INDONESIA

The Jurisdiction of State Administration Courts in
Indonesia's Judiciary System

I. Introduction

Article 47 of Law Number 5 Year 1986 on State Administration
Judicature as amended by Law Number 9 Year 2004 stipulates the
jurisdiction of State Administration Courts (henceforth the court) in
Indonesia's judiciary system, that is the jurisdiction to examine, decide
and resolve state administration disputes.

The courts has jurisdiction to accept, examine, decide and resolve
cases brought forward to them and this jurisdiction is known as the
jurisdiction to adjudicate. State Administration courts has the jurisdiction
to resolve state administration disputes at first instances, State
Administration High Courts for second instances and the Supreme Court
for cassation and judicial reviews.

As stipulated in Article 48 Law No. 9 Year 2004, state
administration disputes that firstly needs to be resolved through
administrative process, will be examined, decided and resolved by the
State 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.

Based on the discussion above, this paper shall focus on ‘The
Jurisdiction of State Administration Courts in Indonesia's Judiciary
System’ to fulfill the request of the Committee for the 10th Congress of
IASAJ, which will be held in Sydney in March 2010.

II. The Jurisdiction of State Administration Courts
The jurisdiction of a court to adjudicate a case can be differentiated into two categories, relative jurisdiction and original jurisdiction. Relative jurisdiction is the court’s jurisdiction to adjudicate a case according to its legal vicinity. On the other hand, original jurisdiction is the court’s jurisdiction to adjudicate a case according to the case’s object, substance or principal dispute.\(^1\)

A. Relative Jurisdiction

The borders of a court’s legal vicinity determine its relative jurisdiction. A court has the jurisdiction to adjudicate a case if one of the parties in dispute (claimant/defendant) resides within the legal vicinity of that court.

The relative jurisdiction of state administration courts is stipulated in Article 6 of Law No. 5 Year 1986 on State Administration Judicature as amended by Law No. 9 Year 2004, which states that:

(1) State Administration courts reside in the capital of a regency/city, and their legal vicinities include that regency/city.

(2) State Administration High Courts reside in the capital of provinces and their legal vicinities include the area of that province.

There are currently only 26 provinces that have state administration courts and 4 with state administration high courts, namely, State Administration High Court of Medan, Jakarta, Surabaya and Makassar, rendering several regencies and cities under the jurisdiction of these state administration courts. Similarly, state administration high courts have jurisdictions over several provinces, for example, the State Administration Court of Jakarta have jurisdiction over cities within the Special Capital Province of Jakarta, while the State Administration High

\(^1\) S.F. Marbun, Peradilan Tata Usaha Negara (State Administration Judicature) Penerbit Liberty, Yogyakarta, 2003, p:59
Court of Jakarta has jurisdiction over several provinces in the island of Kalimantan, West Java and the Special Capital Province of Jakarta.

The court’s jurisdiction over areas where the parties in dispute are located or in residence are specifically stipulated in Article 54 of Law No. 5 Year 1986 on State Administration Judicature as amended by Law No.9 Year 2004, which states that:

(1) Location place of the defendant;

(2) Location place of one of the defendants;

(3) Residence of the claimant and then referred to the Court where the defendant is located;

(4) Residence of the claimant (in particular situations based on Government Regulations);

(5) State Administration Court of Jakarta, if the claimant’s residence and the defendant’s location is overseas;

(6) Location of the defendant, if the claimant’s residence is overseas and the location of the defendant is in the country.

According to the provision above, in principle the complaint must be lodged to the court where the defendant is located, and in exceptional cases, only lodged to the court where the claimant is located. But these exceptions must be stipulated with Government Regulations that currently do not yet exist and therefore non-applicable.

B. Original Jurisdiction

The court’s original jurisdiction is the authority to adjudicate a case according to its object, substance or principal matter of dispute. As provided in Article 1 Paragraph 3 of Law No5 Year 1986 and amended by Law No.9 Year 2004, the objects of dispute within the scope of state administration courts are state administrative decisions (beschikking)
that are issued by state administration agencies/officials. The other actions of state administration agencies/officials, whether that be substantive actions (*material daad*) or the act of issuing regulations (*regeling*) comes under the jurisdiction of the General Courts and the Supreme Court.

The court's original jurisdiction is stipulated in Article 1 Paragraph 4 of Law No. 5 Year 1986 as amended by Law No.9 Year 2004, which states that:

“Disputes over state administrative decisions are disputes that arises within the scope of State Administration between a person or a civil legal entity with a state administration agency or official within capital or regional areas, as a result of the issuing of a state administrative decision, including disputes over employee affairs as based on applicable law”

According to Article 1 number 3 of Law No. 5 Year 1986 as amended by Law No.9 Year 2004, a state administrative decision is defined as a written decision that is issued by a state administration agency/official contain, which contain state administration legal actions based on applicable laws, that is concrete, individual and final in character, and has legal consequences for a person or a civil legal entity.

