

The Authority of State Administrative Courts in Resolving Cases Involving Unlawful Acts Arising from the Issuance of Defamatory Policy Regulations

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Abstract

The development of government administrative law in Indonesia has undergone significant changes since the enactment of Law Number 30 of 2014 concerning Government Administration. One major implication is the expansion of the authority of the State Administrative Court to adjudicate government actions, including Unlawful Acts by Government Agencies and/or Officials, as reaffirmed by Supreme Court Regulation Number 2 of 2019. However, questions remain as to whether public losses resulting from the issuance of policy regulations fall within the Court's jurisdiction. This study analyzes the authority of the State Administrative Court in resolving disputes arising from policy regulations, identifies existing normative gaps, and formulates an ideal concept of legal protection for the public. Using a normative juridical method with statutory, conceptual, case, and comparative approaches, the study finds that policy regulations, although not statutory regulations or classical State Administrative Decisions, are administrative instruments capable of producing legal consequences. Following the enactment of the Government Administration Law and Supreme Court Regulation No. 2 of 2019, the Court has broader authority to review government actions, including those implemented through policy regulations, provided they constitute government actions and cause concrete harm. Nevertheless, inconsistencies regarding the object of disputes, forms of judicial decisions, and compensation mechanisms remain, highlighting the need for legal reform.

Introduction

Indonesia, as a state based on the rule of law, as affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, requires all government actions to be based on law, the principle of legality, and the

General Principles of Good Governance.¹ These principles are the foundation of democratic and accountable governance and protect the rights of citizens.

In modern governance practices, not all government actions are realized through state administrative decisions (*beschikking*). The government also uses instruments in the form of policy regulations (*beleidsregel*) as guidelines for the implementation of discretionary authority.² These instruments are not included in the hierarchy of laws and regulations, but in practice they have factual binding power that can impact the rights and interests of the public.³

Problems arise when these policy regulations cause harm to the public.⁴ Before the enactment of Law Number 30 of 2014 concerning Government Administration, lawsuits against government actions that cause harm were generally filed with the District Court under Article 1365 of the Civil Code as an Unlawful Act by the Authority (*Onrechtmatige Overheidsdaad*). Following the enactment of the Government Administration Law and Supreme Court Regulation Number 2 of 2019, there has been a shift in authority to the State Administrative Court to adjudicate government actions that are alleged to be unlawful.

However, this expansion of authority still leaves legal issues regarding the status of policy regulations as objects of dispute. Unlike state administrative decisions, which have clearly defined characteristics, policy regulations exist somewhere between norms and government actions, often leading to differing interpretations regarding the forum for dispute resolution.

Methods

This research is legal research⁵ that focuses on the study of legal norms, legal principles, doctrines, and court decisions related to the authority of the

¹ Baharuddin Riqey and Syofyan Hadi, "Constitutional Imperatives: Examining the Urgency of Term Limits for Members of the House of Representatives," *Mimbar Keadilan* 17, no. 1 (2024), <https://doi.org/https://doi.org/10.30996/mk.v17i2.9635>; Baharuddin Riqey, "Penujukkan Kepala Daerah Oleh Presiden Dalam Perspektif Demokrasi," *Seminar Nasional-Kota Ramah Hak Asasi Manusia* 3, no. 1 (2023); Syofyan Hadi and Tomy Michael, *Negara Hukum* (Yogyakarta: Jejak Pustaka, 2024).

² Sholahuddin Al-Fatih et al., "Rethinking Delegated Legislation in the Indonesian Legal System," *Jurnal Hukum Novelty* 14, no. 2 (2023), <https://doi.org/10.26555/novelty.v14i2.a27517>.

³ Baharuddin Riqey and Muhammad Khatami, "Constitutionality of Recall Regulations for Officials Elected by the House of Representatives," *Media Iuris* 8, no. 2 (June 30, 2025): 239–64, <https://doi.org/10.20473/mi.v8i2.70726>.

