

# LEGAL IMPLICATIONS OF FACTUAL ACTION AS ABSOLUTE COMPETENCE OF ADMINISTRATIVE COURTS

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**Abstract** -The purpose of this study is to examine the Administrative Decisions (*Beschikking*) in Law Number 30 of 2014 about Government Administration Relating to the Administrative Court Law and the Legal Implications of Factual Action on the authority of the Administrative Court. This research employs normative legal research techniques, to explore legal issues that are relevant to the topics discussed by analyzing primary and secondary materiiil law. The method for gathering legal materials is to make an effort to catalog and support relevant materiiil Law, which is directly related to the themes utilized to support further systematization of writing. The study's findings demonstrate that the expansion of the meaning of administrative decisions, the discussion of what constitutes official action or factual action, and the enlargement of the Administrative Court's absolute competence are the legal implications that ensue.

**Keywords:** *lorem ipsum*; Legal Implication; Factual Actions, Administrative Court.

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### ACKNOWLEDGEMENT

### INTRODUCTION

Law Number 30 of 2014 is Government Administration Law (GA Law) was promulgated to become a guideline for administering government. Government officials in carrying out actions or making decisions must be guided by the principles regulated in the GA Law.[1] The spirit of forming the Government Administration Law has always been material law for the Administrative Court. Materiiil law is a set of rules that regulate things that must be done, and are not allowed, or rules that contain rights and obligations.[2]

While Law No. 5 of 1986 in conjunction with Law No. 9 of 2004 in conjunction with Law No. 51 of 2009 (Administration Court Law) is a formal law. The Law on Government Administration regulates the absolute authority of the Administrative Court which is broader/ so that the authority of the Administrative Court to supervise government officials is also greater.[3] However, the discourse has been since the enactment of the Government Administration Law, which in principle has changed the paradigm of proceedings in the Administrative Court, it was even found that there were provisions on norms that were not in line with the Administrative Court Law.

The legal implication of the presence of the Government Administration Law is that there is a change in the meaning of State Administrative Decrees that is increasingly being expanded. Administrative Decisions are divided into two classifications, namely Written Administrative Decisions as stipulated in Article 1 Paragraph (3) of the Administrative Court Law and Unwritten Administrative Decisions.

According to Syamsul Bachri, decisions (*beschikking*) are not always made in writing but are sometimes issued orally, as they are known as oral decisions.[4] Juridically, the Law on Government Administration stipulates that State Administrative Decisions are no longer only interpreted in writing but also contain factual actions (*Feitelijk Handelingen*) as actions of the Government or bodies. Government Actions can be divided into two forms namely Factual Actions (*Feitelijk Handelingen*) and Legal Actions (*Rechtshandelingen*).[5] The following is the division: *Feitelijk Handelingen* (commonly called Material Actions or Factual Actions / Concrete Actions, vide Article

1 number 8 *jo.* Article 87 of the Government Administration Law).<sup>[6]</sup> Passive action, in the context of factual actions (*Feitelijk Handelingen*), refers to the act of remaining silent or not taking any explicit action or decision regarding a particular matter. It involves the absence of a specific response or the omission to act. This silence or inaction can still have legal implications and consequences. In other words, when the government or any relevant party fails to act or respond to a situation, it can be considered a passive action. This can be interpreted as an implicit approval, acceptance, or acknowledgment of the circumstances at hand, even without an explicit statement or decision being made.<sup>[7]</sup>

Observing the explanation above, factual actions can be classified as government or agency actions. Because of that it is valid to be declared as the object of lawsuit in the Administrative Court. So far we have been immersed in the concept that the decision is written. Jurists with a legal wing of legism emphasize that administrative decisions must be written to provide more legal certainty, although this has always been an interesting topic of discussion in the academic world. In the development of Administrative Law, many legal experts have provided views related to the concept of Administrative Decisions. Administrative Decisions are often interpreted as a decree. According to R. Soegijatno Tjakranegara,<sup>[8]</sup> decisions are unilateral legal actions in the field of government carried out by state apparatus based on special authority. Then Van Vollen Hoven and Van Der Pot<sup>[9]</sup> also said that a decision is a legal action that is one-sided in the field of government carried out by a government agency based on special powers.