In addition, Article 3 of Law No. 5/1986 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 obligation.

In practice, the decisions of state administration agencies/officials that has the potential to create disputes are, for example:

1. Decisions on permits
2. Decisions on legal statuses, rights and obligations
3. Decisions on employee affairs
The court's jurisdiction as stipulated in Article 1 number 3 Law No. 5 Year 1986 as amended by Law No.9 Year 2004 is limited by the provisions in Article 2, Article 48, Article 49 and Article 142 of the same law. Therefore, the limitations on what constitutes as an object of dispute within state administration courts can be categorized into three limitations: direct limitation, indirect limitation and temporary direct limitation.

1. Direct Limitation

Direct limitation renders absolutely no possibilities for state administration courts to examine, decide and resolve disputes. This is clearly stated in the Elucidation of Law No.5/1986:

a. Article 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. Article 49

The court has no jurisdiction to examine, decide and 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.

2. Indirect limitation

An indirect limitation is a limitation that still provides the opportunity for state administration high courts to examine, decide and resolve administrative disputes in condition that all available administrative remedies has been exhausted by a person or a civil legal entity.

Indirect limitations are provided for in Article 48 of Law No. 5 Year 1986 as amended by Law No.9 Year 2004, 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 in accordance with available administrative remedies.

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

If all available administrative remedies (administratief beroep) have been exhausted and the claimant interest is still impaired, then based on the above indirect limitation and Article 51 Paragraph 3 of No. 5 Year 1986 as amended by Law No.9 Year 2004:

“The State Administration High Court has the duty and jurisdiction to examine, decide and resolve state administration dispute at first instance and as stipulated in Article 48.”

In the 18 years of development after state administration courts were established, the court’s original jurisdiction is also limited by the enactment of new laws and Supreme Court judicial decisions, such as:

1. Limitations based new enacted laws:

   a. Law No. 2 Year 2004 on Industrial Relations Courts
b. Law No. 14 Year 2004 on Taxation Courts

c. Law No. 32 Year 2004 on Regional Governments as renewed by Law No. 12 Year 2008

Any disputes on the General Election and Head of Region Elections come under the jurisdiction of the Constitutional Court. Therefore, disputes that are non-related to general elections matters come under the jurisdiction of the state administration courts.

2. Limitations based the Supreme Court's Judicial Decisions

There are several decisions that may not become an object of the State Administration Judicature, as there are Supreme Court judicial decisions on the matter, such as:\(^2\)

a. Auction Treatise

The principal legal norm is that auction treatise is 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 by request of General Courts, therefore, the actions of the auction agencies are continuations of court decisions and comes under the provision of Article 2 No. 5 Year 1986 as amended by Law No.9 Year 2004 (No.150K/TUN/1994, dated 7-9-1995 in juncture with No. 47 K/TUN/1997, dated 26-01-1998 in juncture with No. 245 K/TUN/1999, dated 30-8-2001);

b. Land Ownership Disputes

The principal legal norm is that state administration decisions that are related to land ownership are not included in the state administration judicature’s jurisdiction, but rather in the general courts jurisdiction by involving all parties of relevant interest. (No. 22 K/TUN/1998, dated 37-7-

---

\(^2\) Puslitbang Hukum dan Peradilan MA RI, Kumpulan Putusan Yurisprudensi TUN, Cetak Kedua (Compilation of State Administration Court Judicial Decisions), Jakarta, 2005

c. A state administrative decision that is issued in order to create an agreement or contract

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 as merging (oplossing) into the realm of civil law and therefore becomes a state administration decision as stipulated in Article 2 letter a of Law No.5/1986 as amended by Law No. 9/2004. (No. 252 K/TUN/2000 dated 13-11-2000);

d. Transaction deeds created by land deeds officials

The principal legal norm is that land deeds officials are state administration officials as they perform governmental matters based on applicable laws (Article 1 Paragraph 2 of Law No. 5 Year 1986 in juncture with Article 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 (No. 302 K/TUN/1999, dated 8-2-2000 in juncture with No. 62 K/TUN/1998, dated 27-7-2001);

e. Decisions that are legal actions and issued within the political sphere

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 ones being voted. 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 stipulated
in Article 2 letter g of Law No. 5 Year 1986 (No. 482 K/TUN/2003, dated 18-8-2004);

f. Decisions of Chancellors of Private Universities’

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 administration 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 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 (N. 48 PK/TUN/2002, dated 11-6-2004).

III. The Future Jurisdiction of State Administration Judicature

The Ministry of State Apparatus is currently drafting a law on Governmental administration, which includes a National Legislation Programme (Program Legislasi Nasional: PROLEGNAS). Thus, it is not impossible that in the near future, the Draft Law on Governmental Administration could be enacted as a Law on Governmental Administration.

