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Intra Vires of State Administrative Court in Adjudicating Factual Action Dispute (Onrechtmatige Overheidsdaad)

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ABSTRACT

This research aims to analyze the legal authority of the State Administrative Court in adjudicating disputes involving factual actions (onrechtmatige overheidsdaad) and the application of intra vires principles. A qualitative-empirical methodology is used, with data systematically gathered from interviews. The research takes a comparative approach, examining laws and court decisions to identify similarities and differences, thereby assessing the legality of the court's authority in these disputes. In adjudicating factual actions, it is essential that government actions comply with applicable laws and do not infringe on citizens' rights. The State Administrative Court is empowered to test the validity of government actions and resolve disputes arising from them. Article 1, point (9) of Law Number 51 of 2009, which amends Law Number 5 of 1986 concerning State Administrative Courts, significantly expands the court's authority. This expansion allows the court to review not only state administrative decisions but also government actions and unlawful acts by officials (onrechtmatige overheidsdaad), which can harm other parties.

Keywords: *Aspect of Legal Authority, Comparative Approach, Factual Actions, Intra Vires, State Administrative Court*

INTRODUCTION

The State Administrative Court is an administrative court which is one of the main characteristics of the state of law *rechtstaat* proposed by Frans Julius Stahl. Including the element of administrative justice into the elements of *rechtsstaat*, the intention is to provide legal protection for citizens against government actions that violate human rights in the field of state administration.¹

Furthermore, administrative justice will ensure that administrative officials who act correctly and in accordance with the law are afforded equal legal protection. In the context of an administrative dispute between the government and the community, the administrative court is vested with the authority to resolve the dispute.²

An *intra vires* action is one that is carried out within the authority or legal power of the State Administrative Court. This court plays an important and strategic role in the enforcement of administrative law in Indonesia. Following the enactment of Law Number 30 of 2014 concerning Government Administration, there have been significant developments that have an impact on the authority of the State Administrative Court. Chief among these is the expansion of the definition of decisions, which now encompasses not only concrete, individual and final decisions, but also those that apply generally and are final in a broad sense.³

A Factual Action (*Onrechtmatige overheidsdaad*) is being taken against the decision of the Pangkalpinang State Administrative Court Number 10/G/TF/2022/PTUN.PGP, which states that the Plaintiff's claim is not accepted. The factual action in question is classified under the law of agreements, which adheres to the principle of autonomy. This principle allows the parties involved to enter or decline legal relations and to determine the form of these relations. Therefore, these actions cannot be classified as unilateral state administrative law actions.

The decision of the Pangkalpinang State Administrative Court, Number 11/G/TF/2023/PTUN.PGP, concerns the government action of the Head of the Belitung Regency Land Office in the form of processing an application for land rights with Application File Number 9227 of 2023 on behalf of the applicant PT. Green Forestry Indonesia granted the plaintiff's claim in its entirety for land located in Padang Kandis Village, Mambalong Subdistrict, Belitung Regency, Bangka Belitung Province, covering an area of 185,000 m² (one hundred eighty- five thousand square metres). This constituted an unlawful act by a government agency

¹ SF. Marbun, (2010), *Peradilan Administrasi Negara dan Upaya Administratif di Indonesia*, Yogyakarta: UII Press, p. 10.

² Sadjijono, (2008), *Memahami Beberapa Bab Pokok Hukum Administrasi*, Yogyakarta: Laksbang Pressindo, p. 4.

³ Hidayat Pratama Putra, (2022), *Tantangan Dalam Penanganan Perkara Tindakan Administrasi Pemerintahan di Peradilan Tata Usaha Negara*, Jurnal Hukum Peratun, Jakarta: Volume 5 Nomor 1, p.7

and/or official (onrechtmatige overheidsdaad). The objective of this research is to gain insight into and examine the legal framework governing the authority of the State Administrative Court in adjudicating disputes pertaining to factual actions (onrechtmatige overheidsdaad). Furthermore, this research will examine and analyse the approach and implementation of *intra vires*.

