

Fundamental Principles and Relevance of Reviewing Factual Actions within the Authority of the State Administrative Court

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Article Info

Received: 2024-10-22

Revised: 2024-12-03

Accepted: 2024-12-16

Keywords:

Law; Legal protection;
State Administrative
Court; Factual Action;
Comparative Analysis;

Abstract

The State Administrative Court (PTUN) plays a critical role in ensuring lawful and accountable governance. Traditionally, its purview focused on reviewing legal aspects of administrative decisions. However, recent developments grant the State Administrative Court authority to examine factual actions taken by the government. This article explores the fundamental principles underpinning this expanded authority. It delves into concepts like legality, proportionality, and good governance, analyzing how the State Administrative Court ensures these principles are upheld in factual actions. The article further analyzes regulations governing the State Administrative Court of various countries, including France, Netherlands, and England. By identifying similarities and variations in how these nations empower their SACs, the article presents a helpful perspective into best practices and potential challenges. Thus, this article offers valuable insights into the evolving role of SACs in promoting a more just and transparent administrative system.

I. Introduction

Legal protection for the community and government agencies/officials has different but interrelated objectives. While legal protection for the community is intended to shield them from unlawful and detrimental actions by government actors (Asyiah 2016), protection for government agencies/officials safeguards those who act correctly and in accordance with the law. State Administrative Court supervision of government actions plays a crucial role in achieving both objectives. This supervision, both preventative and repressive, ensures that the treatment of the public follows the law. Essentially, it examines whether government agencies and/or officials have treated the public fairly under the applicable regulations (Asyiah 2016). This legal protection and supervision function has significant implications for both society and government agencies/officials themselves. For society, legal protection guarantees a sense of security and justice. Meanwhile, for government agencies/officials, supervision helps them to carry out their duties lawfully and effectively.

One of the efforts to improve the quality of government administration, provide legal protection to the public and government institutions/officials, and strengthen supervision of their actions is to expand the authority of the State Administrative Court. It can be done by including factual actions (*feitelijke handelingen*) into the definition of government administration and interpreting them as the scope of state administrative decisions as intended in the State Administrative Court law. This expansion of authority has quite large juridical consequences (Leonard and Ramadhani 2023). It makes factual actions become the object of a lawsuit that can be sued at the State Administrative Court. In other words, the State Administrative Court has the authority to make sure that the actions of government agencies/officials are not arbitrary and do not harm people's rights by using certain basic test parameters (Elpah 2016).

The State Administrative Court was initially established based on the Law of the Republic of Indonesia No. 5 of (1986) concerning State Administrative Courts. At its inception, the State Administrative Court's authority was limited to reviewing state administrative decisions (*beschikking*) which were known as objects of dispute or objects of lawsuit. It means that the State Administrative Court only has the

authority to examine and decide on disputes arising from written decisions issued by state administrative institutions/officials. As it developed, the law was amended twice, namely with the Constitution No. 9 of 2004 and No. 51 of (2009). With these amendments, the meaning of state administrative decisions was expanded (Kamarullah in Yasin et al. 2017). It now includes factual actions (*feitelijke handelingen*). This means that both government administration decisions and government administration actions can be the object of dispute in the State Administrative Court (Wahyunadi 2016). The consequence of this expansion of authority is that factual actions that are detrimental to the interests of society can be sued at the State Administrative Court. It is based on Article 85 of the Administrative Procedure Law which states that government administration disputes that have been registered in a General Court but have not yet been examined, are transferred and resolved by the State Administrative Court.

Jurisprudence of the Decision of the Supreme Court of the Republic of Indonesia Number: 144 K/TUN/1998 dated 29 September 1999, contains the legal rule that an action of demolition without a warrant/prior notification is a factual action and is not the authority of the State Administrative Court (PTUN). Therefore, according to the Supreme Court of the Republic of Indonesia, factual actions must be sued based on unlawful acts by the authorities (*onrechtmatige overheidsdaad*) in the General Courts. However, this jurisprudence was decided before the enactment of the government administration law. The latest meaning of the Republic of Indonesia Supreme Court Jurisprudence Number 144 K/TUN/1998 is that the demolition action is a factual action (*feitelijke handelingen*) that falls within the authority of the State Administrative Court.