The concept of administrative decisions put forward by the experts above does not provide a firm statement that the decree must be written. However, we can find a decision that provides such confirmation in the Administrative Court Law. Likewise, the Government Administration Law also agrees with written decisions and factual actions. However, reviewing the meaning of these factual actions, it is very difficult for us to put clear boundaries that invite long debates and experience legal ambiguity in the world of praxis. In response to this discourse, The Republic of Indonesia's Supreme Court has published Perma number 2 of 2019 regarding the Guidelines for the Settlement of Disputes on Government Actions and the Power to Try Illegal Acts by Government Agencies and/or Officials (*Onrechmatige overheidsdaad*). Indonesia's Republic Supreme Court's Article 1 Number 1 Regulation, No. 2 of 2019 stipulates that what is meant by government action is: Actions of Government Officials or other State Administrators to take and/or not take concrete actions in the framework of administering government.<sup>[10]</sup>

The Attorney General of the Republic of Indonesia, ST. Burhanuddin, stated that the provisions above are one of the provisions used by judges at the Jakarta Administrative Court to receive, examine, and decide on cases during a plenary session at Commission III of the House of Representatives of the Indonesian Republic last time. In this case, the Jakarta Administrative Court Panel of Judges gave a guilty verdict on the actions of the Indonesian Attorney General. That is as stated in the decision of the Administrative Court with decision number: 99/G/2020/PTUN-JKT, stating that government action<sup>[11]</sup> is in the form of a Submission of the Defendant (Attorney General of The Republic of Indonesia) at a Working Meeting between Commission III of the House of Representative of Indonesia Republic and the Attorney General of the Republic of Indonesia on January/ 16, 2020, which conveyed: '... The *Semanggi I* and *Semanggi II* incidents, which already had the results of the House of Representatives of Indonesia Republic plenary meeting, stated that these events are not a gross violation of human rights. National Human Rights Commission should not have followed up because there is no reason for the establishment of an ad hoc court based on the recommendation of the House of Representatives of the Indonesia Republic to the President to issue a Presidential Decree on the formation of an *ad-hoc* human rights court by following Article 43 paragraph (2) of Law No. 26 of 2000 concerning Human Rights Courts' is an unlawful act by a government agency or official.

The interesting thing about the Jakarta Administrative Court Decision above is that the High Administrative Court Jakarta is going through legal appeals with Decision number: 12/B/TF/2021/PT.TUN.JKT and the Supreme Court of the Republic of Indonesia through cassation with decision number: 329 K/TUN/TF/2021 have another view. The two decisions essentially rejected the Jakarta Administrative Court decision number: 99/G/2020/PTUN-JKT. From this phenomenon, of course, we are faced with the extent to which the Supreme Court of the Republic of Indonesia can adjudicate factual action legal disputes as intended in the Government



Administration Law. In the theory of authority, it is understood that authority is formal power, a power granted by law or from executive administrative power.<sup>[12]</sup>

According to Ateng Syafrudin Syafrudin<sup>[13]</sup>, the concepts of authority and competence have different meanings. While competence *bevoegheid* only refers to a specific *onderdeel* (part) of authority, authority (*authority gezag*) is what is referred to as formal power, the power that derives from power granted by law. Powers (*rechtsbevoegdheden*) are a part of authority<sup>[14]</sup>. Then, according to another opinion by Stout, "authority" refers to all the laws governing the acquisition and exercise of governmental powers by people and entities subject to public law.<sup>[15]</sup> While Nicolai defines authority as the capacity to carry out specific legal actions (activities intended to have legal repercussions, including the development and disappearance of specific legal repercussions), I will define authority as the capacity to carry out such actions. <sup>[16]</sup>

In addition to the problems described above, of course, there are other legal phenomena from the aspect of the position of the Government Administration Law concerning in relation to the Administrative Court as a formal rule in proceedings at the Administrative Court. Compatibility is required between the substances in the Administrative Court Law and Law No. 30 of 2014. The presence of the Government Administration Law certainly has legal implications in the legal regime of State administration. The clause on changing the meaning of State Administrative Decrees from the Administrative Court is even more interesting when it is confronted with the concept of law enforcement and the purpose of the law itself.