METHOD

This research is based on the empirical method, which is a type of legal research that aims to understand the law in practice and examine how it operates in society. The research data is based on primary data collected through field research, including observations, interviews, and surveys. The Empirical method is strongly influenced by socio-legal research, which highlights the impact and implications of various aspects of social life.⁴

In this legal research, a comparative approach is employed to examine similarities and differences between laws or court decisions. This approach is fundamental to the research method itself, as it enables the identification of solutions to the legal problems raised. The research on the authority of the State Administrative Court in adjudicating is a change in authority from the General Court and to the State Administrative Court is included in the descriptive research. This is because the research is expected to be able to provide a detailed, systematic, and comprehensive description of the problems discussed and to know and understand the real object without making judgments about good and bad.

RESULT & DISCUSSION

This section is the most important section of your article. The analysis or results of the research should be clear and concise. The results should summarize (scientific) findings rather than providing data in detail. Please highlight differences between your results or findings and the previous publications by other researchers.

1. Legal Aspects of the Authority of the Administrative Court in Adjudicating Factual Action Disputes (Onrechtmatige Overchtmatige)

The principle of validity ensures that government actions taken by government officials must be in accordance with applicable legislation and must not violate the rights of citizens. In cases pertaining to the validity of government actions, the State Administrative Court is the designated authority responsible for evaluating the legitimacy of such actions and resolving disputes arising from them. Article 1, point (9) of Law Number 51 of 2009 concerning the second amendment to Law Number

⁴ Derita Prapti Rahayu, (2020), *Metode Penelitian Hukum*, Yogyakarta: Thafa Media, p.43

5 of 1986 concerning State Administrative Courts, defines a State Administrative Decree as a written decision issued by a State Administrative Agency or Official that contains state administrative legal actions based on applicable laws and regulations. These are concrete, individual, and final, and have legal consequences for a person or civil legal entity.

A State Administrative Decree may be determined unilaterally, but aspects of legal protection for the community must still be upheld. It is imperative that the unilateral nature of this process does not result in a reduction or hindrance to the legal protection of the public. It is of the utmost importance that legal protection for the public remains a priority. It thus follows that the determination of State Administrative Decisions by the government must be in accordance with the law (*rechmatig*). It is the function of the law to determine the legitimacy of State Administrative Decisions. In other words, although the government is granted the authority to issue a State Administrative Decree, the content of the decree must not contravene the legal interests of the community. Furthermore, there is a distinction between the test tool employed in the assessment of an unlawful government action (*onrechtmatige overheidsdaad*), which draws upon the principles of jurisprudence, and the test tool utilized to ascertain the legitimacy of factual actions, which is based on legislation and the General Principles of Good Governance (AAUPB). In Indonesia, the authority to assess the constitutionality of government policies affecting the rights of citizens is vested in a distinct judicial institution, namely the State Administrative Court.⁵

State Administrative Decisions according to the Law. Reduction in Article 2 of Law of the Republic of Indonesia Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning State Administrative Courts, as follows:

- a. State Administrative Decisions that are civil legal acts;
- b. State Administrative Decisions that are general regulations;
- c. State Administrative Decisions that still require approval;
- d. State Administrative Decisions that are issued based on the provisions of the Criminal Code and Criminal Procedure Code or other laws and regulations that are criminal in nature;
- e. State Administrative Decisions issued on the basis of the results of an examination by a judicial body based on the provisions of the applicable laws and regulations;
- f. State Administrative Decisions concerning the administration of the National Army of the Republic of Indonesia;
- g. Decisions of the General Election Commission both at the centre and in the regions regarding the results of general elections.

