragraph (1) if all relevant administrative efforts have been used (Art. 48 paragraph (2) of the ACA).
32 SCR No. 6/2018, Art. 3 paragraph (2)
33 Daniel S. Lev, “The state and law reform in Indonesia”, in Tim Lindsey (ed). *Law Reform in Developing and Transitional States* (New York: Routledge, 2007), p. 237. A lack of political will to strengthen administrative courts during the Pre-Reformasi is expressed in another Lev passage, as follows:

“Since May 1998 minimal legal reform efforts have had minimal success under three presidents, partly because of resistance from within and without the legal system, but also for lack of realistic political strategies – or, for that matter; any strategies at all. The Habibie administration had neither program nor time; that of Abdurrachman Wahid had reform intentions and actually acted on them, but inconsistently and without much analysis or planning beforehand; and Megawati Soekarnoputri’s government, since its inauguration in August 2001, showed too little interest in legal reform to require a strategy...No effort was made to improve and extend the authority or jurisdiction of the PTUN.”

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questions such as the election of a head of a village or local government disputes.\textsuperscript{34} Likewise, the complexity of the boundary between civil law and administrative law creates legal gray area in some cases, a blurring of the boundaries of authority between the administrative Courts or the General Courts authority, especially in disputes concerning the decisions issued by Chancellors of Private Universities, transaction deeds created by land-deeds officials (\textit{Pejabat Pembuat Akta Tanah: PPAT}); etc. Specifically, in cases of land disputes, the parameters of ownership and certificate validity have not yet been fully followed by \textit{judex factie} against \textit{judex jurists}.\textsuperscript{35} This situation was criticized by Adriaan Bedner as a ‘shopping forums’, constantly attempt the expansion of court jurisdiction after being overturned on appeal or in cassation.\textsuperscript{36}

The principal legal norm is that auction treatises are not a decision of state administration agency/official, but rather a transcript of proceedings on the sales of goods. As there are no elements of ‘beslissing’ or statement of will from the auction office, auctions conducted by auction agencies are held at the request of General Courts; therefore, the actions of the auction agencies are continuations of court decisions and comes under the provision of Art. 2 No. 5/1986 (as last amended by Law No. 49/2009);\textsuperscript{37} Meanwhile, the principal legal norm is that state administration decisions related to land ownership are not included in the state administration judicature’s jurisdiction, but rather in the general courts jurisdiction by involving all relevant parties.\textsuperscript{38} The principal legal norm is that a state administrative decision issued in order to create an agreement or contract, or issued in relation to the implementation of a contract, or in reference to a particular provision within a contract that is the legal basis among two parties, must be considered to be merging (\textit{oplossing}) into the realm of civil law and therefore becomes a state administration decision as stipulated in Art. 2 letter (a) of ACA;\textsuperscript{39} The principal legal norm is that land-deeds officials are state administration officials as they perform governmental matters based on applicable laws (Art. 1 Paragraph 2 of ACA in juncture with Art. 19 Government Regulation No. 110 Year 1961), but transaction deeds issued by land-deeds officials are not state administrative decisions as they are bilateral (contractual) in character rather than unilateral, which is the main character of a state administrative decision.\textsuperscript{40}

The principal legal norm is that an election of a village head is a legal action within the political sphere and depends on the political outlook of the voters and the candidates. The results of a village head election are essentially the results of a general election within a village area; therefore, the decision on the results of a village head election does not come under the definition of a state administrative decision as

\textsuperscript{34}Disputes relating to the result of the election of head of a village (\textit{Pemilihan Kopala Desa}) or election of head of local government (\textit{Pemilihan Kopala Daerah}). See for example the Kadar Slamet. \textit{Perluasan Wewenang Mengadili Peradilan Administrasi Terhadap Tindakan Pemerintahan}. Ringkasan Disertasi Doktor, (Bandung: Program Studi Doktor Ilmu Hukum Program Pasca Sarjana, Universitas Katolik Parahyangan, 2013)


\textsuperscript{36}Adriaan Bedner, ”\textit{Shopping forums: Indonesia’s administrative courts}”, p. 213.


stipulated in Art. 2 letter (g) of ACA;\textsuperscript{41} The principal legal norm is that the legal relations between a private university’s chancellor and the deans/lecturers, as well as other officials within the private university, do not come under the definition of officialdom in public law. Therefore, a private university’s decision is not a state administrative decision that could be disputed in a state Administrative Court. The fact that private universities are under the coordination of the Department of Education’s University Supervisory Body does not mean that private universities are included within the governmental hierarchy and that their employees have public official status. The University’s Supervisory Body role is to supervise private universities so they may come under the coordination of the government.\textsuperscript{42}

In connection with the description of the expansion of the authority of the Administrative Court as stated above, Paulus E. Lotulung, in the initial decade of the establishment of the Administrative Court, revealed the process of \textit{rechtvindings} by the judges of the Administrative Court:

“\ldots development for more than twelve years the operation of the State Administrative Court has broadened the understanding of legal subjects that can be sued in the state Administrative Court, as well as expanding the legal objects that are the subject of a lawsuit in the State Administrative Court, all of which developed through interpretation and discovery law (rechtvinding)…”\textsuperscript{43}

The tradition of English law also developed through case law, i.e., precedent, so at first, the rules of \textit{droit administrative} in France develop in practice—the practice of the case law (\textit{yurisprudensi}) of the court as well as case law or \textit{judge-made law} in the common law tradition. This is inseparable from the view of French legal experts who believe that \textit{administrative droit} cannot be codified. This is in line with A.V. Dicey, who states:

“For \textit{droit administrative} is, like the greater part of English Law, ‘case-law’, or ‘judge-made law’. The precepts are not to be found in any code; they are based upon precedent. French lawyers cling to the belief that \textit{droit administrative} cannot be codified, just as English and American lawyers maintain, for some reason or other which they are never able to make very clear, that English law, and especially the \textit{common law}, does not admit of codification.”\textsuperscript{44}

In line with this statement, L. Neville Brown and John S. Bell also mentioned that the main characteristic that distinguishes administrative law from codified civil law is that the administrative legal framework is developed through \textit{yurisprudensi} (case-law). Furthermore, they argue that “Legislation has a significant role in specific areas, but unlike in civil and \textit{droit penal}, there is no code of general principles and so it has been for the courts to integrate the various elements into a coherent system.”\textsuperscript{45}

Also related to this issue, Prof. Paulus E. Lotulung stated that administrative law generally develops through court rulings (case law) and not only through doctrines or

\textsuperscript{41} SCD No. 482 K/TUN/2003, dated 18-8-2004
\textsuperscript{42} SCD No. 48 PK/TUN/2002, dated 11-6-2004.
written norms, codifications, and so on. Therefore, through his or her decisions, the Administrative Court judge is expected to be able to bring toward the development of the law, especially concerning the relationship between the state or government and the citizens being governed. In such conditions and situations of the legal system, it is increasingly necessary to feel the existence of judicial activism among judges to be able to fill the legal vacuum in reaching justice in society.46

