



# The Role of the Administrative Court to Promote Administrative Reform in Indonesia

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**Abstract.** Administrative reform in Indonesia has been going on for the last 20 years or so. Various patterns of progress and stagnation have emerged along with administrative reform in the central and local governments. Administrative reform has been analyzed and evaluated mainly from the perspectives of administration and politics, but it is very rare to consider it from the lens of administrative justice in Indonesia. Many decisions and legal breakthroughs in judicial decisions of the administrative courts have directly contributed to encouraging changes in the government. Moreover, the application of the principles of good administration needs to be realized through law enforcement. The research method is a normative legal study. This paper argues that the role of the administrative court is very important to create better administrative reform, although with limited powers. Administrative courts do not have the authority to go too deep into the area of consideration and administrative autonomy because it relates to the principle of separation of powers. However, several judicial decisions show that the judge's arguments and decisions can provide encouragement for the government to improve decision-making procedures that are contrary to the law and the principles of good governance.

**Keywords:** Administrative · Court · Reform · Government · Indonesia

## 1 Introduction

The collapse of the New Order regime in 1999 has opened up many arguments and discussions about what fundamental changes are most urgent. One of the important phases is the amendments to the Indonesian constitution (*Undang-Undang Dasar Tahun 1945*) from 1999 to 2022. Those changes have revised many dimensions of government—politically, economically, socially, and legally.

Some central themes of the reformation are protecting human rights, eradicating corruption, and improving the government. All of these crucial issues have been set forth in various laws: the Human Rights Act, the Corruption Act, and the Administration of Government Act. Related to the government, the estuary of these changes lies in the issues and policies of administrative reform in all areas of government. This reform policy is implemented by the central and regional governments, independent bodies, and state enterprises.

At first, the initiatives and programs of administrative reform were carried out mostly due to the political encouragement urged by the House of Representatives on government performance through its oversight function. The government becomes the object of political control because of the strong position of parliament after the amendments to the Constitution [1]. At the executive level, the president as head of government provides several guidelines and instructions to push the reform policies to be carried out massively down to the regional government level.

The government management system in Indonesia has a fairly high level of complexity and a lot of regulatory burdens [2]. As a consequence, those sporadic policies and programs are combined in the form of Presidential Regulation No. 81 of 2010 on the Grand Design of Administrative Reform 2010–2025. Normatively, this policy will expire in 2025, so the government needs to make adjustments or changes for the next steps and targets.

The progress of administrative reform cannot be focused solely on internal change at the government level. It still has to be seen in terms of the external supervision carried out by many institutions. These supervising processes could be done politically by the parliament, administratively by internal or executive review, socially by social control, and legally through judicial power [3, 4]. The supervision and accountability of administrative bodies can also be carried out institutionally, hierarchically, collectively, and individually [5]. One of the judicial supervision bodies is the administrative court. One indicator of the development of administrative reforms is the government's obedience to court decisions containing corrections to government actions and the implementation of the principles of good administration. Administrative courts have the authority to review government actions and decisions deemed to be contrary to law and good governance principles [6].

This paper will be divided into several parts. First, the administrative reform policies implemented in Indonesia were an effort to encourage changes in government. Second, the restrictive authority of the state administrative court related to the supervision of government actions. Third, the influence of administrative court decisions on administrative reform.

## **2 Policies of Administrative Reform**

Groves [7], argues that the term “administrative reform” can be used as a synonym for administrative change and also efforts to modernize new and developing nations [7]. It is unpredictable but should be designed by creating administrative policies related to administrative elements [8]. There are several policies closely related to administrative reform. Several objectives and contents of the policy are outlined in this section.

### **2.1 Presidential Regulation No. 81 of 2010 Concerning the Grand Design of the Administrative Reform of 2010–2025**

The design is a master plan containing policy directions for implementing national administrative reform from 2010 until 2025. The document would be implemented

through a road map that is formulated every five years. It is a detailed plan for administrative reform with clear annual targets. The grand design is stipulated by a presidential regulation, while the road map is enacted by the regulation of the Secretary of State for Administrative Reform. The grand design and road map are considered dynamic or living documents.

The integrated design is a reference for all public institutions in executing the plan of administrative reform. The Grand Design can be changed by the National Administrative Reform Steering Committee and would be stipulated in a Presidential Regulation. Further provisions regarding the implementation of the presidential regulation are regulated by the Minister of State for Administrative Reform as Chair of the National Administrative Reform Team.