⁵ Sri Rdjeki Slamet, (2013), *Tuntutan Ganti Rugi Dalam Perbutan Melawan Hukum: Suatu perbandingan Dengan Wanprestasi*, Jakarta: Lex Jurnalica Volume 10 Nomor 2, p.1

The addition of what is referred to in Article 3 paragraph (1): If the State Administrative Body or Official does not issue a decision, while it is their obligation, then it is equated with a State Administrative decision, and the limitation of Article 49 The court is not authorised to examine, decide and resolve certain state administrative disputes in the event that the disputed decision is issued:

- a. in a state of war, a state of danger, a state of natural disaster, or an extraordinary state of danger based on applicable laws and regulations.
- b. in an urgent situation for the public interest based on the applicable laws and regulations. "Public interest" means the interests of the nation and state and/or the interests of the community at large and/or the interests of development, in accordance with the prevailing laws and regulations.⁶

Since the adoption of Regulation of the Supreme Court of the Republic of Indonesia No. 7 of 2022 on Amendments to Regulation of the Supreme Court of the Republic of Indonesia No. 1 of 2019 on Electronic Case Management and Court Proceedings, Article 1 item 6 states Electronic case administration is a set of processes for receiving complaints/applications/objections/oppositions/interventions, receiving payments, delivering summonses/answers, replies, duplicates, conclusions, accepting appeals, and managing, submitting and storing documents for civil/special civil/religious civil/military administrative/state administrative cases using an electronic system.⁷

Factual action dispute data has been carried out registration procedures at the registrar of cases through electronic (e-Court) and Sistem Informasi Penyelurusan Perkara (SIPP) at the Pangkalpinang State Administrative Court, which can be seen from the object of the dispute, legal consequences and application of laws and regulations in the examination of factual actions / government administration actions that result in persons or legal entities who feel aggrieved in their rights or interests with the issuance of the object of the dispute State Administrative Decree.

The subject of this dispute is one of the formal requirements for submitting a case to the PTUN. Based on Law No. 30 of 2014, Article 1, Point 8, "Actions of the Government Administration, hereinafter referred to as Actions, are actions of government officials or other state administrators to perform and/or not to perform concrete actions in the context of government administration. Government administration officials and/or bodies may take legal or factual actions.

Factual Action Dispute Case Number 11/G/TF/2023/PTUN.PGP the object of the dispute is the Government Action of the Head of the Belitung Regency Land

⁶ Explanation of Article 49 of Law of the Republic of Indonesia Number 9 of 2004 concerning State Administrative Courts.

⁷ Pasal 1 angka 6 Peraturan Mahkamah Agung RI tentang Administrasi Perkara dan persidangan di Pengadilan secara elektronik.

Office in the form of the application process for Land Rights with application file number 9227/2023 dated 8 September 2023 on behalf of the applicant PT Green Forestry Indonesia on land located in Padang Kandis Village, Membalong District, Belitung Regency, covering an area of 185,000 m², as stated in the Letter of the Intelligence Assistant on behalf of the Head of the Bangka Belitung Islands High Prosecutor's Office Number R-600/L.9.3/Dek.1/10/2022 dated 28 October 2022 regarding the Findings of the Bangka Islands High Prosecutor's Office Intelligence Team, basically states that there has been an overlap between the Land Certificate in the name of Heryandi, the Plaintiff in casu, with the Land Certificate (SKT) in the name of Senen, the Land Certificate (SKT) in the name of Seran, and the Land Certificate (SKT) in the name of Sumardi. In essence, because the issuance of the Disputed Object is not in accordance with the procedures of the applicable laws and regulations and contrary to AAUPB, and what the Plaintiff requests to the State Administrative Court is to declare the Disputed Object cancelled or invalid.⁸

Factual Action Dispute Case Number 11/G/TF/2023/PTUN.PGP the object of the dispute issued by the government action, is categorised as Unlawful Acts by Government Agencies and/or Officials (Onrechmatige Overheidsdaad), then the Panel of Judges stated that the unlawful act must be declared void and the Plaintiff's claim is granted.