Judicial activism among Administrative Court judges is a necessity among which is also based on the objective conditions, not yet many books that explore in-depth the various actual and contextual practice problems faced by the Administrative Court and their alternative solutions, whereas the theory and practice of administrative law are developing so rapidly that the judges are constantly required to think hard not only to follow the flow of changes that occur but are further expected to also participate in developing new thoughts in the context of developing legal science and the development of administrative law itself in more operational sense.47

Teguh Satya Bhakti’s dissertation research demonstrated that during the period 1992 to 2015, the Supreme court produced only fifty-six ‘yurisprudensi’ (case law). The yurisprudensi divided into two groups namely the procedural law group (6 decisions) and concerning material law (substance) totaling fifty cases.48 To maintain the unity of the application of the law, other than through jurisprudence (precedent), the Supreme Court also regularly publishes its landmark decision in each annual report and also regularly issues a circular (SCR) containing the formulation of the plenary chamber that is intended as a guide in carrying out judicial duties to the court under the Supreme Court. Therefore meant as guidance, the position of SCR, certainly will increasingly have the power of binding to the (internal)—that are imperative-juridical—not just persuasive-moral force for judges and court officers but effects and binds, directly and indirectly, the external parties (court’s users) outside the judges or court officers.49 Lower court judges are therefore usually reluctant to depart from a line of consistent Supreme Court decisions on a particular point of law or interpretation, particularly if the Supreme Court has stated that a particular decision should generally be followed, as it written on SCR.50 However, the influence and the function of SCR is increasingly important in supporting the smooth implementation of judicial duties, especially as it is associated with weak legislative and regulatory support from the government and/or parliament so that the existence of SCR can in some cases fill the limitations of the legislation and the limitations of the jurisprudential decision.51

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47 Ibid.
48 Teguh Satya Bhakti, Pembangunan Hukum Administrasi Negara Melalui Pemberdayaan Yurisprudensi Peradilan Tata Usaha Negara (Bandung: Alumni, 2018), pp. 233
50 Simon Butt & Tim Lindsey, Indonesian Law (Oxford: Oxford University Press, 2018), p. 73
51 According to Jimly Asshiddiqie, case law in a broad sense can be classified into four meanings, namely: (1) permanent case law; (2) impermanent case law; (3) semi-juridical case law; (4) administrative jurisprudence which known as ‘surat edaran’. Jimly Asshiddiqie et al, Putusan Monumental Menjawab Problematika Ketatanegaraan, (Malang: Setara Press & Forum Kajian Yurisprudensi, 2016), pp. 9-10

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B. BASED LEGISLATION POLICY

As Bagir Manan once stated, the scope of the Administrative Court jurisdiction is very much determined by the content of the statutes.\(^{52}\) This expression becomes relevant to the reality on the ground that some types of legal issues which, although by nature, are more suitable or appropriate if examined by the Administrative Court, but the legislators make different choices. This can be seen from the following examples:

First, the Komisi Pengawas Persaingan Usaha (KPPU), Business Competition Supervisory Commission, has the authority to carry out administrative actions in the form of revoking business licenses by taking into account the provisions of criminal law. The inability of the Administrative Court to examine administrative actions issued by KPPU whose position is identical to the administrative tribunals in common law traditions is due to the provisions of Art. 45 and 46 of the Law No. 5/1999 governing objections to administrative actions of the KPPU must be submitted to the ordinary court.\(^{53}\) Nevertheless, the potential point of contact between KPPU and the Administrative Court can still occur in the resolution of tenders or procurement of goods and services. This is thanks to the authority of the KPPU to oversee and complete the process of adjudication to tender disputes, especially if there is a conspiracy among tenders (\textit{vide} Art. 22 of Law No. 5/1999); meanwhile, disputes over the implementation of tenders in the field of administration can to a certain degree be examined and tried at Administrative Court.\(^ {54}\)

Second, first in the Law of Organisasi Kemasyarakatan (Ormas), Mass Organizations, granting or revoking or imposing administrative sanctions on the revocation status of Ormas legal entity status, legislative policies prefer settlement through ordinary court in terminating administrative sanctions in the form of revoking the legal status of an Ormas. In the Amendment to the Law on Civil Society Organizations no longer regulate the legal remedy mechanism to the ordinary court. This is an important breakthrough considering the granting and/or revocation of legal entity licenses is certainly an administrative law issue so that legal issues related to state administrative law are tried by Administrative Court judges. The previous provisions of the Ormas Law regulate the mechanism of dissolution of legal organizations, which began with a written request from the Minister of Justice and Human Rights submitted to the ordinary court through the local Prosecutor’s Office. Unchanged provisions from the previous law in the latest Ormas Law are about ratification as an associate legal entity that remains in the hands of the minister who carries out government affairs in the field of law and human rights.\(^ {55}\) Related to the provisions on revoking the status of legal entities according to amendments to the Ormas Law, this is done after the requirements for the dissolution of Ormas are fulfilled.\(^ {56}\) This deletion is appropriate

\(^{52}\) Bagir Manan, “Masa Depan Peradilan Tata Usaha Negara”, Majalah Hukum Varia Peradilan (No. 281- April 2009), p. 77


\(^{55}\) \textit{Ibid}. Art. 11 paragraph (2)

\(^{56}\) Ex Art. 68 paragraph (2) of the Law. No. 17/2013. This provision was deleted in Law No. 16/2017, Law concerning Establishment of Government Regulation in Lieu of Law No. 2/2017 On Amendment of Law No. 17/2013 On Being Social Organizations Act
considering that if it has been dissolved, why should it be followed the revocation of the status of a legal entity? Therefore, of course, there is no need to distinguish between the reasons that a mass organization is qualified as a legal entity; that is, *mutatis mutandis*, if it no longer qualifies as a legal entity then by itself it can no longer exist as a mass organization, as well as the terms of political parties. It can be categorized as a political party if they have legal entity status.

C. BASED ESTABLISHMENT NEW COURT

The enactment of laws is often accompanied by a payload establishment of new courts, which remove or reduce the authority of another court formation. This condition occurs when the establishment Tax Court, Commercial Court, and Industrial Relations Court so that the jurisdiction of the Administrative Court was reduced after the formation of the new courts. The establishment of the Tax Court removed the authority of the *Majelis Pertimbangan Pajak* (MPP), Tax Examination Assembly; the establishment of the Commercial Court removed the authority of the administrative high court to examine administrative appeals from the decision of the Patent Appeal Commission and the Brand Appeal Commission after the establishment of the Commercial Court; the establishment of the Industrial Relations Court removed the authority of administrative high court to hear administrative appeals over *Panitia Penyelesaian Perselisihan Perburuhan Pusat* (P4P), Central Labor Dispute Settlement Committee, and *Panitia Penyelesaian Perselisihan Perburuhan Daerah* (P4D), Local Labor Dispute Settlement Committee, and decisions.