⁴ Hufon and Syofyan Hadi, "Problematisasi Pembentukan Peraturan Oleh Lembaga Peradilan," *Proceeding APHTN-HAN* 2, no. 1 (2024), <https://proceedingaphtnhan.id/index.php/paphtnhan/article/view/141/137>; Syofyan Hadi, "The Influence of Theorie Von Stufenbau Der Rechtsordnung in the Indonesian Legal System," *DiH: Jurnal Ilmu Hukum*, July 14, 2024, 202–10, <https://doi.org/10.30996/dih.v20i2.10989>.

⁵ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2021).

State Administrative Court in resolving cases of unlawful acts resulting from the issuance of policy regulations (*beleidsregel*) that are detrimental to the community. Normative legal research was chosen because the problem being studied lies in the disharmony of norms regarding the object of administrative disputes, the limits of Administrative Court authority, and the legal consequences of the issuance of policy regulations by government agencies and/or officials.

Results and Discussion

Critical Analysis of the Arrangement of the Administrative Court Authority in Resolving Cases of Unlawful Acts Due to the Enactment of Policy Regulations that are Harmful to the Community

The development of state administrative law in Indonesia shows a paradigm shift in the resolution of disputes between citizens and the government. This shift is marked by the enactment of Law Number 30 of 2014 concerning State Administration, which expands the concept of government action (*bestuurshandeling*), so that it is no longer limited to the issuance of State Administrative Decrees (*beschikking*), but also includes factual actions and legal actions carried out by government agencies and/or officials. This expansion was then emphasized through Supreme Court Regulation Number 2 of 2019, which transfers the authority to adjudicate Unlawful Acts by Government Agencies and/or Officials (*Onrechtmatige Overheidsdaad*) from the General Court to the State Administrative Court.

However, these regulations still pose a number of conceptual and practical issues, particularly when public harm arises as a result of the enactment of policy regulations (*beleidsregel*). The main problem lies in the lack of regulations that explicitly place policy regulations as objects of dispute that can be examined by the State Administrative Court. This situation creates legal uncertainty because, on the one hand, policy regulations are not statutory regulations, but on the other hand, these instruments can have real legal consequences for the rights and interests of the public.

According to the administrative law doctrine put forward by Philipus M. Hadjon, policy regulations are a logical consequence of the government's use of discretionary authority.⁶ While these instruments are necessary to ensure effective governance, their existence must not disregard the principles of legality, proportionality, legal certainty, and the General Principles of Good Governance. Therefore, if a policy regulation contradicts these principles and causes harm to the public, an effective judicial review mechanism should be available.

⁶ Philipus M. Hadjon, *Discretionary Power Dan Asas-Asas Umum Pemerintahan Yang Baik (AAUPB)* (Surabaya: Universitas Airlangga, n.d.).

However, Indonesian positive law still exhibits regulatory disharmony. The State Administrative Court Law essentially emphasizes the object of disputes on State Administrative Decisions, which are concrete, individual, and final. Meanwhile, the State Administration Law broadens the meaning of government actions without providing a clear definition of the status of policy regulations as objects of dispute. As a result, there is room for differing interpretations among judges and legal practitioners regarding whether lawsuits against policy regulations must be filed with the State Administrative Court, the Supreme Court through the statutory regulatory review mechanism, or even cannot be filed at all.⁷

From a legal protection perspective, this situation does not fully fulfill the principle of access to justice. Communities experiencing losses due to the implementation of regulatory policies often face obstacles in determining a forum for dispute resolution. Claims are often declared inadmissible (*niet ontvankelijk verklaard*) because the subject of the claim is deemed neither a State Administrative Decision nor a government action as defined in the legislation. Consequently, citizens' constitutional right to legal protection is rendered ineffective.