The main basis for the formation of this policy reform is to implement the intent of several MPR decrees (*Majelis Permusyawaratan Rakyat*) that have already been issued to respond to the reformation movement and the chaotic situation back then. Some of those decrees encourage: (a) development reform in the context of normalizing national life; (b) clean state administration that is free from corruption, collusion, and nepotism; (c) ethics of national life; (d) recommendations for policy directions for the eradication and prevention of many corrupted behaviors; (e) accelerating national economic growth, including reforming the bureaucracy and building a clean government and business sector; (f) eradicating corruption, collusion, and nepotism, including through law enforcement, as well as an emphasis on an administrative culture that is transparent, accountable, clean, and responsible.

Some of the administrative issues that are the targets of reform are: (a) restructuring and re-developing government organizations with the right function and right-sizing; (b) the re-arrangement of statutory regulations, which are still overlapping, inconsistent, and have multiple interpretations; (c) increasing the quality of apparatus; (d) establishing accountability and responsibility; (e) improving the quality of public services for all citizens; and (f) changing the mindset and work culture of administration to be more efficient and professional.

The Ministry of Administrative Reform has formulated several meanings and objectives of administrative reform. The goal is basically to create a professional administration that has the following characteristics: integration, high performance, free from corruption, public service capacity, neutrality, prosperity, dedication, and consistency with values and ethics. These objectives are then broken down into several main indicators, namely: avoiding the abuse of authority; excellent bureaucracy; enhancing the quality of social service; improving the quality of the formulation and implementation of public policy; improving organizational and functional efficiency; creating a world-class bureaucracy; and adapting to changes in the strategic environment.

Administrative reform is interpreted as (1) major changes in the paradigm and governance of the Indonesian government; (2) the big stake for the citizens in facing future challenges; (3) re-evaluating the overlapping government functions and the management of the national budget; (4) reorganizing the administrative process at every level of the administration to be more innovative; and (5) modernizing various policies and government management at the central and regional levels and embracing the new paradigms and roles of government.

## 2.2 Law No. 30 of 2014 Concerning Government Administration

The accountability system is so much related to government behavior and responses to the decision-making process and the implementation of rules [9]. This law was made to improve the quality of administration through the regulation of the authority of administrative bodies. In addition, this law is intended as material administrative law for the administration of government. In this law, the normative, instrumentative, and legal-protecting functions of administrative law are regulated in several provisions. The measure of governance is the government's compliance with laws and good governance principles. The standard is also a tool for administrative judges to review the legitimacy or validity of government actions.

The law regulates that government administration is a decision-making procedure or process of taking actions by government bodies or officials. In carrying out the administrative system, the government is equipped with several functions, which include regulation, service, development, empowerment, and protection. These powers and functions are carried out by government bodies that are within the executive or administrative sphere. This law is only intended to regulate government authority, which is in the realm of public law and does not include private law. The material law that applies to government actions in private law is regulated in the law on civil or private law.

The form of administration is characterized by adherence to legal rationality and authority as one of the prominent characteristics of the administrative system [10]. The government can exercise its authority through two types of actions: written administrative decisions and concrete or factual actions. Government decisions are written decisions issued by government agencies or officials to administer the government. Government actions are acts of government officials or other state administrators to do and/or not take concrete actions within the framework of administering government. In addition to these two types of actions, government agencies are also given discretionary powers that can be used to address concrete problems when laws provide some alternatives, are void of regulations, are incomplete or unclear, or there is government stagnation.

Government agencies are prohibited from carrying out actions that abuse their public authority. There are three forms of abuse of authority prohibited by this law: (1) the prohibition to exceed authority; (2) the prohibition to mix up authority; and (3) the prohibition to act arbitrarily. These three types of actions are basically considered to have violated the law and the principles of good governance. In addition, in making decisions related to the public interest and the use of state finances, government agencies are obliged to carry out the process of public participation. If these conditions are violated, the government's decision or action can be considered contrary to the applicable laws and regulations.

To carry out supervision over such decisions and actions, government agencies are required to develop standard operating procedures. These standards are set forth in the form of statutory regulations that are binding internally and externally. For accountability and transparency purposes, these standards must be published in official online media. The community can supervise the procedures carried out by the government if they are not in accordance with the established and published procedural standards. However, the fact is that many government agencies have not fully complied with this, and some of the published standards are out of date or inconsistent with policy changes.