58 The authority of the Commercial Court adjudicates disputes over Intellectual Property Rights (IPR) based on various laws namely Law No. 31/2000 concerning Industrial Design, Law No. 32/2000 concerning Layout Design of Integrated Circuits, Law No. 14/2001 regarding Patents), Law on Trademarks and Geographical Indications, Law No. 20/2016 former Law No. 15/2001 concerning Trademarks, Law No. 19/2002 concerning Copyright). In addition to adjudicating IPR disputes, the Commercial Court is also authorized to adjudicate bankruptcy disputes. See Indonesia, *Law on Bankruptcy and Suspension of Debt Payment Obligations*, Law No. 37/2004 (SG of 2004 No. 131, Additional SG No. 4443). Law No. 37/2004 replaces Law No. 4/1998 on the Bankruptcy which originally came from *Perppu* No. 1/1998 on the Amendment of the Act. Bankruptcy. The jurisdictions of the Commercial Court also has authority to hear disputes in the process of liquidation and cancellation of all legal actions that result in reduced bank assets or increase in liabilities of the bank, which is done within a period of one (1) year prior to the revocation of the business license, vide Act No. A 24/2004 regarding the Deposit Insurance Agency.

59 Indonesia, *the Law On Settlement of Industrial Disputes*, Act No. 2/2004 (SG of 2004 No. 6, Additional SG No. 4356). Ironically, as stated in the explanation section of Law No. 2/2004 mentioned one of the reasons why labor disputes released from the competence of the Administrative Court are due to the length of the litigation in the Administrative Court: “Law Number 22 of 1957 which has been used as a legal basis for the settlement of industrial relations disputes only regulates the settlement of disputes of rights and conflicts of interests collectively, while the settlement of industrial relations disputes of workers/labor individually has not been accommodated”. Another thing that is very fundamental is the stipulation of the decision of the P4P (Panitia Penyelesaian Perselisihan Perburuhan Pusat), Central Labor Dispute Settlement Committee, as the object of the State Administration dispute, as stipulated in ACA. With this provision, the path that must be taken both by the workers/laborers and by employers to seek justice becomes longer.

60 In the explanation of Art. 48 of ACA it is mentioned that the administrative appeal example is the decision of the Tax Advisory Council based on *Staatsblad* 1912 (Regeling van het beroep in belasting zaken) jo. Law No. 5/1959 as well as the decision of the *Panitia Penyelesaian Perselisihan Perburuhan Pusat*, Labor Dispute Settlement Committee, under the Law Center 22/1957 on the Settlement of Labor Disputes and the Law 12/1964 on the Termination of Employment in Private Enterprises. As well as in the explanation of the former Art. 53 of ACA, an example of testing the legal aspects of the decision by the administrative Judiciary includes, among others, if the *Panitia Penyelesaian Perselisihan Perburuhan Daerah*, Regional
V. JURISDICTIONAL EXPANSION

A. GAA Enactment

The enactment of GAA has brought about a sea change in the meaning of administrative decision as to the *objectum litis* of administrative dispute. Dani Elfah states that the concept of the decision in Art. 1 No. 7 GAA has overturned the legal concept of the administrative decision as referred to in Art. 1 No. 9 ACA.\(^61\) Now decisions as to the *objectum litis* in administrative disputes are not only concrete, individual, but multi-character and abstract-individual.\(^62\)

With the meaning as referred to in Art. 1 No. 7 and Art. 87 of GAA, the Administrative Court jurisdiction system, which was originally a super-special Administrative Court, has been shifted to an Administrative Court system that can examine and test all actions of Government Agencies and/or Officials including concrete actions/individual abstracts, and general-concrete.\(^63\) The provisions of Art. 87 of GAA, stating that the decision in the ACA must be interpreted as follows: (a) A written stipulation that includes factual (material) action; (b) The decision of the Board and/or Administrative Officer in the executive, legislative, and judicial realms and other state apparatus (*Penyelenggara Negara*); (c) Based on statutory provisions or *Asas-Asas Umum Pemerintahan yang Baik (AUPB):* General Principle of Good Administration; (d) Be final in the broad sense; (e) Decisions with the potential to cause legal consequences; and/or (f) Decisions that apply to the public (*warga masyarakat*)

Along with the paradigm shift in proceedings in the Administrative Court as confirmed by the Supreme Court policy after the enactment of GAA, the jurisdiction of Administrative Court is: (a) Authorized to hear cases in the form of lawsuits (gugatan) and requests/ex parte proceedings (permohonan); (b) Authorities adjudicate acts that violate the law by the government, i.e., acts that break the law carried out by the holders of governmental authority (Agency and/or Government Official) commonly referred to as *onrechtmatige overheidsdaad* (OOD) or administrative torts; (c) Decision that has been examined and terminated through administrative appeal is the authority of Administrative Court in first instances.\(^64\)

But then, the Supreme Court annulled some content of the previous *surat edaran* so that administrative Court jurisdiction is to adjudicate administrative cases if: (a) there is a lack of basic regulations specifically governing administrative efforts, so the administrative efforts are based on the provisions of article 75 through Article 78 of GAA and SR No. 6/2018; (b) if there is only administrative effort, the objection is based Labor Dispute Settlement Committee, is conducted in a biased or dishonest manner; then a decision like this is included as an arbitrary decision. Based on the provisions of Art. 51 paragraph (3), administrative disputes that are examined using the mechanism of Art. 48 will be tried by administrative high court as first instance.

\(^{61}\) Dani Elfah, "*Keputusan dan Tindakan Administrasi Pemerintahan*", Unpublished Paper, p. 54

\(^{62}\) *Ibid*, p. 56

\(^{63}\) *Ibid*

\(^{64}\) SCC No. 4/2016 About Enabling Formulation Room Plenary Meeting Results 2016 As the Supreme Court Task Guidelines For Court. After the enactment of GAA and SCR No. 6/2018, Administrative High Court remains authorized as court of first instance in the case of: (a) the basic rules governing the administrative effort in the form of administrative appeals (eg Government Regulation No. 53/2010); (b) the ground rules have been set explicitly administrative High Court authority to hear (for instance Art. 154 Perppu No. 1/2014 in conjunction with the Act. No. 1/2015 about the elections and Art. 60 Act of Non Tax-Revenenues, Law No. 9/2018; See Rumusan Hasil Diklat Sengketa Tata Usaha Negara dan Sengketa Aparatur Sipil Negara Pasca Berlakunya Perma Nomor 6 Tahun 2018, Dempasar, 8 s/d 12 Juli 2019.
on the basic regulations (SCC No. 2 of 1991 concerning Guidelines for Implementing Some Provisions in GAA).\textsuperscript{65}

B. EXPANSION BY THE SECTORAL LAWS

Besides the transformation and paradigm shift of procedural law compelled by the enactment of GAA, as stated earlier, various sectoral laws with different scale have been influenced the organization and jurisdiction Administrative Court. Those laws are:

1. \textit{Undang-Undang Keterbukaan Informasi Publik}, Public Information Openness Act (Law No. 14/2008);\textsuperscript{66}
2. \textit{Undang-Undang Pelayanan Publik}, Public Service Act (Law No. 25/2009);\textsuperscript{67}
3. \textit{Undang-Undang Pengelolaan & Perlindungan Lingkungan Hidup}, Environmental Management & Protection Act (Law No. 32/2009);\textsuperscript{68}
4. \textit{Undang-Undang Pengadaan Tanah Untuk Kepentingan Umum}, Land Procurement for Public Interest Act (Law No. 2/2012);\textsuperscript{69}
5. \textit{Undang-Undang Pemilu Kepala Daerah}, Regional Head Election Act (Law No. 10/2016);\textsuperscript{70}
6. \textit{Undang-Undang Pemilu}, General Elections Act (Law No. 7/2017, previously Law No. 8/2012 Regarding Election of Members of Local Parliaments and/or the Senators (Dewan Perwakilan Rakyat: DPR, Dewan Perwakilan Daerah: DPD & Dewan Perwakilan Rakyat Daerah: DPRD));\textsuperscript{71}
7. \textit{Undang-Undang Konservasi Tanah & Air}, Land & Water Conservation Act (Law No. 37/2014);\textsuperscript{72}
8. \textit{Undang-Undang Tentang Merek dan Indikasi Geografis}, Trademarks and Geographical Indications Act (Law No. 20 /2016);\textsuperscript{73}
9. \textit{Undang-Undang Tentang Penerimaan Negara Bukan Pajak (PNBP)}, Non-Tax State Revenue Act (Law No. 9/2018).\textsuperscript{74}

On the contrary, despite nine laws mentioned above that are assumed to expand or affirm the Administrative Court jurisdiction, there are still at least two other draft laws that will revoke the Administrative Court jurisdiction: 1) Land Draft Law; 2) State Receivables and Regional Receivables Draft law. Art. 81 of the Land Draft Law as

\textsuperscript{65} SCC No. 2/2019 About Enabling Formulation Room Plenary Meeting Results 2019 As the Supreme Court Task Guidelines for Court.

\textsuperscript{66} Indonesia, \textit{Freedom of Information Act}, Law No. 14/2008 (SG of 2008 No. 61, Additional SG No. 4846)

\textsuperscript{67} \textit{Public Services Act}, Law No. 25/2008 (SG of 2009 No. 112, Additional SG No. 5038).

\textsuperscript{68} \textit{Environmental Protection and Management Act}, Law No. 32/2009 (SG No. 140 of 2009, Additional SG No. 5059).

\textsuperscript{69} \textit{Land Procurement for Development in the Public Interest Act}, Law No. 2/2012 (SG No. 22 of 2012, Additional SG No. 5230)

\textsuperscript{70} \textit{Second Amendment to Law No. 1 of 2015 concerning the Establishment of Government Regulations in lieu of Law No. 1 of 2014 concerning the Election of Governors, Regents and Mayors Becoming Laws}, Law No. 10/2016 (SG No. 130 of 2016, Additional SG No. 5898)

\textsuperscript{71} \textit{General Elections Act}, Law No. 7/2017 (SG of 2017 No. 182, Additional SG No. 6109)

\textsuperscript{72} \textit{Land and Water Conservation Act}, Law No. 37/2014 (SG of 2014 No. 299, Additional SG No. 5608)

\textsuperscript{73} \textit{Trademarks and Geographical Indications Act}, Law No. 20/2016 (SG Year 2016 No. 252, Additional SG No. 5953).

\textsuperscript{74} \textit{Non-Tax State Revenue Act}, Law No. 9/2018 (SG of 2018 No. 147, Additional SG No. 6245).
of 9 September 2019 stipulates that: (1) Land Disputes are resolved through the Land Court; (2) The Land Court as referred to in paragraph (1) settles the Land Case, which includes civil, state administrative, and Land criminal matters; (3) The Land Court shall be established by the Supreme Court no later than five years from the entry into force of this Law. The Land Court will be apart of General Court.75

At this point, the consistency of national legal politics in strengthening the administrative justice has not yet been fully realized. Although a new chapter in the Indonesian legal system was opened after the reformation in 1998 and followed by the amendments to the 1945 Constitution in 1999 to 2002, there is still a disharmony of legal political policy in the area of regulation of the existence and function of absolute jurisdiction of Administrative Courts. This is due to the absence of a grand design from policymakers, especially in the field of legislation, to build an effective, authoritative and strong Administrative Justice system under the ideals of the Indonesian law state. I emphasize the influence of legal politics (politik hukum) here because the law is political subordinate. As Daniel S. Lev once said:

“For the study of legal system pathology, the Indonesian case is particularly apt, but to say that a legal system has broken down obscures the problem, for it implies that legal systems somehow stand alone. They do not. Nor can they be repaired or reconstructed or replaced in isolation. The institutions of law, like law itself, are fundamentally derivative, founded on political power conditioned by social and economic influence.”76

Meanwhile, the absence of responsive legal politics to support the optimization of administrative law enforcement, the Supreme Court and Administrative Court must be innovative and work hard to fill the legal vacuum and ensure the smooth administration of justice. In others words, the Supreme Court built a bridge between the ACA and the GGA by SCR. Furthermore, the Supreme Court, on its initiative, has issued several SCR. In the context of litigation in the Administrative Court, several related SCR is as follows:


Whereas Law Number 14/2008 concerning the openness of public information does not stipulate procedures for resolving information disputes in court, the Supreme Court has deemed it necessary to regulate the procedure for resolving information disputes in court through the Supreme Court regulations. By this regulation, the Supreme Court realizes the openness of information is a means of optimizing public participation in the administration of the state and other public bodies and everything

75 See Enrico Simanjuntak, Rekonseptualisasi Pengadilan Pertanahan, Jurnal Hukum dan Peradilan, Puslitbang Hukum dan Peradilan, Badan Diklat Litbang Kumdil, Mahkamah Agung RI, Volume 3 Nomor 3 Nopember 2014.
76 Daniel S. Lev, “The state and law reform in Indonesia”, p. 237. Regarding what Daniel S. Lev said, John K.M. Onnesorge—in the context the marginal role of administrative law in Northeast Asia—said: “Administrative law is so closely tied to politics and political power that one may be dealing with complicated feed-back loop, in which legal change affects the political power relationships that allowed the reforms in the first place, but which also hold the power to shape the continuing path of reforms...”. He concluded in Northeast Asia for many years economic interest did not seem concerned will expanding administrative law to provide ththem with legally-based leverage agaist the state. John K.M. Onnesorge, Western Administrative Law in Northeast Asia: A Comparative's History, thesis SJD degree (Cambridge: Harvard University Press, 2002), p. 303
that results in the public interest.\footnote{See further SCR No. 2/2011 Regarding Procedures for Settling Disputes of Information Disclosure in Courts. For the note, the Openess Public Information Act, Law No. 14/2008 reflects the influence of American model’s Administrative Law as David K. Linnan wrote:}