This research focuses on two important aspects related to the examination of factual actions by the State Administrative Court. First, this research will examine the basic ideas and relevance of reviewing the government's factual actions on the authority of the State Administrative Court. This includes an in-depth analysis of the philosophical and legal basis underlying the examination, as well as its relevance in the context of the rule of law and the protection of people's rights. Second, this research will compare the approaches for reviewing factual actions of the State Administrative Court authority in various countries. It is expected that this comparison will provide new insights and perspectives into understanding developments and best practices in the examination of factual actions in Indonesia. Henceforth, it can

make a significant contribution to understanding and strengthening the role of the State Administrative Court in monitoring the government's factual actions.

2. Research Method

This research uses a qualitative method in which assessing facts or research data that does not use numbers but uses quality standards expressed in words (Anggito and Setiawan 2018). Furthermore, this research uses a constructivist paradigm that interprets law as a relative and contextual agreement, mental construction, and experiential reality (Schwandt 1994).

The type of legal research chosen is normative legal research. This research was conducted by examining secondary data (library materials) and primary data (empirical data). Empirical data is used as research support to strengthen validation in building a basic construction for reviewing (*toeting ground*) factual actions at the State Administrative Court. This normative/doctrinal legal research seeks to clearly describe the implementation of the authority of the State Administrative Court. It meant reviewing factual acts based on regulations with in-depth deductive analysis to then find and build the basic construction for reviewing factual acts in the State Administrative Court.

Subsequently, several approaches were used so that researchers obtain information from various aspects regarding the legal problems that have been formulated. The approaches used in this research include the statutory approach, case approach, comparative approach, and conceptual approach.

3. Results and Discussion

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1. Regulations in General Courts

Civil lawsuits in the General Courts are divided into two, namely lawsuits for breach of contract (default) and lawsuits for unlawful acts. A lawsuit for breach of contract is a claim for rights against an action of breaking a promise based on an agreement, contract, or engagement. Meanwhile, a claim for an unlawful act is a claim for rights filed either against a person or civil legal entity or against a

government agency/official for an action (including a factual action) that is detrimental.

Lawsuits for unlawful acts in the General Courts can be filed against anyone, whether individuals, civil legal entities, or government agencies/officials. The difference lies in the perpetrator of the action. The perpetrator or defendant in an unlawful act (*onrechtmatige daad*) is an individual or civil legal entity. On the other hand, the perpetrator or defendant in the unlawful acts by the government (*onrechtmatige overheidsdaad*) is the government.

Furthermore, the objects of unlawful acts and unlawful acts by the government in the General Court include legal actions in the realm of public law, private law, and factual actions. The basis for all types of lawsuits in the General Courts is in Article 1365 of the Indonesian Civil Code, which states: "Every act that is unlawful and causes damage to another person obliges the person who causes the damage due to his fault to compensate for it."

The elements for proving an unlawful act, including those committed by the government in the General Courts, are as follows: the existence of an unlawful act, the existence of damages, the existence of fault, and the provision of compensation (Wardhana 2020). So, firstly, the actions carried out must be contrary to the law, both written law and unwritten law. It does not distinguish between the subject who commits the act, whether an individual or a legal entity, whether public or private. According to *Hoge Raad* in *Strooppot-arrest* 1928, an unlawful act of the government occurs when it violates the subjective rights of others, contradicts the legal obligations of the perpetrator, or contradicts the principles of reasonableness, thoroughness, and caution that the perpetrator should have (Muchsan 1997). Second, the element of damages. An unlawful act must cause harm to another party, whether material or immaterial damages (Agustina 2003). These damages must be able to be proven in a real and adequate manner. Afterwards, there is an existence of damage. In the formulation of unlawful acts in the civil realm, it includes material losses in the form of losses suffered (*scaden*), costs incurred (*kosten*), and profits to be obtained (*interseten*) as well as immaterial losses intended to obtain compensation and restore one's good name/ reputation (Agustina 2003). Subsequently, there is an existence of fault (*schuld*) which includes actions carried out intentionally or negligently (*onachtzaamheid*). Lastly, there is a provision of compensation which must be proven by the existence of a cause-and-effect relationship between the actions carried out and the losses incurred. This relationship can be proven by at least