Another problem is the lack of normative parameters to determine when a policy regulation can be classified as a violation of the law by the government. To date, judicial review has largely relied on judges' interpretations of the AUPB. While this approach offers flexibility, the lack of clear indicators has the potential to lead to inconsistent decisions. Therefore, more measurable standards are needed, including those assessing:

1. Conformity of policy regulations with higher laws and regulations.
2. Compliance with the General Principles of Good Governance.
3. Conformity of the objectives of issuing policies with the objectives of granting authority.
4. Abuse of authority (*detournement de pouvoir*).
5. Arbitrary actions (*willekeur*).
6. A causal relationship between the issuance of policy regulations and the losses experienced by the community.

a Furthermore, current regulations also lack certainty regarding the type of decision the Administrative Court can issue if a lawsuit against a policy regulation is upheld. Whether judges are authorized only to declare a

⁷ Ahmad Wijaya and Nasran Nasran, "Comparison Of Judicial Review: A Critical Approach To The Model In Several Countries," *JURNAL LEGALITAS* 14, no. 2 (2021), <https://doi.org/10.33756/jelta.v14i2.11809>; Dewi Asimah and Anna Erliyana, "The Concept and Legal Protection Regarding Government Administrative Actions in the Form of Not Performing Concrete Actions (Omission)," *Jurnal IUS Kajian Hukum Dan Keadilan* 13, no. 3 (December 24, 2025): 708–33, <https://doi.org/10.29303/ius.v13i3.1520>.

government action unlawful, order the revocation of the policy regulation, restore the plaintiff's rights, or award damages remains an open question that requires further regulation. This lack of regulation has the potential to reduce the effectiveness of Administrative Court decisions in providing comprehensive legal protection.

Based on this analysis, it can be assessed that the expansion of the Administrative Court authority through the State Administration Law and Supreme Court Regulation No. 2 of 2019 represents a progressive step in strengthening judicial control over government actions. However, these regulations do not fully address the legal issues arising from the issuance of policy regulations. The absence of clear regulations regarding the status of policy regulations as objects of dispute, the standards for review, and the forms of legal protection that can be provided by the Administrative Court demonstrates the continued need to improve administrative law in Indonesia.

Thus, regulatory reforms need to be directed at affirming that policy regulations that result in concrete legal consequences and actual harm to the public constitute government actions that can be reviewed by the State Administrative Court. This affirmation will strengthen legal certainty, increase the effectiveness of citizen rights protection, and reinforce the PTUN's role as an oversight instrument for the exercise of government authority in a state governed by the rule of law.

The Ideal Concept of Dispute Resolution Due to Policy Regulations in State Administrative Courts

The development of government functions within the welfare state concept demands that the government act quickly, effectively, and responsively to the various needs of society. In practice, this demand is often realized through the use of discretion, which is then formalized in the form of policy regulations (*beleidsregel*). This instrument emerged as a consequence of the limitations of existing laws and regulations in regulating all aspects of government administration. However, when policy regulations actually cause harm to society, a state based on the rule of law demands an effective judicial oversight mechanism to prevent the use of discretion from degenerating into abuse.

Current positive legal regulations in Indonesia do not provide certainty regarding the mechanism for resolving disputes over policy regulations. Although Law Number 30 of 2014 concerning State Administration and Supreme Court Regulation Number 2 of 2019 have expanded the PTUN's authority to adjudicate government actions, there is no provision explicitly stating that policy regulations are the subject of administrative disputes. This

situation creates legal uncertainty, both for the public as justice seekers and for judges in determining the absolute competence of the courts.

Therefore, the ideal concept for resolving disputes arising from policy regulations must be based on the principles of legal protection, legal certainty, utility, and justice. These four principles must be balanced so that oversight of government actions does not hinder the effectiveness of state administration but still guarantees the protection of citizens' rights.

