

Intersection of Jurisdictional Competence between Administrative Court, District Court, and Tax Court in Adjudicating Unlawful Acts by Government Bodies and/or Officials

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Abstract

The jurisdiction to adjudicate disputes involving unlawful acts by Government Bodies and/or Officials encompasses three institutions, namely the Administrative Court, District Court, and Tax Court. The Administrative Court has authority to adjudicate all disputes involving unlawful acts by Government Bodies and/or Officials, except those specifically designated under the jurisdiction of the District Court and Tax Court. The District Court is empowered to adjudicate citizen lawsuits and breach of contracts committed by Government Bodies and/or Officials. Meanwhile, the Tax Court has jurisdiction to adjudicate factual actions in the field of taxation, customs, and/or excise by the Directorate General of Taxes or the Directorate General of Customs and Excise as stipulated in Article 31 of Law Number 14 of 2002 concerning Tax Court.

Keywords: Jurisdiction, Adjudicating, Unlawful Acts by Government.

INTRODUCTION

Before the enactment of Law Number 30 of 2014 concerning Government Administration, disputes regarding actions by Government Bodies and/or Officials fell under the absolute competence of general courts, while disputes over government officials' decisions (KTUN/beschikking) became the jurisdiction of the Administrative Court (Tohadi et al., 2019). This separation of jurisdiction often resulted in ineffective dispute resolution and led to disparate rulings because, in many cases, governmental actions were preceded by the issuance of decisions, such as demolition orders followed by actual demolitions (Asimah et al., 2020). Disparate rulings would occur if a demolition order was deemed legally flawed by the Administrative Court (PTUN), yet the demolition action was considered lawful by the District Court (PN), and the demolition had already been carried out (Sukri & Erliyana, 2022).

With the enactment of Law Number 30 of 2014 concerning Government Administration, according to Article 85 paragraph (1) of Law Number 30 of 2014, it is stated that "Filing of administrative dispute lawsuits that have been registered in general courts but not yet examined, upon the enactment of this Law, shall be transferred and settled by the Administrative Court"

(Aji & Sugiarto, 2018; Marwasih, 2018; Nasution, 2023). The existence of this provision is expected to avoid disparate rulings and facilitate access to justice for justice seekers in administrative disputes (Permana, 2015).

In response to the provision of Article 85 paragraph (1) of Law Number 30 of 2014 concerning Government Administration, the Supreme Court issued Supreme Court Regulation Number 2 of 2019 concerning Guidelines for Resolving Government Actions Disputes and Jurisdiction to Adjudicate Unlawful Acts by Government Bodies and/or Officials (Wardhana, 2020).

Although Article 85 paragraph (1) of Law Number 30 of 2014 concerning Government Administration only regulates the transfer and resolution of administrative government disputes from the District Court to the Administrative Court, Supreme Court Regulation Number 2 of 2019 actually regulates two main aspects combined into one Supreme Court Regulation, namely: (Wahyunadi, 2016)

1. Guidelines for Resolving Government Actions Disputes.
2. Jurisdiction to Adjudicate Unlawful Acts by Government Bodies and/or Officials.

Regulation regarding guidelines for resolving government actions disputes does not necessarily need further regulation within the Supreme Court Regulation because disputes over government actions in the Administrative Court are resolved through ordinary procedural law, the regulations of which are already provided in Law Number 5 of 1986 concerning Administrative Court Procedures and its amendments, ranging from Article 53 to Article 97 (Pamungkas, 2020; Ridwan et al., 2018; Teguh et al., 2022).

However, if disputes over government actions in the Administrative Court are determined to be resolved through special procedural law as specific administrative disputes, guidelines for resolution are needed, such as in Supreme Court Regulation Number 2 of 2011 concerning Procedures for Resolving Public Information Disputes in the Administrative Court, Supreme Court Regulation Number 2 of 2016 concerning Procedural Guidelines in Disputes over Determination of Development Locations for Public Interest in the Administrative Court, and Supreme Court Regulation Number 5 of 2017 concerning Procedures for Resolving Disputes in the Electoral Process (Simanjuntak, 2015; Yuslim, 2022).