two theories, namely the theory of *conditio sine qua non* (Von Buri), which states that essentially an event or action can be considered a cause of a particular outcome if that outcome would not have occurred without the event or action; and *adequate veroorzaking theory* (Von Kries) which basically states that an action is only considered a cause if, according to normal expectations and under the circumstances, the action was likely to lead to the specific outcome that occurred. The basis for determining "balanced action" is a reasonable calculation, that is, according to common sense, it is reasonable to assume that the action can cause certain consequences (Muchsan 1997).

The essence and main objective of filing a lawsuit against an unlawful act, including one whose object is a factual action committed by the government, is to obtain compensation. This compensation is the main claim (primary) in a civil lawsuit regarding an unlawful act. Thus, the examination of the government's factual actions in the General Courts is not specifically differentiated from the classification of claims for other unlawful acts. Strengthening the authority to examine factual and unlawful acts of the government at the State Administrative Court was confirmed by the promulgation of Law Number 30 of 2014 concerning Government Administration and Supreme Court Regulation Number 2 of 2019 regarding Guidelines for Resolving Government Disputes and Authority to Judge Unlawful Acts by Government Agencies/Officials (*onrechtmatige overheidsdaad*).

2. Regulations in the State Administrative Court

Minister of Justice of the Republic of Indonesia, Ismail Saleh, SH, in his speech representing the Government before the Session of the People's Representative Council of the Republic of Indonesia on December 30, 1986, stated 3 types of state administrative actions (*bestuurshandeling*) which include (Marzuki 2017):

- a) Declaring state administrative decisions (*beschikking daad van de administratie*);
- b) Making and declaring regulations (*regelend daad van de administratie*);
- c) Material acts of state administration (*materiële daad van de administratie*);

As previously explained, the State Administrative Court's authority was initially limited to examining, terminating, and resolving disputes that arose as a result of the issuance of state administrative decisions (*beschikking daad van de administratie*). Since the promulgation of Law Number 30 of 2014, attributively material state administration actions (*materiële daad van de administratie*),

government administration actions, or factual actions have become the authority/competence of the State Administrative Court. This expansion of authority means that the State Administrative Court also covers state administrative actions.

However, in its practice, this new expansion only has implications for the understanding of the State Administrative Court's authority after it was confirmed by the promulgation of Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2019. This regulation sets guidelines for the settlement of disputes regarding administrative actions and the jurisdiction to judge unlawful acts by government agencies/officials (*onrechtmatige overheidsdaad*). Consequently, this regulation can be used as a basis to affirm the jurisdiction of a specific judicial branch (in this case, the State Administrative Court) – as per Article 7 paragraph (1) in conjunction with Article 8 paragraph (1) of Law Number 15 of (2019) concerning Amendments to Law Number 12 of 2011 concerning the Formation of Legislation.

By examining the nomenclature of the Court Regulation, two important points can be immediately understood. First, the authority to review factual actions, material acts, or administrative actions, now falls under the jurisdiction of the State Administrative Court. Second, the authority to review (examine, decide, and settle) unlawful acts by government bodies/officials (*onrechtmatige overheidsdaad*), which was previously the authority of the General Court to review (examine, decide, and prosecute), has now been transferred to the jurisdiction of the State Administrative Court.