Regarding the flow of Public Information Disputes, the process of public information disputes can be divided into three stages or stages of dispute resolution. The first stage is the stage of administrative effort (internal settlement). The second stage is the non-litigation mediation/adjudication stage (settlement through the Information Commission) and the third stage is the litigation stage (Settlement through the judiciary). \footnote{Compare to Abdulhamid Dipopramono. Keterbukaan dan Sengketa Informasi Publik, Panduan Lengkap Memahami Open Government dan Keterbukaan Informasi Publik serta Praktik Sengketa Informasi Publik, (Jakarta: Renebook, 2017), pp. 23-28}

Public information dispute uses the term \textit{Pemohon Keberatan} (literally 'objection applicant') to specify the legal subject who filed an objection/claim for public information dispute. The applicant is the legal subject who previously brought the objection, both by adjudication and mediation before the \textit{Komisi Informasi} (Information Commission) who did not receive the decision of the Information Commission. In short, both the \textit{Pemohon Informasi} (Respondent’s information) and the \textit{Termohon Informasi} (defendant), if they are not satisfied with the \textit{Komisi Informasi} decision, can submit legal remedies to the Administrative Court. This is a variation of the standard concept of the administrative dispute, which is a dispute between a person and a legal entity with a administrative official/body in which the defendant is a state or public authority/agency, not vice versa.

2. \textit{SCR Regarding Procedure Guidelines for Disputes on Designation of Development Locations for Public Interest in the Administrative Court.}

In the provision of Art. Of Law No. 2/2012 concerning Procurement of Land for Development in the Public Interest, the Administrative Court has the authority to accept, examine, and decide on a lawsuit over the Determination of a Construction Location for Public Interest. To exercise the authority as referred to in letter a, the ACA, have not yet arranged the Guidelines for Procedure in Dispute Determination of Land Acquisition Locations for Development for Public Interest before Administrative Courts. Based on the considerations referred to in paragraphs a and b, it is necessary to stipulate a SCR concerning Procedure Guidelines in Dispute over the Establishment of Development Sites for Public Interest before the Administrative Court to fill the legal vacuume.\footnote{Indonesia, SCR No. 2/2016 Regarding Procedure Guidelines for Disputes on Designation of Development Locations for Public Interest in the Administrative Court, (SG of 2016 No. 176).} In land acquisition disputes for public purposes, the plaintiff entitled to be an individual, legal entity, social body, religious body, or government
agency that owns or controls the land acquisition object under the provisions of the legislation, which includes: (a) Holders of land rights; (b) Management holders; (c) Nadzir for waqf land; (d) The owner of the former customary land; (e) Indigenous and tribal peoples (masyarakat hukum adat); (f) Parties who control state land in good faith; (g) Basic holder of control over land; and/or (h) Owners of buildings, plants or other objects related to the land. Meanwhile, the defendant is the Governor who issues the location determination or the Regent/Mayor who receives a delegation from the Governor to issue the location determination.

3. **SCR No. 4/2015 on Guidelines on the Proceedings In Testing Abuse of Power.**

In the provisions of Art. 21 of GAA, the Administrative Court has the authority to receive, examine, and decide whether or not there is an element of abuse of power (détournement de pouvoir) carried out by Government Agencies and/or Officials. In order to exercise authority as referred to in Art. 21 of GAA, the Supreme Court released an SCR on Procedure Guidelines in the Assessment of the Abuse of Power. The term “abuse of power” in GAA, Art. 21, is *stricto sensu* in the matters related to the state finance loss. Supporting by the Mahkamah Konstitusi (MK), Constitutional Court, decision No. 25/PUU-XIV/2016 now the border between the administrative and criminal liability is a clear-cut conception: *premum remedium* and *ultimum remedium*. MK decision implicitly opened a more open space for the Administrative Court to play a greater role in preventing corruption (non-penal approach). However, if we compare it to the French pattern judicial review, illegality in the purpose of the decision (détournement de pouvoir) is one of the element among the grounds of review. *Détournement de pouvoir* on this context: the decision’s aim was not a public interest one or, while being a public interest aim, it was not the one which, according to statutes, the decision should have been taken.

4. **SCR No. 5/2017 Regarding Election Process Dispute Resolution Procedures in the Administrative Court.**

This regulation is a response by the Supreme Court to potential administrative disputes occurring during the general elections among political parties running in the elections or candidate members of the DPR, DPD, Provincial DPRD, District/City DPRD, or presidential and vice-presidential candidates who do not pass verification by the KPU, Provincial KPU, District/City KPU as a result of a decision issued by any of the latter institutions. The Administrative Courts are conferred with judicial authority under The Law 7/2017 to receive, hear, decide upon and resolve electoral disputes. To ensure the proper exercise of such authority, the law stipulates that such disputes are to be tried by special electoral judges sitting on a special panel.

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80 SCR No. 2/2016. Art. 1 point (5)
81 SCR No. 2/2016. Art. 1 point (4)
84 --------, SCR No. 5/2017 Regarding Election Process Dispute Resolution Procedures in the Administrative Court, (SG of 2017 No. 1442)
5. **The SCR No. 8/2017 Regarding Guidance for Obtaining a Verdict on the Receipt of an Application to Obtain a Decree and/or Act of a Government Agency or Officer.**

The SCR No. 8/2017 was issued to address the lack of procedural law regulating the authority of the Administrative Courts in hearing petitions to obtain a decision and/or action by a government institution or official as conferred under ACA. The Supreme Court determined that two years after the enactment of SCR No. 5/2015, it had failed to provide clear instructions for judges in deciding on such cases. The authority of the judiciary is to resolve legal disputes (court of law). Compared to other countries, there is no equivalent of an Administrative Court that hears a voluntary case (non-contentious). The handling of positive fictitious cases since 2015 in Administrative Court proves that the nature of positive fictitious cases in their operation were dispute cases, not petition (ex parte proceeding) cases, so in the future, it would be better examined with the model of dispute cases, as in the examination of negative fictional cases first.

6. **SCR No. 6/2018 Regarding Guidelines for Resolving Government Administrative Disputes After Taking Administrative Efforts**

As mentioned before, the *ratio legis* behind the SCR No. 6/2018 is because the provisions regarding the resolution of administrative disputes in the Court after taking administrative effort/review (upaya administratif) are not regulated in detail, so to fill legal shortcomings or vacancies related to the completion of administrative review, the Supreme Court has the authority to make regulations for this purpose. In other words, one can say that administrative effort is a compulsory mechanism prior to litigation before the Administrative Court. The administrative effort can usually take two forms: an appeal formed before the authority that adopted the act (keberatan) or before his or her immediate hierarchical superior (banding administratif—appeal to a higher administratif body). The *keberatan* refers to *recours gracieux* (internal appeal) and *banding administratif* refers to *recours hiérarchique* in French administrative law. Futhermore, this SCR received a positive appreciation from Ridwan, a notable administrative law scholar, by saying that besides the SCR is in line with administrative doctrine and accordance with GAA. On the other hand, SCR No. 6/2018 contains legal politics that are directed (bedoelen) realization of administrative effort on their respective government agencies, as law enforcement media that is part of or one of the tasks of government.