### 2.3 Other Related Laws

Other laws related to administrative reform policies are the public service act, the public information disclosure act, the state financial management act, and the law on clean government. Other policies relate to the implementation of e-government systems and e-public services in almost all parts of government [11].

Public service is a series of activities to provide goods, services, or administrative needs by providers for every citizen and resident based on the laws. Public services must be implemented based on the principles of: public interest, legal certainty, equal rights and obligations, professionalism, participatoryness, non-discrimination, openness, accountability, special treatment for vulnerable groups, punctuality, speed, convenience, and affordability.

The provision of public services must also be carried out based on standards that have been jointly determined. Communities are given the right to participate in the provision of public services, from the formulation of service standards to the evaluation. Community participation can be achieved through cooperation, the fulfillment of community rights and obligations, and an active role in formulating public service policies.

Public information is generated, stored, managed, sent, and received by a public agency relating to the government, state, and public interest. The provision of public information must be carried out based on several principles regulated in the law on public information disclosure. Every piece of public information is open and can be retrieved by citizens.

However, not all information can be disclosed to the public. This information is referred to as “public information,” which is exempt, strict, and limited. Certain public information is confidential in accordance with the law. The provision of such information is based on considerations of decency and public interest in relation to the consequences that arise when the information is disclosed to the public. Closing public information that is exempt intends to protect the greater interest.

If there is a dispute related to the provision of public information between the public agency as the owner of the information and the applicant, the dispute is first resolved through an information commission at the national or regional level.

The state finance act defines “state finance,” as the state’s rights and obligations that can be valued in money, including everything either in the form of money or in the form of goods that can be owned by the state related to the implementation of the rights and obligations. State and regional finances must be managed in an orderly manner, in compliance with laws and regulations, efficiently, economically, effectively, transparently, responsibly, fairly, and appropriately.

Accountability for the implementation of state and regional finances in the form of financial reports is examined by the Supreme Audit Agency. Violations in the management of state finances can be subject to criminal or administrative sanctions, along with compensation.

The clean government law was formed to lay down the basis and principles of governance that are free from corruption, collusion, and nepotism. Clean state administrators are manifested in the management of government and the state in accordance with the general principles of state administration and are free from corruption and other disgraceful acts [12].

This law regulates several main principles of good governance. The principles of implementing a clean government include legal certainty, orderly administration of the state, public interest, openness, proportionality, professionalism, and accountability. To realize this, relations between state administrators must be carried out in accordance with institutional norms, decency, and ethics based on state ideology (*Pancasila*) and the constitution. The relationship between good governance is also related to community participation. The rights and obligations of the community in this context are regulated by this law.

Law enforcement can be done to realize a clean government through the application of criminal and administrative law. The mechanism for resolving legal disputes involving government agencies if they are suspected of having committed an act contrary to this law can be carried out through the imposition of criminal or administrative sanctions. The agency authorized to carry out the function of eradicating corruption, in particular, is the Commission for Eradicating Corruption.

### 3 Restrictive Power of Administrative Court?

In an accountable relationship, it would be important to provide the demands, modes of assessment, institutional arrangements, and changes [13]. The accountability mechanism makes the government responsible within the dynamics of the governmental system [14]. Administrative courts were formed through Law No. 5 of 1986 on the state administrative court (SAC) [15]. The law gives very limited authority to the judiciary to oversee the government. The essence of an administrative court is to supervise government actions. Government actions that violate the law can be invalidated by the court and subjected to other administrative sanctions.

The SAC stipulates that the powers of the administrative court are only meant to examine legal acts committed by government bodies in the form of written administrative decisions. These administrative decisions must be made based on the authority regulated by laws and regulations, be concrete, individual, and final, and have legal consequences for individuals and private entities. This decree is at the heart of governmental acts and administrative law in Indonesia.

Administrative decisions can only be issued by government agencies that are given the authority. The government's authority is only of an executive or administrative nature, not political or otherwise. In other words, if a government agency issues a decision without legal authority or violates the limits of its authority, then such action is considered an abuse of authority. The decision can be invalidated and revoked by the administrative court based on statutory regulations and the principles of good governance.