In addition, there is a slight difference regarding the grace period rules according to Supreme Court Regulation Number 6 of 2018 and Supreme Court Regulation Number 2 of (2019). The comparison is as follows:

Table 1. Administrative Remedies in Supreme Court Regulation Number 6 of 2018 and Supreme Court Regulation Number 2 of 2019

Parameter	Supreme Court Regulation Number 6 of 2018	Supreme Court Regulation Number 2 of 2019
Grace Period	90 (ninety) days from the time the decision regarding administrative action is received by the public or from the time it is announced by the administrative official who handles the administrative action.	90 (ninety) days after the government action is taken, with the provisions that if community members take administrative measures, a grace period is extended until the decision on the administrative measures is received.
Reference to administrative remedies	• Basic Regulations • Administrative law	• Special Regulations • Administrative law
Competence	State Administrative Court	For actions with special administrative remedies, the competence of the State Administrative Court

It should be noted regarding the relative jurisdiction of the State Administrative Court in Supreme Court Regulation Number 2 of 2019, if administrative remedies have been specifically regulated, then disputes over government actions fall under the jurisdiction of the High Administrative Court. It is different from the regulation in Supreme Court Regulation Number 6 of 2018, which in Article 3 states that after administrative remedies have been taken, disputes over government actions remain under the jurisdiction of the State Administrative Court. Therefore, the fundamental difference between disputes over government actions and disputes over unlawful acts by government agencies/officials in the State Administrative Court lies in the existence or absence of a claim to declare the government official's actions invalid and/or void and/or without binding legal force along with compensation. Moreover, the provisions on grace periods and relative competency that are used as benchmarks are the provisions of

Supreme Court Regulation Number 2 of 2019.

Another distinction to consider is the perpetrator or the Defendant. It can be seen in the table below:

Table 2. Comparison of Administrative Disputes and Unlawful Acts by the Government in the State Administrative Court Based on Supreme Court Regulation Number 2 of 2019

Parameter	Administrative Disputes	Unlawful Acts by the Government (<i>Onrechtmatige Overheidsdaad</i>)
The Parties	Public Citizens (individuals/entities) vs. Government Officials/Other State Administrators.	Public Citizens vs. Government Agencies/Government Officials.
Object of Dispute	Government Actions.	Unlawful Acts (Can be Government Decisions or Actions)
Demands	—	• Declare government official's actions invalid and/or void • Has no binding power • Compensation

In administrative disputes, the Defendant is the government official and other state administrators (vide Article 1 paragraph 3 of Supreme Court Regulation Number 2 of 2019), while in disputes over unlawful acts by government agencies/officials (*onrechtmatige overheidsdaad*), the Defendant is the government agency/official (vide Article 1 paragraph 4 of Supreme Court Regulation Number 2 of 2019).

Overall, the regulation in the Supreme Court Regulation that distinguishes administrative disputes only for disputes when actions have been taken by administrative officials without any claims, needs to be improved. It is because disputes are certainly intended to submit claims, both principal and/or additional (subsidiary), not just to question an action that has been taken without any claims. As judicial practice progresses, if each judicial environment, both General Courts and State Administrative Courts, has understood and implemented the limits of authority to examine disputes over factual actions and unlawful government acts that have been transferred, then the Supreme Court Regulation in question needs to be improved by including the basic construction of reviewing disputes over factual government actions with more rigidity and

comprehensiveness.

Comparative Analysis of Factual Action Review Regulations in Various Countries

In Western countries, law is considered a sign of civilization, indicating that only civilized societies have a strong legal system. David and Brierley explain that the function of comparative law is not only to understand historical and philosophical legal research better but also to help improve the law and increase society's understanding of it (Menski 2019). Here are several countries that can be used as a comparison:

1. Frace

The French judicial system adopts a duality of jurisdiction, which means there are two separate court systems: the General Court and the Administrative Court, each with its own supreme court. General justice culminates in institutions such as the Supreme Court (*Cour de Cassation*), while Administrative Court culminates in the *Conseil d'Etat* (Burhanuddin and Putri Cahyawati 2024).