There are several interesting features in the Draft Law on Governmental Administration that are related to the jurisdiction of state administration courts:

- **Article 1 Paragraph 1:**

  Governmental administration includes all legal actions and substantive actions conducted by government institutions and government state

---

3 Draft Law on Governmental Administration, Jakarta, April 2009
administration officials, as well as other legal entities that have the authority to perform all governmental functions and duties, including the provision of public service based on applicable laws.

- **Article 4:**

  This law is applicable to all governmental administrative actions.

- **Article 44:**

  The state administration judicature shall perform the examination and permutation of cases related to the actions of state administration agencies or government officials that cause material and immaterial impairment according to this law.

Based on the above provisions, the jurisdiction of state administration courts have thus been expanded to include:

1. Claims for annulments of both written and factual actions of state administrative decisions that violate applicable laws and General Principles of Good Governance.

2. Claims for material and immaterial compensations for the actions of state agencies or officials that have given rise to material and immaterial impairment according to the law.

**Procedural Process at the State Administration Courts**

I. **The State Administration Court**

   The State Administration Court (henceforth the Court) has the jurisdiction to examine, decide and resolve state administration dispute at first instance.

   There are currently 26 courts that were each established based on a Presidential Decree, specifically: Presidential Decree Number 52 Year 1990 on

---

4 Prof. DR. Paulus Effendi Lotulung, SH, Menyongsong Pengesahan RUU-AP (Embracing the Enactment of Draft Law on Governmental Administration), Makalah Bimbingan Teknis Hakim Peratun Seluruh Indonesia, Jakarta, 9 Juni 2009
the Establishment of State Administration Courts in Jakarta, Medan, Palembang, Surabaya, Ujung Pandang; Presidential Decree Number 16 Year 1992 on the Establishment of State Administration Court in Bandung, Semarang and Padang; Presidential Decree Number 41 Year 1992 on the Establishment of State Administration Court in Pontianak, Banjarmasin and Manado; Presidential Decree No. 16 Year 1993 on the Establishment of State Administration Court in Kupang, Ambon and Jayapura; Presidential Decree Number 22 Year 1994 on the Establishment of State Administration Court in Bandar Lampung, Samarinda and Denpasar and Presidential Decree Number 1997 on the Establishment of State Administration Court in Banda Aceh, Pekanbaru, Jambi, Bengkulu, Palangkaraya, Palu, Kendari, Yogyakarta, Mataram and Dili. However, Dili does no longer come under the jurisdiction of the Republic of Indonesia since East Timor gained its independence.

II. Examination Period

Any person or any civil legal entity that believes their interest has been forfeited by a state administrative decision may lodge a complaint within the jurisdiction of the Court. State Administration agencies or officials may not lodge a complaint through the Court. It is required that the complaint must be in written form as it will become the basis of reference for the Court and parties during the examination period. Those who are illiterate or have difficulty in reading and writing may lodge their complaints to the Court’s Registrar who will assist with their formulation of complaint in written form.

The procedural process in the Court is stipulated in Law No. 5 Year 1986 on State Administration Judicature as amended by Law No. 9 Year 2004 on Amendment on Law No. 5 Year 1986 on State Administration Courts. In practice, however, such laws do not comprehensively stipulate the procedural process at the Courts. Therefore, the Supreme Court issued a Supreme Court Circulation Letter that became the guidance for procedural processes at the Courts.

Dispute resolutions at the Courts proceeds through the following stages:

A. Administrative assessment
Law No. 5 Year 1980 cf. Law No. 9 Year 2004 does not explicitly stipulate the administrative assessment required for a complaint that has been submitted and registered at the Court’s case registry, but the provision of Article 62 Paragraph (1) letter b of Law No. 5 Year 1986 in juncture with Law No. 9 Year 2004 states that: ‘(Should) the requirements for lodging a complaint as provided by Article 56 has not been fulfilled by the claimant although he/she has been advised and notified’

The Circulation Letter of the Supreme Court No.2/1991 on Guidance for Several Provisions in Law No. 5 Year 1986 stipulates on the administrative assessment:

In order to simplify the further examination of a case, once a case has been registered in the Court’s registry, staff members of the Registrar’s office will construct a summary of the case before submitting it in formal form to the Chief Justice of the Court. A summary of the case will include the following points:

a. The identity of the claimant and whether he/she will represent themselves or by any other person authorized to represent them.

b. The matter of complaint and whether such matters are included under the definition of a state administrative decision and thus fulfilling all the elements of Article 1 number 3 of Law No. 5 Year 1986.

c. The rationales of the complaint and whether such rationales fulfills the elements of Article 53 Paragraph 2 letter a, b, c of Law No. 5 Year 1986.

d. The prayer of relief and whether the claimant seeks only for an annulment of the state administrative decision, or annulment as well as damages claims and/or rehabilitation.