Conceptually, this research proposes that the object of judicial review in the State Administrative Court should no longer be limited by the formal form of a governmental action, but rather by its resulting legal consequences. Thus, a policy regulation that significantly impacts the rights, obligations, or legal interests of an individual or group of people should be viewed as a governmental act (*bestuurshandeling*) whose legality can be tested by the Administrative Court. This approach is more in line with developments in modern administrative law, which emphasizes the protection of citizens' rights rather than the formal classification of governmental instruments.

To realize this concept, it is necessary to reconstruct the Administrative Court authority regulations through changes to the State Administrative Court Law and the Government Administration Law. The reconstruction includes at least several aspects. Confirmation of the status of policy regulations as an object of administrative dispute if they meet the following elements:

1. Issued by authorized government bodies and/or officials;
2. Constitutes the implementation of government authority or discretion;
3. Has real legal consequences for the community; and
4. Is suspected of being in conflict with laws and regulations or the General Principles of Good Governance.

Clearer testing parameters have been established. Administrative Court judges must not only examine the authority, procedure, and substance aspects, as is customary for State Administrative Decisions, but must also assess:

1. The purpose of establishing policy regulations;
2. Proportionality of policy;
3. Rationality of policy;
4. Compliance with AUPB;
5. The existence of abuse of authority (*detournement de pouvoir*);
6. The existence of arbitrary actions (*willekeur*);
7. Balance between public interest and protection of individual rights.

Strengthening the forms of legal protection that can be provided by the State Administrative Court. In cases related to policy regulations, judges are not only authorized to declare government actions unlawful, but can also:

1. Declare that the policy regulations have no binding force on the plaintiff;
2. Order the revocation or amendment of the policy regulations;
3. Order the rehabilitation of the plaintiff's rights;
4. Order certain administrative actions;
5. Grant a claim for compensation if there is a clear causal relationship between the policy and the losses experienced by the community.

Strengthening the preventive function of the Administrative Court. To date, the Administrative Court has primarily served as a dispute resolution institution after losses have occurred. Going forward, the Administrative Court needs to be granted more progressive authority through a preventive judicial review mechanism for regulations and policies that have the potential to violate public rights. This mechanism will strengthen the principles of good governance and prevent protracted administrative disputes.

In addition to regulatory changes, it is also necessary to strengthen the capacity of Administrative Court judges to understand the characteristics of policy regulations. The complexity of modern administrative disputes requires judges to master not only Administrative Court procedural law, but also discretionary theory, public policy theory, proportionality analysis, and the principles of good governance. This enhanced competence is crucial for Administrative Court decisions to strike a balance between protecting public rights and ensuring effective governance.

From the perspective of the rule of law (*rechtsstaat*) theory, this ideal concept aligns with the principle that every government action must be accountable before the law. While the government is granted discretion to achieve public welfare, this discretion does not constitute unlimited discretionary authority. Every exercise of authority must remain within the law, respect human rights, and be subject to effective judicial oversight mechanisms.

Conclusions

Based on the findings, this study concludes that the current regulation of the State Administrative Court's (PTUN) authority to adjudicate unlawful acts arising from the issuance of policy regulations (*beleidsregel*) has not yet provided sufficient legal certainty. Although Law Number 30 of 2014 on Government Administration and Supreme Court Regulation Number 2 of 2019 have expanded the Court's jurisdiction over government actions, they do not expressly recognize policy regulations as objects of administrative disputes. Since policy regulations, as products of administrative discretion, may produce concrete legal consequences for the public, they should be subject to judicial review when they violate statutory law, the General Principles of Good Governance (AUPB), or involve an abuse of authority. This

study argues that Administrative Court jurisdiction should be determined by the legal function and effects of an administrative instrument rather than its formal classification. Accordingly, policy regulations that cause actual harm should be treated as government actions (*bestuurshandeling*) reviewable by the Administrative Court. To address existing legal uncertainty, this study proposes the concept of Functional Administrative Review, which emphasizes the actual legal consequences of government actions as the primary criterion for determining the object of administrative disputes, thereby strengthening legal certainty, protecting citizens' rights, and enhancing governmental accountability.

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