According to the theory of law enforcement, there must be a procedure for upholding how legal standards actually serve to regulate behavior in legal contexts in the life of society, the country, and the state. The definition of law enforcement can also be seen from the perspective of the thing itself, namely from the perspective of the law. The meaning in this instance encompasses both broad and specific connotations. Law enforcement, in a wide sense, also refers to social justice norms. But in a limited sense, law enforcement simply refers to the application of formal, written regulations.<sup>[17]</sup>

According to Jeremy Bentham,<sup>[18]</sup> the purpose of the law is to achieve expediency. This means that the law will and can guarantee the happiness of many people, this theory is also known as the theory of utilities. Legal objectives are the main objectives to be achieved in the law enforcement process. There is an expansion of Administrative Court competence, previously in Law Number 5 of 1986 concerning the Administrative Court it was only given the authority to try the *Beschikking* case but in the expansion, Administrative Court was given the authority to try decision cases which were not only in written form but also included government factual actions.

What often becomes a problem in the world of practice is that the factual actions referred to in the Law on Government Administration are so broadly interpreted that it is difficult for us to determine the meaning of those factual actions. With that in mind, this certainly still requires a more in-depth study, because the author previously indicated the opinion that the Government Administrative Law is material law while the Administrative Court Law is the formal law of the procedural law in the Administrative Court. Therefore both should support each other and strengthen each other. But factually, the two laws conflict with each other, especially in the aspect of the absolute authority of the judiciary.

#### METHODOLOGY

In this study, primary and secondary legal sources are examined in order to analyze legal concerns that are pertinent to the themes covered. The method for gathering legal materials is to make an effort to compile and aid pertinent legal materials, that are closely related to the topics used to support further systematization of writing

#### DISCUSSION

The Administrative Court's appearance has changed significantly since the passage of Law No. 30 of 2014 about Government Administration, especially in terms of its areas of jurisdiction. This happens because the meaning of the decision has shifted, while the decision is the object of dispute in the Administrative Court. The Administrative Court uses the Administrative Court Law (Law No. 5 of 1986 *jo.* Law No. 9 of 2004 *jo.* No. 51 of 2009) in handling Administrative Disputes. Between Law No. 30 of 2014 on the Administrative Court Law is experiencing discourse because in



substance the two are experiencing a conflict of norms. In the Administrative Court Law, administrative actions are only decisions. However, after the enactment of the Government Administration Law, two types of Administration Actions were recognized, namely decisions and actions. There is a conflict of interpretation between the broad provisions of Article 1 Number 7 and Article 87 of the Government Administration Law. It governs the clauses that, in essence, expand the meaning of decisions, the occurrence of dialogue about the meaning of actions, and the authority or competence of the Administrative Court.

### 1. Expansion Of The Meaning Of State Administrative Decisions

We can look at the decision's meaning in terms of the rules governed by Article 1 Number 7 of Law No. 30 of 2014 regarding government administration, specifically [\[19\]](#): Government Administration Decisions, sometimes referred to as Administration Decisions or State Administration Decisions, are written decisions made by government agencies and/or officials for the management of government affairs.

The definition of these decisions is also found in Article 1 Paragraph 3 of Law Number 5 of 1986, as amended by Law Number 9 of 2004, and further amended by Law Number 51 of 2009 regarding the State Administrative Court (State Gazette of 1986 Number 77 Supplement to State Gazette Number 3344), which states that Administrative Decisions are written decisions made by a state administration body or official. These conclusions include state administrative legal acts supported by relevant laws and rules. They are particular, unique, and conclusive, and they have repercussions for either natural persons or legal entities.[\[20\]](#)

Examining the two provisions of the norm above, in principle that a decision is a written determination, therefore to recognize it, the most important thing is to ensure that the form must be written. At this level, the size of a decision is still clear and has legal certainty. In contrast, Article 87 of Law No. 30 of 2014 Governing Government Administration mandates that State Administrative Decisions, as used in the State Administrative Court Law, be read as follows: (a) written judgments that also include factual actions; (b) determinations made by state administrative organizations and/or representatives of the executive, legislative, judicial, and other state organizers; (c) based on legal requirements and ethical standards (Algemene Beginselen van Behoorlijk Bestuur); (d) lastly, in a more general sense; (e) decisions that may have repercussions in the legal system; and (f) decisions that affect citizens.

In analyzing the formulation of the norms above, it is very significant to change the face of the decision concept regulated in the Administrative Court Law. This then, in addition to having an impact on the fear of not achieving legal objectives (justice, benefit, and certainty), the law enforcement process is very difficult to enforce. Because in terms of interpreting and implementing Article 87 letter and above, it is very difficult to enforce because it is unclear in determining the boundaries relating to decisions and/or actions as objects of State Administrative disputes.