2. Intra Vires Approach and Implementation

The approach and implementation of Intra Vires is that the Administrative Court focuses on the limits of authority granted by the relevant regulations, the Administrative Court only has the authority to hear disputes or cases in accordance with the laws and regulations and must not exceed the limits of authority granted. Adjustment to the birth of the concept of Administrative Justice Agency is to monitor and reduce the possibility of abuse of function and abuse of power from government actions and decisions.⁹

The implementation of the Administrative Court in adjudicating the dispute of Factual Action Case Number 10/G/TF/2022/PTUN.PGP, the Object of Dispute is a Cooperation Agreement between the Provincial Government of Bangka Belitung Islands and the Navy's Parent Cooperative regarding the Implementation of Normalisation of the Flow and Estuary of the Jelitik River Air Kantung Sungailiat District, Bangka Regency Number: 007/TKKSD/DKP/2022; Number: PKS/03/III/Inkopal dated 30 March 2022 and the dispute of Factual Action Case Number 11/G/TF/2023/PTUN. PGP, the Object of Dispute of Governmental Action of the Head of the Belitung Regency Land Office in the form of an application process for Land Rights with Application File Number 9227/2023 dated 8

⁸ Putusan Nomor 10/G/TF/2022/PTUN.PGP, p.70

⁹ Ridwan HR, Despan Heryansyah, and Dian Kus Pratiwi, (2018). "Perluasan Kompetensi Absolut Pengadilan Tata Usaha Negara Dalam Undang-Undang Administrasi Pemerintahan," *Jurnal Hukum Ius Quia Iustum* 25, No. 2.p.350

September 2023 on behalf of the applicant PT Green Forestry Indonesia on land located in Padang Kandis Village, Membalong District, Belitung Regency, covering an area of 185,000 M2. This implementation in the context of Indonesian law, the State Administrative Court has clear authority to adjudicate disputes over factual actions taken by government officials.

TABLE 1: Similarities in the Implementation of the Administrative Court adjudicating factual action disputes

No.	Regulations	Supreme Court Regulation	Circular Letter Supreme Court of Indonesia
1.	<ul style="list-style-type: none"> • Law No. 30 of 2014 on Government Administration. • Law No. 51 of 2009 on the second amendment to Law No. 5 of 1986 on State Administrative Justice. on State Administrative Courts. 	<ul style="list-style-type: none"> • No. 6/2018 on Guidelines for resolving administrative after exhausting disputes administrative remedies. • No. 2 of 2019 on Guidelines for Settling Government Action Disputes and the Authority to Adjudicate Unlawful Acts by Government Agencies and/or Officials (Onrechtmatige Overheidsdaad). 	<ul style="list-style-type: none"> • No. 4/2016 letter E Legal Formulation of the state Administrative Chamber number 1 letter b, Authorised to prosecute unlawful acts by the government, namely unlawful acts committed by holders of government power (Government Agencies and/or Officials) commonly referred to as Onrechtmatige Overheidsdaad (OOD).

Source: PTUN Pangkalpinang data 30 april 2024

Based on the description of the Legislation, Supreme Court Regulations relating to State Administrative Decisions above, Article 87 of the Government Administration Law basically expands the spirit of access to justice for justice seekers against unlawful acts committed by holders of government power (Government Agencies and/or Officials).

The similarities and differences in this study assess a legal act that causes legal consequences in the field of state administration between persons or civil law entities and state administrative bodies or officials, always related to laws and other regulations that regulate it. Rosecoe Pound's theory Law is a means of social control and even the law always faces challenges from conflicting interests, the law seeks to compile a framework of values in society that must be maintained

by law.¹⁰ The researcher finds from the research of the case number 10/G/TF/2022/PTUN.PGP and the case number 11/G/TF/2023/PTUN.PGP after the trial process that there are differences in the examination of the plaintiff's lawsuit filed in court, and the facts of the trial clearly show that there are things that the plaintiff does not understand, which are factual actions carried out by state administrative officials. One of the criteria for government action is whether the real intention of the statement/action/event can be understood, determined and carried out, or better known as *feitelijke handelingen*.