In assessing the formal requirements of a compliant, the Registrar or staff registrar may provide notes about a lodged complaint that is then submitted to the Court’s Chief Justice so it may be followed-up with a dismissal procedure.
B. Dismissal Process

After the administration assessment is completed, the Chief Justice will conduct a dismissal process to determine whether a complaint could be deemed as worthy for court proceedings or not.

Cases that are deemed worthy for court proceedings will be declared as passing the dismissal process. Single judges would then be assigned for cases that would require expedited proceedings and panels of judges would be assigned for cases that would require full court hearings.

The dismissal process is conducted in deliberation meetings that are initiated by the Chief Justice, who would appoint a judge as a rapporteur. If it is deemed necessary, the Chief Justice has the authority to call upon and listen to the parties’ hearsay during the dismissal process before deciding a dismissal.

The Chief Justice has the authority to decide a dismissal by stating his/her considerations on whether a complaint is deemed unacceptable or unduly based upon, in cases where:

a. The principals of the complaint were not decidedly included within the Court’s jurisdiction.

b. The claimant, as stated in Article 56, has not fulfilled the requirements of the complaint, even though he/she has been advised and warned.

c. The complaint was not based on sufficient rationales.

d. The claims in the complaint have actually been fulfilled by the state administrative decision that is being disparaged.

e. The complaint was lodged before due time or is overdue.

In matters where the prayer of relief cannot decidedly be granted, there would still be a possibility for dismissal of that certain part of
the complaint, but in practice this never occurred, as there would be an opportunity to improve the claims during preliminary hearings.

The dismissal decision is signed by the Chief Justice and Registrar/Deputy Registrar (the Vice Chief Justice may also sign should the Chief was unable to do so).

The Chief Justice’s decision on the dismissal process that deems a complaint unacceptable or unduly based upon will be announced in a deliberation meeting before the first day of hearing is determined and by calling upon the parties to listen for their hearsay.

The Court should decide any claims of objection to the dismissal decision and if sustained, such dismissal decisions must be declared null and void before the law and the complaint will be heard, tried and decided through a full court hearing. An award that sustains an objection to a dismissal decision cannot be appealed through any legal remedies.

If a party should attempt to object to this award through appeal or any other legal remedies, then the Registrar is required to provide a rejection of appeal or of any other legal remedies.

C. Preliminary Hearings

Preliminary hearings are only possible for cases that warrant a full court hearing. Therefore, expedited proceedings cannot have preliminary hearings.

Preliminary hearings are conducted before the main hearings for the complaint begins. The judge is obligated to conduct preliminary hearings to provide an opportunity for parties to improve any obscure claims. Therefore, the objective of a preliminary hearing is to develop a complete case. All proceedings during the preliminary hearings are dependent upon the wisdom and prudence of the Chief of Panel of Judges. In preliminary hearings, the claimant is summoned to complete his/her claims and or the defendant is summoned and requested to provide
information on the disputed state administrative decision. Both hearings do not always have to be conducted separately. Furthermore, Article 63 Paragraph (2) b states that the summons could not only include the defendant, that is, a state administration agency or official, but also any person related to any necessary data required to complete the case.

The preliminary hearing is conducted at a closed court hearing, not necessarily in a courtroom and even possibly in the judge's chamber. Members of the judges' panel who have been appointed by the head of the judges' panel accordingly through his/her policy could also conduct preliminary hearings.

The following proceedings could occur in a preliminary hearing:

- The Judges are obligated to advice the claimant to improve his/her claim and to complete any data required within thirty days.

- The judges may require any explanations from the related state administration agency or official for the purpose of completing any data required for the claim. Such judges' authority is to balance and overcome the difficulties of the defendant in obtaining required information or data from the state administration agency or official, considering that the defendant and the state administration agency or official do not have a balanced status. The judges may also hear from other state administration officials or hear from any person who has the judges' required necessary information, and gather any necessary documents.

- In reality, the disparaged state administration decision may not be in the claimant's possession. If it is so, then the claimant must attach the decision on the complaint for proof. But if the claimant does not have the decision, then the judge may require the relevant state administration agency/official to send the disparaged decision. The words 'as possible' envelopes all
manners of possibilities, including if there are no decisions produced as defined by Article 3 Law No. 5 Year 1986.

- Preliminary hearings are mainly held to acknowledge all relevant proofs and documents. Any response from the defendant may not be considered as a reply or a rejoinder, but must be recorded in the preliminary hearing’s transcript of proceedings.

- The judge may withdraw ‘The Chief Justice of the State Administration Court Decision on the Deferment of Implementation of the State Administration Decision’ if it is not necessary.