Moreover, the administrative court does not have the authority to review administrative decisions based on several exclusionary criteria. Such decisions can only be examined by other judicial bodies and the administrative body itself. The criteria for those decisions are: decisions that are private law in nature, decisions that are regulative or general in nature, decisions that are not yet final, decisions in the military field, decisions in the realm of criminal law, decisions made on the basis of court decisions, and decisions regarding the results of general elections. Administrative courts are also, in principle, not authorized to examine acts or discretionary governmental authority.

This very limited authority has expanded with the publication of the Administration of Government Act [16], which extensively regulates the normative definition of administrative decisions. The formulation in the SAC has been fundamentally changed by this law. Government actions under this law are no longer limited to written administrative decisions but can also take the form of concrete or factual actions. In other words, the government can use one of these actions or both simultaneously when a government agency needs to exercise its authority. The orientation of the authority of government bodies is, of course, the fulfillment of public interest or public service.

Administrative decisions are written judgments issued by government agencies and/or officials to administer the government. Government action is an act of a government official or other state administrator to take and/or not take concrete actions in the framework of administering government.

A more comprehensive formulation is regulated in Article 87, which states that the administrative decision is a written stipulation, which also includes factual actions taken by the state administrative agency and/or officials in the executive, legislative, judiciary, and other state administrations based on statutory provisions and the principles of good governance. It should be final in a broader sense and have the potential to cause legal consequences and apply to citizens. This formula is very different from the formulation in the SAC, giving rise to multiple interpretations both among judges of administrative courts and government agencies.

The expansion of these meanings and formulations has implications for the expanding powers of administrative justice. This trial does not only examine written administrative decisions but also the concrete or factual actions of the government. Examination of concrete actions is carried out through disputes over government actions that violate the law (*onrechtmatige overheidsdaad*). In this context, the Supreme Court has issued Supreme Court Regulation No. 2 of 2019 as procedural law for examining the dispute.

## 4 Judicial Decisions on Administrative Reform

Administrative courts have limited authority to promote administrative reform. It is because the administrative court is only given the authority to review government decisions or actions deemed to be contrary to laws, regulations, and the principles of good governance. The unlawful act can be canceled and revoked by the administrative court. In addition, judges are permitted to construct legal considerations deemed appropriate to correct the government's actions. However, judges cannot go too far, including when examining the government's discretionary authority.

The basis of the judicial review used by the judge is the suitability of the government's authority, the substance of the action, and the procedures carried out when making administrative decisions or actions. Each of these elements must be in accordance with relevant facts and must not conflict with laws, regulations, or the principles of good governance. All of these material and formal requirements are cumulative, so when one of the conditions is not fulfilled, then the government's actions can be considered illegal.

In his consideration, the judge was allowed to provide arguments for why the government's decision should be annulled. The element that must be fulfilled is that the plaintiff can prove that he has experienced real or potential losses as a result of the

implementation of the government's decision or action. The legal standing requirement is the main element requiring the plaintiff to stand before the administrative court. The judge's argument can be prepared based on the reason that the actions of the government being sued are not in accordance with the principles of good governance and are seen as having negative consequences for government administration.

However, there are limits to the judge's authority where the principle of separation of powers must be considered. Administrative courts are not allowed to sit as if they were government bodies and provide judgments that should become administrative autonomy. The court is not in a position to determine if the government's actions have been carried out in accordance with the law and government principles and fulfill the legal terms of authority, substance, and procedure, even though the contents of the decision harm the rights or interests of the plaintiff. Fulfillment in the public interest is the authority of an autonomous government agency.

This is also the reason why administrative court decisions are often difficult to execute because the annulment and revocation of government decisions are returned to the relevant government agency. The result is that court decisions often do not resolve problems between the government and its citizens.

One of the decisions of the administrative court related to administrative reform can be seen in Decision Number 58/G/2019/PTUN.BDG [16]. This case relates to the definitive inauguration of the Regional Secretary for the City of Bandung, which was deemed to have violated procedures because the inauguration was not made to the plaintiff but to another individual. Chronologically, the plaintiff is the person who was determined to be appointed in the open bidding by the previous mayor of Bandung. The inauguration carried out by the new mayor is considered to have caused direct harm to Plaintiff by eliminating his right to be appointed as the Regional Secretary of the City of Bandung. In addition, the plaintiff believes that the actions of the new mayor have created legal uncertainty and could have a negative impact on the open selection of other public positions because they have the potential to be followed by other regional heads.