Supreme Court Regulation Number 2 of 2019 indeed regulates the transfer of authority to settle administrative disputes from the District Court to the Administrative Court, but it does not explicitly regulate the absolute competence of both judicial jurisdictions, namely the General Court and the Administrative Court, in adjudicating disputes over administrative government actions. It doesn't clarify whether all administrative government actions entirely fall under the jurisdiction of the Administrative Court or if there are still matters under the jurisdiction of the general courts (Ramadani, 2023; Siagian et al., 2023). If there are still matters under the jurisdiction of the general courts, then what are the matters that remain under the jurisdiction of the General Court and what are the matters that fall under the jurisdiction of the Administrative Court, including whose jurisdiction it is if the government's unlawful act is committed jointly with individuals or legal entities (Bimasakti, 2018; Neno, 2018; Yasser, 2019).

Furthermore, this Supreme Court Regulation has not yet regulated the absolute competence of the Tax Court regarding government actions carried out by the Director General

of Taxes and the Director General of Customs and Excise because when the absolute competence to adjudicate it differs from the competence to adjudicate decisions in taxation and customs, there is a potential for disparate rulings in the fields of taxation and customs (Neno, 2018).

Based on the background provided above, the focus of this research is to examine the intersection of jurisdiction in adjudicating disputes involving unlawful acts by Government Bodies and/or Officials among the Administrative Court, General Court, and Tax Court. This study aims to investigate how the transfer of jurisdiction from the General Court to the Administrative Court affects the resolution of administrative government disputes. Additionally, the research will explore the absolute competence of the Tax Court in adjudicating government actions related to taxation and customs. The objective of this research is to comprehend the legal framework governing the jurisdiction of each court in handling administrative government disputes and to identify potential issues and disparities in court practices.

RESEARCH METHOD

The methodology applied to address the issues in this study involves the following approaches: statutory approach, comparative approach, analytical and conceptual approach, and case approach. The types of data used in this research are secondary and tertiary data. Secondary data are derived from library research. Secondary data sources include various legal materials classified into three types:

1. Primary legal resources (authoritative records), such as the 1945 Constitution, legislative regulations, draft legislation and its implementing regulations, judgments from various courts, especially the Administrative Court, District Court, and Tax Court, which have obtained legal force and may have been appealed or subject to judicial review.
2. Secondary legal resources (not authoritative records), such as literature, research findings, seminar papers, articles, and other materials that provide clarification on primary legal resources.
3. Tertiary legal resources, such as dictionaries/lexicons, encyclopedias, and other materials that provide guidance and clarification on both primary and secondary legal resources.

DISCUSS AND ANALYSIS

Brief History of Government Wrongful Acts

The history of disputes concerning unlawful government actions can be traced back to October 1, 1838, when the Burgerlijk Wetboek was enacted in the Netherlands. Within this legal framework, provisions regarding Onrechtmatige Daad (OD) were included in Article 1365, which stipulated that every act that violates the law and causes harm to others obliges the perpetrator, due to their fault, to compensate for the resulting damages (Mirza et al., 2024).

Moving forward to 1919, a significant judgment was rendered in the case of Lindenbaum vs Cohen. This landmark case introduced not only Wetmatig (legality) considerations but also Rechtmatig (legitimacy) elements, incorporating notions of morality, propriety, and caution as criteria for assessment. However, until 1919, unlawful actions by the government remained largely beyond the purview of the courts (Sianipar & Hadi, 2023; Zikra & Minh, 2022).

It wasn't until 1924 that government unlawful actions could be challenged in court through the Osterman Arrest. In Indonesia, since independence until the enactment of Law Number 5 of 1986 concerning State Administrative Courts, these courts were only empowered to review Administrative Decisions, while Government Actions remained under the jurisdiction of the District Court. It was not until 2014, with the passing of Law Number 30 of 2014 concerning Government Administration, that State Administrative Courts were granted authority to review Administrative Decisions and government actions (Yuslim, 2022).