- A local examination may also be conducted at preliminary hearings. The panel of judges may produce a decision to assign one of its members to conduct a local examination.

- If the judge deems the complaint as complete, then no improvement of the complaint is required.

- The panel of judges may also advice the claimant to improve the prayer of relief as defined in Article 53 on prayer of relief and in Article 97 Paragraph 7 on court decisions.

A 30 day period will be granted for the improvement of the complaint in such preliminary hearings, but the strict exercise of this time frame is not advised as stipulated in Article 63 Paragraph 3 Law No.5 Year 1986.

As soon as a single judge is appointed, the parties will be summoned for the full court proceedings.

**D. The Court Proceedings**

The head of the panel of judges/the judge will order the Registrar to summon all parties to court with registered mail. The time frame between the summons and the first day of court must not be less than six days, except for the purpose of expedited proceedings. The summons to all parties relevant will only
be considered valid if each party has received a summons letter sent with registered mail.

The summons letter for the defendant must be attached with a copy of the complaint and a notification that the reply to that complaint should be in written form.

If necessary, the judge may order both parties in dispute to present themselves in court even though they have already been represented.

In determining the first day of court, the Judge shall consider the proximity of both parties’ residences from the Court.

In a full court hearing, the Court examines and decides a dispute on a state administration decision with three judges, and with a single judge in an expedited proceeding. The Court proceeds on the day that is stated in the summons letter. The chairperson judge of the court proceedings will lead the court’s examination in order to ensure that every person present in the court upholds the rules of court proceedings.

For examination purposes, the chairperson judge shall open and declare the trial open for public viewing. If the panel of judges considers that the dispute is a matter of public order or state security, the trial may be declared closed for public viewing, but the decision must still be read in an open for public viewing proceeding.

In the case where the claimant or his/her representation were not present in court for the first day of court and on the second pre-determined day of court even though they have been duly summoned, the complaint shall be dismissed and the claimant ordered to pay for court fees. The claimant may only submit his/her complaint once more if he/she has paid the down payment for the court fees.

In the case where the defendant or his/her representation were not present in court for two consecutive trials and did not respond to the complaint without stating any accountable reason for these failures, then with a court order
the chairman judge may order the defendant to be present and or respond to the indictment.

If there were more than one defendant or their representation that were not present in court without stating any accountable reason, the proceeding may be adjourned by the chairman judge until the next determined day.

The court’s adjournment must be notified to all present parties and the chairperson judge shall order for another summon for those who were not present. If any defendant or their representations are still not present on the next court day, then the court shall proceed without them.

The court proceedings begin with the reading of the complaint and the letter that provides the chairperson's reply. If there are no such replies, the defendant is provided with an opportunity to convey his/her reply. The chairperson judge shall provide an opportunity for both parties convey any necessary explanation on their part.

The claimant may change the reasons underlying his/her complaint only with a reply and with sufficient reason that does not hinder the interest of the defendant, which also must be thoroughly considered by the judge. The defendant may change his/her reasons underlying his/her rejoinder, only if it is also with sufficient reason that does not hinder the interest of the claimant and is also thoroughly considered by the judge.

The claimant may at any time withdraw his/her complaint before the defendant delivers his/her rejoinder. If the defendant has already delivered his/her rejoinder then the Court may only grant the withdrawal of a complaint with the defendant's consent.

An objection to the Court's original jurisdiction may be evoked at any time during the examination process. Moreover, even though there are no objections to the Court's original jurisdiction while it is evident that there is so; the judge is obligated to declare that the Court has no jurisdiction over the matter. An objection to the Court's relative jurisdiction must be provided before the reply to the prayer of relief and a decision to that objection must be provided
before the case is decided. Other objections on matters other than the jurisdiction of the court may only be decided together with the main decision of the case.

In order to have a smooth examination, the Chairperson judge has the right to provide guidance to the parties in dispute on legal remedies and evidence that may be submitted in court. This provision demonstrates the active role that the chairperson judge of the court must play in determining the course of the proceeding to avoid a protracted trial.

The judge determines the burden and the judgment of proof. The judge's conviction shall determine whether there are two pieces of evidence to establish a valid burden of proof. Article 107 of Law No. 5/1986 in juncture with Law No. 9 Year 2004 specifies the requirements to achieve substantive truth. In difference to the system of burden of proof in civil proceedings, and by acknowledging everything that occurs during the examination and without any reference to the facts presented by the parties, the judge may solely determine:

a. What must be proven.

b. Who must bear the burden of proof and what matters must be considered proven by the judge.

c. Which evidence is prioritized in the burden of proof.

d. The strength of the presented burden of proof.

Evidence comprises of: letters or writings, an expert's testimony, witness's testimony, party's confession, and judge's knowledge (on the matter). A publicly known situation does not need to be proven.