The plaintiff denied this argument on the grounds that the determination of appointed officials was the autonomous authority of the new mayor due to changes in regulations made by a circular letter from the minister of home affairs. The circular letter stipulates that the inauguration of regional secretaries must be postponed until a new mayor is elected as part of a simultaneous general election process at the regional level. The new mayor believes that the appointment of high-ranking regional officials signifies the full authority of the new mayor as the highest official in the region. Apart from that, in fact, the defendant was not an official who was in first place out of the three selected candidates but only in third place.

The judge decided that the mayor's decision regarding the inauguration of the regional secretary for the City of Bandung was illegal because it contradicted statutory regulations and the principles of good governance, namely the principle of legal certainty, the principle of motivation, and the principle of reasonable expectations. According to the judge, there was indecisiveness from the minister of home affairs and the governor of West Java when the new mayor proposed changing the name of the appointed official. The judge argues that if the new mayor wants to change the name of the appointed official, it should be accompanied by clear and objective reasons and considerations. The



previous mayor should have given the right to determine the regional secretary candidate to the newly elected mayor because the person who would be using the services of the Bandung City Secretary would be him. The judge's decision was based on the argument that there was a lack of care from the previous mayor, who did not consider if the new mayor had to partner with officials who did not match his choices and preferences.

However, the first-level administrative court decision was annulled by the appellate and cassation-level judges. The final decision stated that the plaintiff did not use administrative measures before filing a lawsuit at the administrative court. The expiration of the deadline for filing administrative efforts means that there is no legal standing or interest for the plaintiff to file a lawsuit. Therefore, the plaintiff's argument cannot be accepted.

The next case is Decision No. 245/G/2019/PTUN-JKT regarding lawsuits related to the decision letter issued by the Head of the Investment Coordinating Board (ICB) No. 179 of 2019 concerning the revocation of business licenses on behalf of PT. Gaharu Capita Indonesia [17]. The plaintiff argued that the administrative decision was made by an unauthorized official and that ICB had implemented the wrong procedure to impose administrative sanctions on the plaintiff. Moreover, the plaintiff stated that the revocation of the plaintiff's business identification number was not carried out according to legal procedures. Based on this argument, ICB submitted a rebuttal stating that the decisions made were in accordance with laws and regulations and the principles of good governance, namely the principles of legal certainty, accuracy, arbitrary prohibition, and orderly administration of government. The administrative court rejected the ICB's argument and accepted the claim or argument from the plaintiff. The judge stated that the administrative decision was against the law or invalid and ordered the plaintiff to revoke the decision.

In his decision, the judge concluded that the decision issued was invalid because it was not issued by an authorized official. The laws and regulations relating to the dispute stipulate that the temporary officer is not authorized to issue definitive and strategic decisions. Such a decision has legal consequences and changes the plaintiff's legal status. The content of the decision being challenged should have been issued by the head of the agency, not a temporary officer who is positioned under him. As a consequence of this invalidity, the decision issued is deemed to have never existed or has been canceled automatically.

From the two decisions, it can be concluded that indirectly, administrative justice has an important role to play in supporting administrative reform. This function can be carried out through the authority to cancel and repeal government decisions or actions that are contrary to the law and the principles of good governance. Law [18], argues that judicial oversight also contains a coordinating function that encourages and educates the public to participate in supervising the government [18]. It would be so important, especially if the political and administrative control system is no longer effective [19].

## 5 Conclusion

It is difficult to design a responsive government system for all public concerns but it should be related to the responsive law-making process according to its formal mechanism [20]. Administrative justice is one of the legal accountability mechanisms for

overseeing the government. This judiciary has the authority to cancel administrative actions that are illegal and detrimental to the rights and interests of citizens. Even though they are not directly involved in the preparation and implementation of administrative reforms, which are the autonomous territory of administrative bodies, court decisions can encourage changes in government bodies. This is provided through the provision of fair administrative dispute resolution for citizens.

This role cannot be carried out optimally due to several institutional constraints and limitations stipulated in laws and regulations. Court decisions often cannot be executed due to the doctrine of separation of powers and government autonomy. Therefore, the ultimate outcome of administrative reform remains in the hands of the government. Compliance with court decisions is an indicator of the creation of administrative reform because court decisions contain the rule of law principle, namely obedience to laws and regulations and the principles of good governance.

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