7. **SCR No. 2/2019 Regarding Guidelines for Dispute Resolution of Government Actions and Authority to Prosecute Unlawful Acts by Government Agencies and/or Officials**

The ACA stipulates that citizens can file complaints against decisions and/or

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85 Ibid., SCR No. 8/2017 Regarding Guidance for Obtaining a Verdict on the Receipt of an Application to Obtain a Decree and/or Act of a Government Agency or Officer; (SG of 2017 No. 1751).
actions of government bodies and/or administrative officials. That acts against the law by a Government Agency and/or Official (Onrechtmatige Overheidsdaad) are Government Acts so that they become the authority of the Administrative Court based on ACA. The transitional provisions of ACA do not mention the authority to adjudicate the Onrechtmatige Overheidsdaad case, and the legal provisions for dispute resolution of Government Actions have also not been regulated, so it is necessary to have guidelines for disputing resolution of government actions and the authority to adjudicate cases of illegal actions by the Agency and/or Officer Government. Based on the considerations as referred to in letter a, letter b, and letter c, it is necessary to establish a SCR concerning Guidelines for Dispute Resolution of Government Actions and Authority to Judge Unlawful Acts by Government Bodies and/or Officials (Onrechtmatige Overheidsdaad). 89

This assumes that the principles underlying the law in Indonesia are the same as in other civil law traditions, a carry-over from the colonial period. 90 The Indonesian Administrative Courts are modeled on the Dutch system of judicial review and have also been been influenced by French law. However, now the Indonesian Administrative Courts have broader jurisdiction through the judicial review. By the enactment of SCR No. 2/2019, Indonesian Administrative Court has been taking over the role of civil court to adjudicate administrative dispute between citizen and government, which is based on Civil Code (Burgerlijk Wetboek: BW) (respectively Art 1365 BW; Art 6:162 and Art. 6. 203 New BW). Meanwhile, the civil courts in the Netherlands still play a supplementary role in the Administrative Courts, offering legal protection against decisions or actions of governmental bodies. The civil judge functions as a “residual judge”. 91 In other words, the jurisdiction of the Indonesian Administrative Court is now closer to the German Administrative Court. Linked to this understanding, one might say that the Indonesian Administrative Court is strengthening the duality of jurisdiction.

But not all the sectoral laws already followed by enactment of SCR. There are still legal vacuums in certain areas. For example, although there are several specificities in the case of deleting registered trademarks at the initiative of the Minister, there is as yet no Supreme Court regulation to regulate further handling of cases that appear to be the exclusive authority of the Jakarta Administrative Court. Until now there have been no cases of this type registered. More or less the same situation also occurs in administrative cases pertaining to the determination of PNBP compulsory payments as referred to in Law No. 9/2018. The case of objection to the determination of PNBP is under the authority of the Administrative High Court as the court of first instance.

Zooming out, we can make a simple classification of special/sectoral Administrative Court procedural law. It can be grouped into two types: (1) Special Administrative Court procedural law with conventional procedural law applicable in: (a) Public Service administrative disputes; (b) Environmental administrative disputes; (c) Land and Water Conservation administrative disputes; and (2) Administrative court procedure law specifically with Sectoral Procedure Law that applies in: (a) Disclosure of Public Information disclosure; (b) Election Administrative disputes; (c) Dispute Determination of Location for Development in the Public Interest; (d) Administrative

89 SCR No. 2/2019.
90 Adriaan Willem Bedner, Administrative Courts In Indonesia..., p. 4
disputes over regional head elections; (e) disputes over administrative mark deletion at the initiative of the Minister; (f) Administrative disputes concerning non-tax state revenue (Penerimaan Negara Bukan Pajak: PNBP).

A decade ago the special administrative procedure law was only the tax administration law, so the tax court was classified as a special court within the Administrative Court. But now the rapid development of administrative law encourages the birth of various types of special administrative law and/or special Administrative Court procedural law. The diversification of procedural law indicates the development of sectoral administrative law, so that today it can be said that the Administrative Court procedural law is divided into two procedural law groups, the general procedural law sourced from the ACA, and GAA, including the special Administrative Court procedural law as a lex specialis of the Administrative Court law general (lex generalis). The mutatis mutandis procedural law diversification creates a demarcation line between disputes that fall into the category of public administrative disputes and special administrative disputes. In this kind of classification, it can be positioned that general administrative disputes are administrative disputes where the source of the legal event is derived either partially or wholly from the Law of Administrative Court. Classification of the types of cases as referred to above (general administrative cases and special administrative cases) is a new phenomenon from the viewpoint of the study of administrative law as a land for administrative law practices, particularly from the perspective of knowledge studies in the justice sector, from procedural aspects of litigation law in Administrative Courts. In the point of view (science) of administrative law itself, the classification (verdeling) between general administrative law (algemeen deel) and special administrative law (bijzonder deel) is commonly used by administrative law researchers.

From the perspective of judicial expansion authority, the presence of several SR is still believed to disturb or complicate the implementation of Administrative Court expansion of authority. Since MK (Mahkamah Konstitusi; Constitutional Court), decision No. 25/PUU-XIV/2016 confirmed the administrative and criminal liability boundary, as referred to in GAA and other legislation policies. MK’s decision implicitly opened a more open space for the Administrative Court to play a greater role in preventing corruption (non-penal approach).

Additionally, SCR No. 8/2018 can be said to limit the direct access of justice seekers to court. This relates to the principle in the SCR, which determines that the

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92 Various types of proceedings previously known in ACA are: Acara Biasa (regular proceedings), Acara Cepat (accelerated proceedings) and Acara Singkat (simplified proceedings) but the other types of proceedings such as (1) Acara Sederhana (simple proceedings) vide SCR No. 2/2011; (2) Proceeding for Testing Abuse of Power (SCR No. 4/2015); (3) Proceedings of Fictitious Decision (SCR No. 8/2017); (4) Proceedings of Administrative Dispute concerning General Election (SCR No. 5/2017); (5) Proceedings of administrative Dispute Concerning Head of Local Government Election; (6) Proceedings of administrative Dispute Determination of Location for Development Interests (SCR No. 2/2016); (7) Proceedings of Administrative Torts (conrechtmatige overheidsdaad) (SCR No. 2/2019); (8) Proceedings of administrative dispute about deletion of Trademarks on the initiative of the Minister; (9) Proceedings of administrative dispute concerning non-tax state revenue compulsory payment.