The chairperson judge may order an examination of any necessary letters held by a state administration official or other state officials who are in possession of letters or other explanations and information related to the dispute for the purpose of the examination. If the letters are part of a list, the holder of the letters must make a copy of the relevant letter before showing it to the court.
Witnesses’ examinations are held by summoning the witnesses one at a time and based on the best possible priority as deemed by the chairperson judge. A witness who has been examined must remained in the courtroom except if the chairperson judge considers it necessary for that witness not to be in the presence of another unheard witness, for example, if the unheard witness objects to the presence of the examined witness.

By the chairperson judge’s own authority or by request of one of the parties, the chairperson judge may order for a witness to be heard in court.

A state official that has been summoned as a witness is obligated to come in person to the court. The travelling fees for such state officials are not included as court fees.

A witness that does not have residence within the court’s jurisdiction is not obligated to come to the relevant court, but instead will be examined in a court that has jurisdiction over the witness’s area of residence. The chairperson judge shall delegate the authority to examine the witness in a decision that must clearly state the matter that must be questioned to the witness by the assigned court.

The judge and registrar at the assigned court must sign the transcript of proceedings of the witness examination, which will then be sent to the authorizing court.

1). The registrar must provide a transcript of proceedings for every examination.

2). The chairperson judge and registrar must sign the transcript of proceedings. If one of them are not present, then it must be declared so in the transcript.

If the chairperson and registrar are not present to sign the transcript of proceedings then the Chief Judge of the Court must sign the transcript and state the absence of the chairperson judge and registrar.

If a dispute cannot be resolved in one day of proceedings, then the examination will be continued on the next determined day of trial. The continuation of a trial must be notified to all parties and this notification serves
the same purpose as a summons. In the case where one of the parties were not present during the first trial, the Chairperson judge shall order for a notification to that party, that states the time, day and date of the next trial (Article 95 of Law No. 5 Year 1986 in juncture with Law No. 9 Year 2004).

If a dispute examination has been completed, both parties are given the opportunity to convey their last opinions in the form of closing statements.

E. Judgement

After both parties have delivered their closing statements, the chairperson judge will declare the court as adjourned to provide an opportunity for the panel of judges to deliberate in a closed chamber to formulate their judgment.

The judgment taken in the deliberation must be the result of a unanimous agreement. In the case where there is no unanimous agreement, the decision shall be taken through a majority of votes.

The court’s judgment shall be immediately announced in an open for public trial or postponed to another day, which must also be notified to both parties.

The judgment must be announced in an open for public trial. If one of the parties or both parties cannot be present on the day the judgment is announced, the chairperson judge shall order for the judgment to be delivered by registered mail to the absent party or parties. The failure to announce the judgment in an open for public trial shall render the judgment as non-valid and such decisions will not have legally binding powers.

Article 97 Paragraph (7), (8), (9) of Law No.5 Year 1986 in juncture with Law No. 9 Year 2004 on judgments states that:

(7) The Court’s Judgment may:

a. Deny the claimant’s complaint.

b. Grant the claimant’s complaint.
c. Renounce the claimant's complaint.

d. Dismiss the claimant's complaint.

(8) In the case where the complaint is granted, then the judgment may state the obligation that the state administration or official must fulfill.

(9) The obligation as defined in paragraph (8) may award compensation in the form of:

a. Revocation of the relevant state administrative decision or

b. Revocation of the relevant state administrative decision and the issuing of a new state administrative decision; or

c. An issuing of a state administrative decision should the complaint was based on Article 3.

(10) The obligation as defined in paragraph (9) shall be accompanied with a compensation award.

(11) In the case where the judgment as defined in paragraph (8) is related to matters of officialdom, an award for rehabilitation may also be granted in addition to the provisions in (9) and paragraph (10).

The Power Executed by State Administration Courts

State Administration Courts have the jurisdiction to declare a state administrative decision as null and void and award compensation and rehabilitation (Article 53 Paragraph 1). The power to conduct judicial reviews on any applicable laws lies within the Constitutional Court and the Supreme Court. The Constitutional Court has the jurisdiction to conduct judicial reviews against the Constitution and adjudicate at first and third instance, where its decision shall become the final judgment (Article 24 C of the 1945 Constitution). Based on Article 24 A of the 1945 Constitution, the Supreme Court has the jurisdiction to
adjudicate at cassation level, appraise regulations against higher laws, and has other authorities as stipulated in various laws.

Indonesia’s system of governance is a unified state in the form of a republic. The president holds the executive power with the assistance of a vice president and state ministers. The Unified State of the Republic of Indonesia is divided into autonomous regions, which are provincial autonomous regions and that are further divided into regencies and cities. Each province, regency and city has their own regional government that is subjected to laws.