Despite this separation, the General Courts also have jurisdiction over certain administrative disputes including disputes in the fields of industry and trade, compensation for accidents involving government vehicles, government liability in the field of education, compensation for the expropriation of property, and government actions that invade on individual property rights or human rights (*voie de fait*). Apart from that, the General Courts also examine decisions or regulations issued by the government on an incidental basis (*exception de legalite*) relating to the civil or criminal case being examined. Yet, the General Court's decision only applies to the specific case in question and does not have general binding force (*erga omnes*).

On the other hand, the Administrative Courts in France are organized into a three-tier system: *Tribunaux Administratifs*, *Cours Administratives d'Appel*, and *Conseil d'Etat* (Brown, Bell, and Galabert 1998). *Tribunaux Administratifs* are the first-instance Administrative Courts. According to the report on the comparative study of France's Administrative Court (2009), France's Administrative Courts have jurisdiction to examine, decide, and resolve all administrative disputes arising from decisions, actions, and policies of government officials that are based on public law and cause harm to the public. Its authority and procedures are governed by the Code of Administrative Courts (*Code des Tribunaux Administratifs*), which contains legislative provisions and government regulations that were refined in Law (Loi) No. 87-1127 of December 31, 1987, on

Administrative Litigation Reform (Abdoellah 2016). The jurisdiction of the courts extends not only to government decisions and actions but also to policies and even factual actions. In addition to being a judicial institution, the *Tribunal Administratif* also has a function as an advisory or consultative council for local governments. This dual function, especially as an advisory and consultative council, has its roots in history, namely from the Royal Council during the monarchy (*Conseil du Roi*) and the Advisory Council of Regional Heads (*Conseil de Prefecture*) (Lotulung 1993).

Appeals against cases decided by the *Tribunaux Administratifs* can be brought to the *Cours Administratives d'Appel*. The *Cours Administratives d'Appel* have jurisdiction to review and decide these cases again, taking into account the decisions already handed down by the *Tribunaux Administratifs*. Cassation for certain/special cases decided by the *Cours Administratives d'Appel* is also carried out and reviewed by the *Conseil d'Etat* (Lotulung 1993). Ultimately, the *Conseil d'Etat* has several authorities, which can be summarized as follows: advisory and consultative council for the central government, reviewing appeals of cases examined by the *Tribunaux Administratifs*, and reviewing cassation of certain/special cases investigated by the Specialized Administrative Courts

In addition, there are also administrative faults and personal faults (Garner 1924). Administrative fault (*faute de service*) is a mistake or wrongdoing committed by a public official while on duty thus it involves the government's overall responsibility to provide compensation for damages incurred. The mechanism for providing compensation for administrative fault is that the government is directly responsible and pays compensation to the injured party. Meanwhile, personal fault (*faute personnelle*) is a mistake or wrongdoing committed by a public official that is not related to their official duties. It has nothing to do with the administrative activities of government officials and cannot be considered official actions. The mechanism for providing compensation for personal fault is that the injured party asks the government to pay compensation, and then later the government charges the government official who committed the personal fault (Lotulung 1993). This mechanism aims to simplify and speed up the provision of compensation, as the state/government is always able to pay, so that injured citizens receive compensation without having to go through a long and complicated legal process. Instead, the government is the one who will bear the burden of long and complicated processes as well as payment difficulties from government officials who make personal faults (Lotulung 1993).

In France, the responsibility to pay compensation (*responsabilite de la puissance publique*) is largely a development of the jurisprudence of the *Conseil d'Etat*, and only a small part is based on legislation. Similar to civil law, the government is obliged to pay compensation if the following conditions are met (Lotulung 1993):

- a) There is an element of fault;
- b) There is damage, both material or immaterial, by the party affected by the action;
- c) There is a causal link between the two

Damages that can be compensated in France include both material and immaterial damages, caused by unlawful (*onrechtmatig*) actions with negligence (*pour faute*) or lawful (*rechtmatig*) actions without negligence (*sans faute*). However, to obtain compensation, a causal link must be proven between the government's action and the damage that occurs. The Administrative Courts will determine and explain the type of damage (material and immaterial) and the amount of compensation that must be given (Ridwan 2014).