TABLE 2: Differences in the Implementation of the State Administrative Court in Adjudicating Factual Action Disputes

Case Dispute	Regulations	Explanation	Verdict
1. No.10/G/TF/2022/PTUN.PGP.	<p>Article 1 point 8 of Indonesian Law No. 30 of 2014.</p> <p>Law No. 51 of 2009 on the second amendment to Law No. 5 of 1986 on State Administrative Justice.</p> <p>Article 2 letter a of Law of the Republic of Indonesia No. 9 of 2004 concerning Amendments to Law No. 5 of 1986 concerning State Administrative Courts.</p> <p>Article 9 paragraph (1) and Article 9 paragraph (2) letter a of Law No. 30 of 2014 concerning Government Administration.</p>	<p>The object of the dispute is to be made in writing, excluding disputes over government actions.</p> <p>The State Administrative Decision does not fall under the category of exempted decisions:</p> <p>a. State Administrative Decisions that are civil legal acts. State Administrative Decisions that are civil legal actions.</p> <p>The Object of Dispute is classified as an agreement law that applies the principle of autonomy, namely the freedom of the parties to enter or not enter into a</p>	Declare the Plaintiff's claim inadmissible.

¹⁰ Derita Prapti Rahayu dan Sulaiman, (2020), *Metode Penelitian Hukum*, Op.Cit, h.46

		<p>legal relationship and the freedom to determine its form.</p> <p>In this case, the basis of the Defendant's authority in issuing the State Administrative Decree which is the object of dispute in this case.</p>	
<p>2. 11/G/TF/2023/PTUN.PGP</p>	<p>Article 75 and Article 76 of Law Number 30 of 2014 on Government Administration.</p> <p>Article 53 paragraph (1) of the Peradilan Tata Usaha Negara</p>	<p>Citizens who are aggrieved by the Decision and/or Action may submit Administrative Remedies to the Government Official or the superior of the Official who determines and/or carries out the Decision and/or Action, in which case the Administrative Remedies consist of objections and objections. Administrative Remedies consist of objections and appeals.</p> <p>Persons or Civil Law Entities who feel that their interests have been harmed by a State</p>	<p>Grant the Plaintiff's claim in its entirety</p>

		Administrative Decision may file a written lawsuit to the competent court containing a demand that the disputed State Administrative Decision be declared null or invalid, with or without a claim for compensation and or rehabilitation.	
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Source: State Administrative Court Pangkalpinang 13 May 2024, Case Decisions No. 10/G/TF/2022/PTUN.PGP and No. 11/G/TF/2023/PTUN.PGP

CONCLUSION

The Administrative Court's authority to adjudicate factual action disputes is based on the principle of legality, ensuring that government actions comply with the law and protect citizens' rights. The State Administrative Court is empowered to test the validity of government actions and resolve disputes arising from factual actions taken by government officials. The State Administrative Decree, defined by Law Number 51 of 2009, refers to a written decision issued by a State Administrative Agency or Official that has legal consequences for individuals or entities. Over time, the State Administrative Court's authority has expanded to include reviewing government administrative disputes, unlawful acts by government agencies or officials, and the exercise of discretion. The exercise of discretion is based on a legal vacuum, where there is no governing law for state administrative officials. However, this can potentially harm other parties affected by government actions. Therefore, the Supreme Court needs to provide further legal policy to regulate the transfer of jurisdiction from the General Court to the Peratun in adjudicating cases involving unlawful acts by the government. The authority of the State Administrative Court has expanded over time, with the Government Administration Law playing a role in this expansion. Initially, the court's jurisdiction was limited to testing the validity of state administrative decisions. However, it has now expanded to include the review of government administrative disputes, such as government actions and unlawful acts by government agencies and officials. One area where the State Administrative Court exercises its authority is in adjudicating factual action disputes, which have the potential to have legal consequences. Factual actions refer to the exercise of discretion by state administrative officials in the absence of governing laws. This has the potential to

harm other parties involved in government actions. To regulate this more technically, the Supreme Court needs to provide further legal policy on the transfer of jurisdiction from the General Court to the State Administrative Court in cases related to factual actions.

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