The Provincial Regional Governments, regencies and cities manage and administrate their own governance accordingly to the principle of autonomy and facilitation duties. As Indonesia is a unified state that executes its governance through autonomous regions, the Government has the authority to form laws.

Laws consist of laws and other acts beneath such laws. In Indonesia, laws are defined according to their hierarchy and category, which are as follows:

a. The 1945 Constitution.

b. Laws/Government Regulation in Lieu.

c. Government Regulations

d. Regional Regulations, consisting of:

1. Provincial Regional Regulations

2. Regency/City Regional Regulations

3. Village Regulations

Other laws that are not included within the hierarchy and category above are recognized and have legally binding powers as long as the law mandates them.

5 Article 4 Law No. 10 2004 on The Making of Laws

6 Ibid. Article 7
Aside from having the power to execute governance pursuant to laws that are enacted by the House of Representatives and the President, the executive also has the independence to administrate and manage its governmental matters.

Only the makers of a law (the House of Representatives and the President) may amend it and if they are not compelled to do so, there are two ways in which a law could be appraised:

1. By appealing to the Constitutional Court for a review of its validity against the Constitution;\(^8\) or

2. An injured party may appeal to the Supreme Court by using one of the rights to legal remedies, that is the right for a judicial review on such laws.\(^9\)

If a law that has been brought into question through a concrete case are not amended by its makers or brought through appeal into judicial review, then the only authority that may interpret such laws is a judge (through the proceedings of an actual case). If a law has unambiguous provisions in regard to its application to a case, then a judge shall only act as a speaker of the law (\textit{la bouche de la loi}), unless the application of that law will create injustice, or is against ethics, or against public order, then a judge may interpret such laws so it shall become instruments of justice.\(^{10}\) There may be times when a law does not have any provisions that may be applied to an actual case and a judge may have to create the law; for example, state administration disputes may be assessed against Good Principles of Governance.

A state apparatus or agency is bonded to \textit{(gebonden)} and may not divert from an existing regulation that stipulates the implementation of governmental

\(^{7}\)Ibid. Article 7 Paragraph (4)

\(^{8}\) Article 24 B of the Amended 1945 Constitution

\(^{9}\)Ibid. Article 24 a

\(^{10}\)Bagir Manan, Sistem Peradilan Berwibawa (Suatu Pencarian) \textit{(An Authoritative Judiciary System: A Search)}, Mahkamah Agung RI, 2004, p. 11.
matters.\textsuperscript{11} But if such regulations are obscure then state apparatus have discretionary powers in the course of public service.\textsuperscript{12}

A judge also has discretionary powers to appraise a concrete state administrative case against Good Principles of Governance.

State Administration courts only have the jurisdiction to declare a state administrative decision as null or void\textsuperscript{13} and issue a court order for a state administration agency or official to issue a new decision as requested by the claimant.\textsuperscript{14} A state administration court does not have the jurisdiction to declare a state administration decision or decree as valid, as in principle, such decisions are valid as long as there are no declarations of annulment from the producing state administration agency or official and or by a legally binding judgment.\textsuperscript{15} The expansion of the state administration court’s jurisdiction in the form of a court order for a state administration agency or official, may only be considered and granted if prior to any court proceedings the claimant has requested for such orders.

As discussed above, state administration courts in Indonesia have limited jurisdiction, that is, the jurisdiction to only declare a state administrative decision null or void and the expanded authority to issue a court order to a state administration agency or official. Indonesia’s legal system within the state administration judiciary does not recognize (the declaration of a decision as) null and void (\textit{nietgheid van rechtswege}).

The legal consequences of such jurisdiction can be categorized as follows:

1. A state administrative decision that has been declared as nullified would consequently only be considered as so only if a judgment has been passed

\textsuperscript{11} \textit{(…)} Usaha Memahami Undang-Undang Tentang Peradilan Tata Usaha Negara (An Attempt to Understand the State Administration Judiciary), Pustaka Sinar Harapan, 1991, p. 299

\textsuperscript{12} Ibid

\textsuperscript{13} Article 53 Paragraph (1) of Law No. 5 Year 1986 on State Administration Judiciary

\textsuperscript{14} Ibid. Article 3

\textsuperscript{15} Ibid. Elucidation of Article 67
to declare it as such. Thus theoretically, the decision is considered as valid until it has been declared as nullified. This legal consequence is based on a principle in the state administration judiciary that ‘every state administration decision shall be considered as valid until nullified by a legally binding court judgment.’ Such nullification shall not render a state administration decision as retroactive.

2. A state administrative decision that has been declared as invalid by a legally binding court judgment is a state administrative decision that was issued by an authoritative state administration agency or official that has been rendered as incompetent by that judgment to issue the disputed decision. This type of judgment shall also render the state administrative decision as retroactive.