If the lawsuit against the government is granted, the government will be responsible for compensation. It was emphasized in the Agnes Blanco case, where the *Tribunal des Conflits* stated that the government's responsibility for unlawful actions was not based on private law, but rather administrative law as a special rule for government actions in public service activities. Moreover, most governmental liability in France arises from unlawful acts, including both factual actions and legal actions.

2. Netherlands

The Netherlands also has a two-track court system: the General Courts and Administrative Courts. The General Courts have a cassation route up to the Supreme Court (*Hoge Raad*). Meanwhile, the Administrative Court culminates in the Council of State (*Raad Van State*). Appeals against disputes relating to social security, pension matters, and civil service decisions (*ambtenarengerecht*) are submitted to the Central Court of Appeals (*Centrale Raad Van Beroep*); while appeals against decisions of public legal entities are submitted to the Court of Appeal of Public Legal Entities (*College Van Beroep Voor Het Bedrijfsleven*) (Lotulung 1993; Abdoellah 2016).

The jurisdiction of Administrative Courts in the Netherlands is limited to the

review of plans and administrative decisions, while factual actions and compensation are the authority of General Courts (Graaf, Marseille, and Wever 2022). It is understandable because in the Netherlands administrative law is a complement to civil law. The Netherlands considers administrative law as a development of differentiation from civil law because administrative law is considered to only regulate legal relationships that are not covered by civil law (Barkhuysen, den Ouden, and Schuurmans 2012).

In the Netherlands, factual actions (*feitelijke handelingen*) are separated and not related to a decision (*beschikking*) which is a legal action (Usfunan 2002). It means that factual actions are not always preceded by a decision. Consequently, if there is a dispute regarding to factual actions and decisions, both are examined separately in court. It shows a clear dichotomy between decisions and factual actions in the Netherlands. Furthermore, this separation results in the impossibility of appealing factual actions according to the provisions of the AROB (*Algemene Rechtspraak On Beschikkingen*), because factual actions are not categorized as legal actions (Usfunan 2002).

In contrast to the Netherlands, the formulation of factual actions in Law Number 30 of 2014 concerning Administrative Governance does not explicitly separate factual actions and decisions. In fact, factual actions are qualified as part of written decisions (*beschikking*) - see Article 87 (a) of the Law. This definition, which identifies decisions with factual actions in government administrative law, has the consequence that the authority to review/examine both lies with the Administrative Court.

Disputes between the public and the government in the Netherlands can be resolved through three groups of institutions, namely (Lotulung 1993):

- a) Administrative Appeals (*administratief beroep*) that are still within the internal authority of the executive and are included in the government hierarchy.
- b) Specialized Administrative Courts (*bijzondere administratieve rechtsspraak*) that only have the authority to examine, decide, and resolve specific disputes so that it is different and not the same as the jurisdictional authority of the State Administrative Courts in France which has general jurisdictional authority (*algemene administratieve rechtsspraak*).
- c) Civil/General Courts that examine, decide and resolve government actions that violate the law and cause losses.

Based on the classification above, the Netherlands stipulates that examinations of material actions (*materielle daads*) or factual actions (*feitelijke handelingen*) are carried out by civil judges in the General Court, even though the government action being reviewed falls within the realm of public law. It is because the main focus of the investigation is to assess whether the government's factual actions are actually detrimental to society and how or what compensation should be provided. Hence, the government can be held liable for compensation not only because of legal actions but also because for factual actions (*feitelijke handelingen*). Examples of factual actions that can give rise to compensation include negligence in maintaining public roads, damage to road facilities, and real actions in the context of government coercion (Ridwan 2014).