Subsequently, in 2019, the Supreme Court issued Supreme Court Regulation No. 2 of 2019, which provided the operational basis for the transfer of jurisdiction to adjudicate disputes over government actions from the District Court to the State Administrative Court. The authority of the State Administrative Court to adjudicate disputes over Administrative Government Actions is enshrined in Article 2 paragraph (1) of Supreme Court Regulation No. 2 of 2019, which states: "Cases of unlawful acts by government bodies and/or officials (Onrechtmatige OverheidsDaad) fall within the jurisdiction of the State Administrative Court (Bimasakti, 2018; Rohman, 2023)."

Reasons for transferring jurisdiction to adjudicate unlawful acts from the District Court to the State Administrative Court include:

1. Compliance with the mandate of Administrative Government Law.
2. Establishing legal unity and avoiding disparities in judgments between the District Court and the State Administrative Court.
3. Facilitating access to justice for justice-seeking individuals in the community.

Although Article 85 paragraph (1) of Law Number 30 of 2014 only mandates the transfer of jurisdiction to adjudicate from the District Court to the State Administrative Court, Supreme Court Regulation No. 2 of 2019 surprisingly contains two definitions that are quite confusing:

- a. Disputes over government actions are disputes arising in the field of government administration between members of the public and government officials or other state organizers as a result of government actions (Article 1 number 3 of Supreme Court Regulation No. 2 of 2019).
- b. Disputes over unlawful acts by government bodies and/or officials (Onrechtmatige OverheidsDaad) are disputes that involve demands to declare the actions of government officials null and void or without legal force, along with claims for compensation in accordance with statutory regulations (Article 1 number 4 of Supreme Court Regulation No. 2 of 2019).

Characteristics of disputes involving government unlawful acts:

- 1) The perpetrator of the unlawful act is a government body or official.
- 2) The actions stem from both legal and factual actions.
- 3) Cumulative claims are possible for both object and subject, if part of a series.
- 4) Legal provisions and General Principles of Good Governance serve as testing tools.
- 5) For active commission actions, administrative remedies must be pursued before filing a lawsuit, while for passive omissions, administrative remedies are not required (Plenary Formulation of the State Administrative Court Chamber in 2021).
- 6) Compensation may be requested but is not the primary objective.
- 7) Rehabilitation may be requested.

- 8) The deadline for filing a lawsuit remains applicable.
- 9) The petitum of the claim may be supplemented as stated in Supreme Court Regulation No. 2 of 2019, namely:
 - (1) Carrying out government actions.
 - (2) Not carrying out government actions.
 - (3) Halting government actions.

Subject and Object:

1. Subject:
 - a. Plaintiff: Individual, Legal Entity, Non-Governmental Organization (NGO).
 - b. Defendant: Government Official.
 - c. Intervention: Intervention by other parties is possible.
2. Object of Dispute:
 - a. Actions stemming from legal or factual actions.
 - b. Cumulation of actions and State Administrative Decisions if they constitute a single unit or series. Examples include demolition permits and demolition actions

Deadline for Filing Lawsuit:

For Commission Actions:

1. Within 90 days of the government action being taken (Article 4 of Supreme Court Regulation No. 2 of 2019).
2. While citizens pursue administrative remedies, the deadline is suspended until the final administrative remedy is received.

For Omission Actions:

Supreme Court Regulation No. 2 of 2019 does not specify the deadline for filing a lawsuit, thus it may vary, including:

- a. Within 90 days of the omission based on Supreme Court Circular No. 5 of 2021. The point at which the defendant is deemed not to have acted is unclear.
- b. Within 90 days of a request for action being made (omission requiring a request).
- c. Within 90 days of the obligation to act arising.
- d. Within 90 days of the plaintiff suffering damage (omission not requiring a request).
- e. Anytime as long as the plaintiff suffers ongoing damage (no deadline required).
- f. Ex aequo et bono.