93 One of the most representative, up-to-date papers dividing the scope of general administrative law and special administrative law was made by Ridwan HR, Hukum Administrasi Negara, (Jakarta, Rajawali Press, 2011). Likewise, SF Marbun shares common administrative law sources and specialized administrative law sources. SF Marbun, Hukum Administrasi Negara I (Yogyakarta: FH UII Press, 2012), p. 34-36. See also Harsanto Nursadi (ed), Hukum Administrasi Sektoral I, Edisi Revisi (Depok: Center for Law and Good Governance Studies (CLGS) and Badan Penerbit Fakultas Hukum Universitas Indonesia, 2018)
Administrative Court has the authority to adjudicate administrative disputes as long as administrative efforts have been made first. In the opinion of the Author, not all administrative disputes are suitable for administrative efforts before filing a lawsuit to the Administrative Court. In certain circumstances, there is an einmalige nature of the decision where the decisionability of the decision is shorter than the duration of filing an objection, as stipulated in GAA. For example, say a decision must be made as to whether a foreign national should be deported in fewer than 7 days. If the aggrieved party submits an objection, it will take a maximum of 10 days, meaning that the validity period of the decision being the object of the objection is shorter than the period of filing an objection or administrative effort. Therefore, further regulation is needed concerning the exclusion of administrative effort objects to account for the characteristics of certain types of decisions that have a limited, narrow, and temporary (ad hoc) validity period.

Apart from the efforts and good intentions of the Supreme Court, which has taken the initiative to fill the legal vacuum and in the framework of a smooth judicial process, so that it proactively strives for the birth of SCR’s (but ideally in the future it is expected that in drafting a SCR), the Supreme Court will begin by drafting an academic text (naskah akademis). Besides the fact that the stakeholders involved can be widely involved, the presence of the academic paper will have two interests, both internal and external. For the Administrative Court, the academic paper can be used as a guide to carry out its duties and functions and develop the institution according to the principles of good judicial governance. For the community, this academic paper can be used as information about the policy direction and development of the Administrative Court and can be used as a measurement tool to assess and evaluate the performance of the Administrative Court in the future.

C. EFFECT OF CONSTITUTIONAL COURT DECISIONS.

Since its establishment in 2003, the role of the Mahkamah Konstitusi (MK), Constitutional Court, have undoubtedly colored the scope of the authority of the Administrative Court, both directly and indirectly. This can be seen from the following Constitutional Court decisions:

1) MK decision No. 31/PUU-XI/2013.

Based on this decision, Dewan Kehormatan Penyelenggara Pemilu (DKPP), the Election Organizer Honorary Board can be placed as a legal subject before Administrative Court. The Constitutional Court argued that the final and binding decision of the DKPP cannot be compared to the final and binding decision of the judiciary body. The final and binding nature of the DKPP decision must be interpreted as final and binding by the President, Komisi Penyelenggara Pemilu (KPU), National Election Body, and Badan Pengawas Pemilu (Bawaslu), Election Supervisory Body, in implementing the DKPP’s decision. The decision of the President, KPU, and Bawaslu is an administrative decision that is concrete, individual, and final, and can be the object of a lawsuit before the Administrative Court. Whether the Administrative Court will examine and reassess the decisions of the DKPP, which are the bases of the

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94 On June 11, 2015, DKPP sent the letter No. 002/DKPP/VI/2015 addressed to the Chairpersons of administrative high courts and administrative courts throughout Indonesia. That Letter was the unbiased delivery of Circular No. 001/DKPP/VI/2015 Regarding the Follow-up to the Decision DKPP. Basically, this circular letter confirms the final nature and is binding on the decision of the DKPP so that it can be carried out effectively by the election organizer and is intended to realize legal certainty.
decision of the President, KPU, Provincial KPU and Bawaslu, is the authority of the Administrative Court.

2) MK decision No. 77/PUU-IX/2011;

Based on this MK decision, the (local) state-owned limited bank (*Bank Badan Milik Usaha Negara/Daerah*) receivables are not the State’s debt, and therefore the settlement is not to the *Panitia Urusan Piutang Negara* (PUPN), State Receivables Affairs Committee. In other words, the scope of the definition of credit or debt to the state now only covers the amount of money that must be paid to the State, not including the receivables of entities that are either directly or indirectly controlled by the State based on a regulation, agreement or any cause. Because the collection of state-owned enterprises receivables or business entities that are directly or indirectly controlled by the state is no longer the authority of the *PUPN*, if there are legal issues in the process of billing and handling of state-owned enterprises receivables or other entities whose assets are directly or indirectly controlled by the state must be resolved by civil law, no longer a part of the administrative dispute, the administrative court has no more jurisdiction over this legal issue.

3) MK decision No. 25/PUU-XIV/2016;

This MK decision confirms the administrative and criminal liability limits, as referred to in GAA and other legislation policies. The MK decision implicitly opened a more open space for the Administrative Court to play a greater role in preventing corruption (non-penal approach). This MK decision articulated the legal policy direction that puts the administrative law approach as a means of as *primum remedium* instrument, and penal law as an *ultimum remedium* instrument to eradicate corruption by abuse of power. Therefore, SCR No. 4/2015 Concerning the Guidelines for Procedure in Testing Abuse of Power needs to be reviewed to be revised considering that the SCR is still oriented toward criminal settlement as *primum remedium* in legal issues such as this because in Art. 2, paragraph (1) SCR No. 4/2015 Concerning the Guidelines for Procedure in Testing Abuse of Power it is stated: “The court has the authority to accept, examine and decide upon the request for evaluation of whether or not there is abuse of power in the Decisions and/or Actions of Government Officials before criminal proceedings”.

### VI. THE IMPORTANCE OF LEGAL HARMONIZATION.

Various opinions, and studies recommend the need for revision of the ACA and GAA. For example, Ayu Putrianti confirmed the necessity of synchronization between ACA and GAA. She argued there are some articles need clear regulation to implement because they otherwise cause a lack of law and hamper law enforcement and good governance. Despite the fact that the Supreme Court has published regulations for minimizing the lack of law, in the future, it should support these with commensurate Acts.95 Stewart Fenwick proposed the importance of ACA revision: “There are significant differences between the conditions that brought about Indonesia’s system of administrative justice in the 1980s, and the newer judicial review process 20 years later”.96 The need for harmonization (synchronization) of the law, as stated above

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95 Ayu Putriyanti, “Synchronization Between Act of Governance Administration and Act of Administrative Court to Develop Good Governance”, Advances in Social Science, Education and Humanities Research, volume 84, International Conference on Ethics in Governance (ICONEG 2016), p. 87

96 Stewart Fenwick, dalam Tom Ginsburg and Albert H.Y. Chen, Administrative Law and Governance In Asia, Comparative perspectives (New York: Routledge law in Asia Series, 2009), p. 159
is associated with the rapid development of technology in the modern era which required more effective and efficient case and court administration services.97

After the ratification of GAA, the need for improvement or revision of the ACA is increasingly unstoppable and the urgency of its changes is increasingly being realized.98 But unfortunately, the urgency of changing the ACA up to now has not been accommodated in the future legislation policy design. This can be seen from the 237 bills in the 2020-2025 national legislation program (Program Legislati Nasional: Prolegnas), the ACA draft revision has not yet emerged as a bill.99 Even though the need for revision of ACA and GAA has not been included in the 2020-2025 National Legislation Program, the entry point for changes to the two laws can still be pursued as a Priority Bill outside the Prolegnas list, namely through the relevant Institution or Ministry to submit an application license of the initiative to the President (permohonan izin prakarsa kepada Presiden).