In principle, the legal consequence of government actions that are detrimental to society is to restore the situation to its original state (*herstel in de vorige toestand*). It is done through reparatory action. The review mechanism is carried out in the General Court by first requesting the cancellation of the factual action, and only then requesting reparatory action from the government. If a return to the original state is not possible, then the government will be burdened with compensation (Ridwan 2014).

Similar to France, the Netherlands also recognizes responsibility for personal faults (*faute personnelle*). If the government's actions cause harm due to the official's personal faults, then the responsibility for compensation is borne by that official. Officials' personal faults can be in the form of maladministration or violations of integrity, such as corruption, bribery, and nepotism.

3. England

The English legal system adheres to the principle of unity of jurisdiction, meaning that there is only one judicial system applicable to all parties, including the government and the public. It is in line with the concept of the rule of law, which emphasizes equality before the law for all people. Equality before the law means that the government and the public have the same status, responsibilities, legal processes, and accountability when they make mistakes (Ridwan 2014). Consequently, there is no concept of Administrative Courts in England (Lotulung 1993). If there is a dispute between the public and the government, there are several mechanisms that can be used to resolve it. These mechanisms are essentially forms of supervision/control over government actions. These mechanisms include: Administrative Tribunal and Judicial Review.

Administrative Tribunals in England are not Administrative Courts like those in France. Instead, they are a general term for various institutions that are responsible for resolving disputes between the public and the government in specific areas (Drewry 2009). These institutions have different names, such as Boards, Committees, Commissioners, and so on. The term "administrative" is used because these institutions are formally part of the administrative structure.

In addition to Administrative Tribunals, there is also a mechanism known as Judicial Review. Judicial Review is a form of supervision conducted by a true judicial institution (court), not just a tribunal, in Anglo-Saxon countries with a common law legal system. It examines and evaluates government actions solely from a legal standpoint, assessing the legality of a particular action. The goal of Judicial Review is to ensure that the public has legal protection, to prevent arbitrary actions, and to avoid any mistakes made by the government (Ridwan 2014).

The conduct of Judicial Review of administrative disputes, including factual actions of the government, is the authority and responsibility of the General Courts in England. For first-instance court, the court that examines the case is called the County Court. Appeals against County Court decisions are submitted to the Court of Appeal. Meanwhile, the top of the judiciary is in the House of Lords.

If government officials take *ultra vires* actions that cause harm to the public, the government can impose liability and the responsibility to pay compensation. This responsibility is their own responsibility, not the responsibility of the government (agency) (Ridwan 2014). However, this liability does not apply to the monarch, who can only be held legally accountable (not criminally) for government actions under the common law system as long as there is a law that expressly provides for such liability. The exceptions to this monarch's liability include (Paulus Effendi, 1993):

- a) Acts of State: decisions made as a realization of the monarch's prerogative rights.
- b) Compensation related to military/armed forces activities.
- c) Compensation related to judicial duties to ensure the independence of the judiciary.

Based on a comparison of the jurisdiction of Administrative Courts in the above-mentioned countries, a comparative table can be made of the review of factual

actions before and after the enactment of Law No. 30 of 2014 on Government Administration and Supreme Court Regulation No. 2 of 2019 on Guidelines for Settlement of Disputes over Administrative Acts and the Authority to Adjudicate Unlawful Acts by Government Agencies/Officials (*Onrechtmatige Overheidsdaad*), which is processed as follows:

Table 3. Comparative Analysis of Authority to Review Factual Actions with the Jurisdiction of Administrative Courts in Several Countries

No	Parameter	Before the Administrative Procedure Law (UUAP) and Supreme Court Regulation No. 2/2019	After the Administrative Procedure Law (UUAP) and Supreme Court Regulation No. 2/2019
1.	Competence	General Courts Identical to Netherlands	Administrative Courts Identical to France
2.	Basis of Review	Written Law Unwritten Law : - Not infringing upon rights Subjectivity of Others - Not in conflict with the legal obligations of the perpetrator - Principle of proportionality - Principle of thoroughness - Principle of caution Identical to Netherlands	Legislation General Principles of Good Governance (GPG) Identical to the <i>Algemene Beginselen Van Berhoorlijk Bestuur</i> (ABBB) of the Netherlands and Natural Justice of England