Compensation:

Compensation characteristics include:

1. Payment of a sum of money to community members who suffer losses due to actions of government bodies or officials.
2. Compensation can be material and immaterial. Material losses include costs, property damage, interest, or lost profits. Immaterial losses are left to the discretion of the judge.
3. The burden of compensation is borne by government officials.
4. Previously, the amount of compensation was governed by Government Regulation No. 43 of 1991. Currently, specifically for government action disputes,

compensation is based on Supreme Court Circular No. 2 of 2019, with no maximum limit set, but according to the plaintiff's loss.

Rehabilitation

Rehabilitation, commonly heard in employment cases, involves restoring the plaintiff to their original position before the dispute arose. In disputes involving government actions, the characteristics include:

- a. Restoring the plaintiff to their original state before the action was taken.
- b. Possible if the claim is granted substantively (not just procedurally).
- b. The technical implementation of rehabilitation in government action disputes is not yet regulated and is therefore left to the discretion of the official.

Postponement/Suspension

In cases of Unlawful Acts by Government Bodies and/or Officials, a decision to postpone may also be issued. In cases of Unlawful Acts by Government Bodies and/or Officials where the object of the dispute is an active action (commission), the issued decision is in the form of a postponement order to prevent the Defendant from executing or halting the government action during the examination until a decision in the case becomes legally binding. However, if the object of the dispute is a passive action (omission), the issued decision is the opposite and resembles an immediate and enforceable decision (*uitvoerbaar bij voorraad*), which is an order to execute the action first, even though the case has not yet become legally binding.

Jurisdiction of the District Court

In a specific case mentioned earlier, the District Court of Central Jakarta issued a verdict in case number 757/Pdt.G/2022/PN Jkt.Pst, stating that the General Election Commission had committed an unlawful act against the Prima Party. This decision sparked a wide debate in society regarding whether the District Court had the jurisdiction to adjudicate disputes involving unlawful acts by the Government, particularly the General Election Commission, given the existence of Supreme Court Regulations Number 2 of 2019 and Number 5 of 2017 regarding Disputes over the Electoral Process in the Administrative Court.

Ultimately, the Jakarta High Court annulled the decision of the District Court of Central Jakarta and adjudicated the case itself, ruling that the Plaintiff's claim was not admissible because the District Court lacked jurisdiction to adjudicate disputes between the Prima Party and the General Election Commission.

This ruling serves as a reference indicating that the judiciary already understands that the District Court no longer has the authority to adjudicate disputes involving unlawful acts committed by Government agencies or officials, particularly in the field of elections. Nonetheless, the District Court still retains jurisdiction to adjudicate cases of breach of contract by Government agencies or officials.

Moreover, the General Court retains jurisdiction to adjudicate citizen lawsuits, as evidenced by a relatively recent case between Melani Subono and others against the President of Indonesia and others concerning the air quality in Jakarta. The Panel of Judges agreed that the negligence of the Defendants contributed to the poor air quality in Jakarta, depriving the Plaintiffs of their right to a clean and healthy environment. Based on these considerations, the Panel of Judges granted most of the Plaintiffs' demands, including requiring the President of Indonesia to tighten the Ambient Air Quality Standards to protect human health, the

environment, ecosystems, and the health of sensitive populations based on advances in science and technology. The Minister of Environment and Forestry was also instructed to supervise the Governors of DKI Jakarta, Banten, and West Java in conducting an inventory of cross-border emissions between DKI Jakarta, Banten, and West Java provinces. Additionally, the Governor of DKI Jakarta was tasked with developing and implementing a Strategy and Action Plan to Control Air Pollution, taking into account the focused and targeted dissemination of emissions from pollution sources, with public participation.