3. The legal consequences of a court order as requested by the claimant shall only be evident if the state administration agency or official did not execute a court judgment with legally binding powers (non retroactive).

After the establishment of state administration courts in 1991, which were made possible with the enactment of Law No. 5 Year 1986, the execution of a legally binding court judgment by a state administration official or agency is stipulated in Article 115 to Article 119. Initially, a failure to perform such executions did not render any sanctions, only moral sanctions, as there were no coercive remedies.

In essence, the procedure to execute a legally binding judgment is as follows:

Should a defendant fail to revoke a state administrative decision within four months after a legally binding judgment has been passed, then the judgment shall have no further legally binding powers.

Should a defendant who was ordered to revoke a decision failed to issue a new one within three months; the claimant may submit a request to the chief justice of the court to issue a court order for the defendant to execute the judgment.
Should the defendant still fail to do so, the Chief Justice of the court shall notify the higher institution above the defendant’s. Within two months, the higher institution must order the relevant official/defendant to execute the judgment.

Should the higher institution fail to act upon the Chief of Justice’s order, the Chief Justice shall report the matter to the President. Should the defendant still fail to execute the judgment, the defendant shall be coercively ordered to pay a sum of money and/or shall be penalized with an administrative sanction. The Registrar shall announce the failure of a state administration agency or official to execute a court judgment as stipulated in paragraph (4) in the local mass media.

The principal difference between the stipulations of Law No. 5 Year 1986 and after its amendment on the matter of executions is that: the means of execution through higher institutions and the President has been abolished and replaced with dwangsom and administrative sanctions, as well as mass media announcements on the defendant’s failure to execute a legally binding judgment.

Although mass media announcements have had success, until now the dwangsom and administrative sanction cannot yet be implemented. However, mass media announcements have also met with hurdles, such as high announcement fees that the claimant must bear and moreover, such announcements do not effectively force the defendant to execute the judgment.

The dwangsom and administrative sanction are both met with the same hurdles, which is that there are no substantive and procedural regulations for the execution of such sanctions. Even though the court has attributive powers to pass a dwangsom and administrative sanction, other laws, such as the law on officialdom, do not support the executions of such sanctions.

---

16 Article 116 of Law No. 9 Year 2004 on The Amendment to Law No. 5 Year 1986 on State Administration Judiciary
A claimant may only file for a maximum sum of IDR 5,000,000 (five million Rupiah) in damages and a maximum sum of IDR 2,000,000 (two million Rupiah) in compensation within state administration courts, so in effect, most claimant would prefer not to claim for damages and compensation in state administration courts.

Currently, the executive body is drafting a substantive law on state administration. This draft law will stipulate the ideal procedure that state administration official or agencies should adhere to in the course of executing governmental matters, whether that be issuing written decision letters or actual course of actions.

According to this draft law, state administration courts shall have the jurisdiction on all disputes regarding all actions of state administration officials and agencies that essentially perform their duties based on public law.

Concluding Remarks

The jurisdiction of state administration judicature within the Indonesian Judiciary is still 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 Laws on State Administration Courts itself, by the enactment of new laws or by the Supreme Court’s judicial decisions.

It hoped that the House of Representative would support the Government’s effort in drafting a law on governmental administration and thus reforming bureaucracy, so it may soon become a law and the future existence of state administration judicature can provide benefits for both the Government and the public.

The enactment of the Draft Law on Governmental Administration into a law must also be followed by harmonizing the provisions of the Law on State Administration Courts, so that their future jurisdictions are not only limited to state administrative decisions but also includes all the actions of state
administration agencies/officials that are based on public law, and which gives rise to a person's or civil legal entity's impairment.

Furthermore, the jurisdiction of state administration courts shall be expanded to not only being able to declare a state administrative decision as null or void as stipulated in Law No. 5 Year 1986 and amended by Law No. 9 Year 2004, but also to able to declare a state administrative decision as null and void, nugatory, nullifiable, amended, revoked, and amended in part or in its entirety; and unlimited material as well as immaterial claims for damages. Award for damages shall be given as deemed fair and appropriate. This draft law will also stipulate on sanctions imposed should there be a failure to execute legally binding judgments, by similarly and essentially drawing on the previous *dwangsom* and administrative sanctions as stipulated in Law No. 9 Year 2004.

However, such new provisions in the law as described above cannot be implemented without any follow-up regulations. This situation will render the same fate as previous stipulations on the executions of judgments in Law No. 5 Year 1986 and Law No. 9 Year 2004 have suffered.

Even though in principle the procedural process in state administration courts are stipulated in a law, there are still legal gaps that requires further stipulation with a circulation letter or implementation guides from the Supreme Court.

Thus, there will be a need in the future for law amendments that will comprehensively stipulate the procedural process in state administration courts.