3.	Procedural Structure	District Court High Court Supreme Court Identical to Netherlands - <i>Burgelijke Rechter</i> - <i>College Van Beroep Voor Het Bedrijfsleven</i> - <i>Hoge Raad</i>	Administrative Court Administrative High Court Supreme Court A combination of the Netherlands and France - <i>Administratif Tribunal</i> (France) - <i>Cours Administratives d'Appel</i> (France) - <i>Hoge Raad</i> (Supreme Court of the Netherlands) / <i>Cour de Cassation</i> (Supreme Court of the France)
4.	Compensation and Its Mechanisms	Material and Immaterial Claims Decided by the General Courts. Mechanism: The factual action that is cancelled is accompanied by a reparatory order. If it is not implemented, then compensation will be given. Identical to Netherlands	Material and Immaterial Claims Decided by the Administrative Courts Identical to France
5	Liability	By Government Agency Identical to Netherlands	By Government Agency/ Government Officials Identical to France who recognize personal fault (<i>fautes personally</i>) and administrative

			fault (<i>fautes de service</i>)
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From the table above, it can be concluded that before the enactment of the Government Administration Law and Supreme Court Regulation Number 2 of 2019, the authority of the Indonesian Administrative Court (PTUN) resembled that of the Netherlands. Its jurisdiction was restricted to legal matters, excluding the review of factual actions. This meant that the Administrative Court could not assess the factual aspects of administrative decisions, focusing solely on legal issues and adherence to legal principles. However, after these two rules were implemented, the Administrative Court in Indonesia had the authority to examine factual actions along with responsibility for compensation for both material and immaterial losses, as in France. The main difference between Indonesia's and France's regulations lies in the highest judicial institution. In Indonesia, both the General Court and State Administrative Court culminate in the Supreme Court. Meanwhile, in France, the General Court culminates in the *Cour de Cassation* and administrative justice culminates in the *Conseil d'Etat*.

4. Conclusion

Based on the analysis and discussion that has been explained, it can be concluded as follows:

1. The authority to review factual actions of the government by the Administrative Court (PTUN) rests on a solid philosophical and foundational basis:
 - a. Factual actions represent the government's actions within the realm of public law, stemming from its authority to act (*bevoegdheid*) rather than the capacity to act (*bekwaamheid*) in the realm of private law. This authority is exercised to provide legal protection for the public and to exert control over the government to enhance the quality of governance.
 - b. Unification of the review of various government actions within the public law domain (both decisions and actions) based on the commonality of the perpetrator (the government) and the basis for the action (authority to act) aims to prevent disparities in review and decisions.

- c. The orientation of Administrative Court rulings extends beyond merely examining the legality of the disputed object from the aspects of authority, procedure, and substance. It also carries the function of correcting in the pursuit of achieving justice as corrective justice.
2. At the time of the enactment of the Administrative Court Law (UU PTUN), the authority to review factual actions was not explicitly granted to the Administrative Court (PTUN). The Administrative Courts' jurisdiction was solely limited to examining Administrative Decisions issued by government agencies. The introduction of the Administrative Procedure Law (UUAP) and the subsequent reinforcement brought about by Supreme Court Regulation No. 2 of 2019 marked a significant expansion of the Administrative Courts' authority. This expansion encompassed the review of factual actions and unlawful acts by the government that cause harm to the public. However, a potential gap remains in addressing unlawful administrative decisions. The Supreme Court Regulation's identification of unlawful acts by the government with administrative actions may inadvertently overlook unlawful administrative decisions.

Therefore, Therefore, it is necessary to revise the Administrative Court Law and Supreme Court Regulation Number 2 of 2019 to clarify the Administrative Courts' authority in examining factual actions, including administrative decisions that violate the law. This is important to strengthen legal protection for the community and ensure government accountability in carrying out its duties and obligations.

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