Jurisdiction of the Administrative Court

In another specific case, a dispute over Government administrative actions occurred within the Administrative Court, where there are still differing interpretations regarding the absolute jurisdiction of the Administrative Court. This pertained to case numbers: 28 G/TF/2021/PTUN.BDG combined with 264 B/TF/2021/PTTUN.JKT combined with 361 K/TUN/TF/2022, between Herman Boenardy et al. as Plaintiffs against the Regional Water Supply Company Tirta Kahuripan of Bogor Regency as the Defendant and PT. Sentul City Tbk. as the Second Defendant intervenor. The dispute involved Government administrative actions, specifically the actions of the Regional Water Supply Company Tirta Kahuripan of Bogor Regency, which failed to perform legal actions to provide water supply services to the Plaintiffs residing in the Sentul City residential area of Bogor Regency.

The first-instance court (Administrative Court of Bandung) held that the Government administrative actions fell under the absolute jurisdiction of the Administrative Court. The actions were found to have violated the procedures and substance of statutory regulations and the general principles of good governance.

However, the appellate court (Administrative High Court of Jakarta) held the opposite view, stating that the Government administrative actions fell within the absolute jurisdiction of the general court. This was because the Administrative Court lacked the authority to compel a state-owned or regional enterprise to enter into civil contracts, such as business transactions/sales agreements between the regional enterprise as the producer and the community members as consumers.

Meanwhile, the Supreme Court, in the cassation case, ruled that the Government administrative actions could not be categorized as unlawful acts. This implies that the Administrative Court has the authority to adjudicate disputes concerning Government administrative actions, although substantively, these actions do not constitute unlawful acts.

Thus, at least the Supreme Court has established that the jurisdiction to adjudicate unlawful acts committed by Government agencies or officials in general (excluding breach of contract, citizen lawsuits, and unlawful acts committed by the Directorate General of Taxes and the Directorate General of Customs and Excise) falls within the jurisdiction of the Administrative Court.

Jurisdiction of the Tax Court

Furthermore, in its development, based on the plenary formulation of the Supreme Court's Administrative Court Chamber in 2022, agreed upon by the Supreme Court Justices of the Administrative Court Chamber, it has been established that decisions and/or factual actions in the fields of taxation, customs, and/or excise by the Directorate General of Taxes or the Directorate General of Customs and Excise fall under the absolute jurisdiction of the Tax Court

as stipulated in Article 31 of Law Number 14 of 2002 concerning the Tax Court. Examples of such factual actions include prevention, sealing, and/or blocking by the Directorate General of Taxes or the Directorate General of Customs and Excise.

Based on the above facts, the legal development regarding the absolute competence of the court authorized to adjudicate unlawful acts committed by Government agencies or officials has progressed rapidly and has not yet been explicitly regulated in Supreme Court Regulation Number 2 of 2019 concerning Guidelines for Resolving Government Actions Dispute and Jurisdiction to Adjudicate Unlawful Acts by Government Agencies or Officials. Thus, it does not provide sufficient guidance for judges in determining the absolute jurisdiction of each judicial institution.

CLOSURE

Conclusion

From the above explanation, it can be concluded that the authority to adjudicate disputes regarding unlawful acts by Government Bodies and/or Officials includes three institutions, namely the Administrative Court, District Court, and Tax Court. The Administrative Court has the authority to adjudicate all disputes concerning unlawful acts by Government Bodies and/or Officials, except those specifically designated as the jurisdiction of the District Court and Tax Court.

The District Court has the authority to adjudicate citizen lawsuits and breaches of duty committed by Government Bodies and/or Officials. Meanwhile, the Tax Court has the authority to adjudicate Factual Actions in taxation, customs, and/or excise matters by the Directorate General of Taxation or the Directorate General of Customs and Excise as regulated in Article 31 of Law Number 14 of 2002 concerning Tax Courts.

Suggestion

Based on the above conclusion, it is recommended that the division of authority among the three judicial institutions in adjudicating unlawful acts by Government Bodies and/or Officials be clearly regulated in the applicable legislation, for example, in the amendment of Supreme Court Regulation Number 2 of 2019 concerning Guidelines for Resolving Government Action Disputes and Authority to Adjudicate Unlawful Acts by Government Bodies and/or Officials.

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