Seeing the urgency and relevance of synchronizing the ACA with GAA, as well as other relevant laws and regulations, the revision of the ACA and GAA is a necessity that cannot be delayed any longer.100 On this basis, the Supreme Court, at the initiative of the leadership of the State Administrative Chamber and facilitated by the Directorate General of the Military Courts and Administrative Court (Direktorat Jenderal Badan Peradilan Militer dan Peradilan Tata Usaha Negara: Ditjenbadilmiltun), designed the initial synchronization of the GAA with changes to the ACA. The preparation of the draft took place almost simultaneously with the deliberations over GAA in Parliament between February and October 2014. The draft that has been produced is expected to be a reference material for the discussion of the ACA Bill in the Parliament. It is also hoped that the attention and analysis of all relevant stakeholders will provide positive input and constructive criticism of the SC version of the ACA Draft Law, so that the contents are more comprehensive and able to accommodate the demands for rapidly changing legal challenges.

The synergy of the Administrative Court with academics is an important element that determines the progress of the Administrative Court. The intensity of Administrative Court cooperation with the scholarly community needs to be improved so that a more constructive and concrete symbiotic relationship of mutualism can be built and better guard the establishment of administrative justice in the Indonesia legal development. The Administrative court can model the same cooperation such as the Constitutional Court with the Association of Lecturers on Constitutional Law and Administrative Law in publishing procedural law books for the Constitutional Court, and other activities. Additionally, in conjunction with other civil society circles, especially the Association of Administrative Courts on the international scene, the Administrative Court also needs to open itself more broadly so that positive cooperation is developed for the advancement of administrative law. The existence of the Administrative court certainly does not belong exclusively to the apparatus of the Administrative Court, but the Administrative Court must be responsive, proactive and consistent in promoting ideas of administrative justice and the relevance of administrative law in the life process of the state, government and society that

97 In addition, Article 2 (4) of Law No. 48/2009 on Judicial Powers requires the justice system to be simple, quick and low cost.
100 Moreover, at the time of this writing, some of the ACA material, especially regarding licensing, will be changed in the Omnibus Law Bill.
continues to move dynamically and complexly.

The importance of amending the ACA, in addition to harmonizing with GAA, is also high because, in the practice of the Administrative Court, the Electronic Judicial Procedure law (E-Court/E-Litigation) has been adopted as stipulated in SCR No. 1/2019, which radically changed the legal system in court practice from conventional to the digital era. As Richard Suskind wondered: “Is court a service or a place? To resolve disputes, do parties and their advisers need to congregate together in one physical space, to present arguments to a judge? Why not have virtual courts or some kind of online courts?” Suskind, a technology law expert, basically tries to predict that appearance in physical courtrooms for lawyers will be increasingly rare in the future. This idea is approaching realization, and it feels faster in the Indonesian justice system.\textsuperscript{101} For this reason, the Supreme Court saw a need to reform the administrative and justice system to overcome the existing obstacles and challenges of administering the justice system. To achieve this goal, the Supreme Court launched an e-Court application in 2018 and is currently developing an e-Litigation application. Through SCR No. 1/2019 on The Administration of Court Cases and Proceedings by Electronic Means and its implementing regulation, Supreme Court Decree Number 129/KMA/SK/VIII/2019 on Technical Guidelines for the Administration of Court Cases and Proceedings by Electronic Means, the Supreme Court revoked PERMA 3/2018. Kepma 129/2019 further emphasized the use of the e-Court application (Aplikasi e-Court).\textsuperscript{102} Since the Supreme Court is aiming to have e-Litigation operating in all courts of the first instance in Indonesia by early 2020, all the Administrative Courts are now using the e-Court application to serve the user’s court. One of the challenges to the development of e-Litigation is that the Supreme Court and the parties involved must still prepare the facilities and infrastructure as well as reliable human resources needed to operate the system optimally. In connection with this breakthrough, it can be said that the Administrative Court has tried to actualize the great justice mission as stated in Art. 2 (4) of Law Number 48/2009 on Judicial Powers, which requires the justice system to be simple, quick, and low-cost.

VII. CONCLUSIONS

The jurisdiction of the Administrative Court can be explained from various dimensions mentioned above have one common thread that ties initially based on the ACA and reinforced by various case law. From all of the above, it is clear that over the past decade, administrative justice has changed and its development continues in constant flux. Judicial decisions during the AGA era provide ample evidence that judges from the first instance up through the Mahkamah Agung (Supreme Court) not only managed litigation but, as best they could in difficult circumstances, began to adapt old substantive law to new conditions. The Administrative Court institution faces a fundamental challenge to be the principal institution upholding administrative justice, to be the leader in public administration norms, namely the inconsistency of national legal policy to provide maximum support for the development of Administrative


\textsuperscript{102} See further SCR No. 1/2019 Regarding The Administration of Court Cases and Proceedings by Electronic Means and its implementing regulation (SG of 2019 No. 894). It can be briefly explained the e-Court application can process the submission of lawsuits (e-filing), payment of court fees (e-payment) and summonses (e-summons) electronically. e-Court consists of an electronic court administration process which includes the submission of: (i) lawsuits/applications; (ii) responses; (iii) counterpleas; (iv) rejoinders; (v) conclusions; as well as (vi) the storage of case dossiers.
Court. Until now, the enactment of GAA into law has not been followed by harmonizing the provisions of the ACA, so there are some technical problems relating to running the Administrative Court mission. Even though in principle the procedural process in Administrative Courts is stipulated by law, there are still legal gaps that require further stipulation via a circulation letter or implementation guides from the Supreme Court. Most new provisions as described above cannot be implemented without any follow-up regulations. Thus, there will be a need in the future for law amendments that will comprehensively stipulate the procedural process in Administrative Courts. Moreover, to ensure uniformity in the application of the law and consistency of ruling, the SCR and SCR, Supreme Court, Administrative Court chamber need to continuously develop the standards of the Administrative Court’s jurisprudence to establish the principles of administrative law and standards of performance of official duties. To successfully and systematically disseminate knowledge regarding administrative law to the public. No less important, relevant laws, rules, regulations, and policy rules shall be amended to expedite functional and organizational Administrative Court with good governance and court excellence.
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