### 2. Discourse On The Meaning Of Government Actions Or Factual Actions

There is no specific mention of government activities or decisions in the Administrative Court Law; only administrative decisions are recognized as being the subject of disputes there. The only things that can be contested in the Administrative Court, in accordance with Article 1 Paragraph (3) of the Administrative Court Law (Law No. 5 of 1986 jo. No. 9 of 2004 jo. 51 of 2009), are administrative decisions. The scope of the Administrative Court has, however, undergone major revisions since the passage of Law No. 30 of 2014 about Government Administration, particularly in connection to state administration operations. Actions can be construed as follows in this context if we refer to Article 1 Number 8 of Law No. 30 of 2014 concerning Government Administration: Government Administration Actions, often known as "Actions," are the deeds that Government Officials or other state administrators carry out or prevent from carrying out in the context of government administration.[\[21\]](#)

According to the aforementioned rules, acts refer to the actions taken by state administrators or government officials in the course of governing, whether to carry out or refrain from carrying out particular precise actions.

The Government Administration Law's general sections handle both concepts. Article 87 of Law No. 30 of 2014 Governing Government Administration, however, is important to note, which states





that "written determination also includes factual actions".<sup>[22]</sup> Upon examining the aforementioned provisions, it becomes evident that a written decision also encompasses factual actions.

Government Actions are defined by Article 1 Number 1 of the Supreme Court Rules No. 2 of 2019 concerning Guidelines for the Settlement of Disputes on Government Actions and the Authority to Adjudicate Unlawful Acts by Government Agencies and/or Officials (Onrechmatige Overheidsdaad), as the actions taken by Government Officials or other State Administrators in carrying out or refraining from specific concrete actions within the framework of government administration. However, none of the existing provisions provide a clear definition of factual action, which has led to prolonged debates on this matter.

Considering this discourse, it is evident that there is an error in the formulation of this law. This phenomenon contradicts one of the principles governing the formulation of legislation, namely the principle of clarity in the formulation. This principle emphasizes that every piece of legislation must meet technical requirements in terms of its preparation, structure, choice of words or terminology, as well as clear and easily understandable legal language, to avoid multiple interpretations during its implementation.

The correlation between the clarity of the formulation of regulations and the discourse above is very contrary to the existing meaning, in the sense that concerning the existing problems, the public is confused in interpreting the intent of the formulation of the regulation. So if the conflict is allowed to continue, there will be legal uncertainty. Thus, according to the author, what is meant by factual action is an action carried out by a government agency/official which has legal implications. Therefore, it is clear in plain terms that every action taken by the government or an agency is a factual action. In addition, the delegation clause in Article 87 of the Government Administration Law effectively means that the provisions governing decisions under the quo provisions are interpreted in the same way as those governing decisions under Article 1 Paragraph 3 of the Administrative Court Law. Of course, if one looks at the grammatical meanings used, the organic meanings of the two norms are strictly different. Therefore, the next problem is that it is known that the Administrative Court Law is the norm used in proceedings or as formal law at the Administrative Court, while the existence of the Government Administration Law is the material law of the Administrative Court itself. The decision is intimately tied to the procedures and mechanisms in proceedings at the Administrative Court because it is the subject of a dispute within the purview of the Administrative Court. In this way, official provisions—in this case, the Administrative Court Law—should serve as the primary reference. Because formal provisions are a set of guidelines used to govern the steps involved in enforcing important legal requirements in order to create a court decision.

### 3. Expansion Of Administrative Court Competency

The power and jurisdiction of the Administrative Court have been significantly impacted by the adoption of Law No. 30 of the 2014 Governing Government Administration. The jurisdiction of the administrative courts has expanded, making it challenging to determine the precise limits of their authority or competence. It is crucial to understand the competence of the Administrative Court because if a case is brought before a court that lacks jurisdiction, the court will not accept the case.

Specifically, Article 47 of Law No. 5 of 1986 regulating the Administrative Court, as revised by Law No. 9 of 2004, governs the Administrative Court's jurisdiction under the Indonesian legal system. This includes having the duty and power to look into, determine, and settle state administrative issues. It is typical to refer to the court's competence or authority to adjudicate as its right to accept, consider, decide, and settle cases filed before it.<sup>[23]</sup> There are two categories of a court's authority (competence) to handle a case: relative competence and absolute competence. According to its jurisdiction, the court's relative competence relates to its ability to decide a case. Absolute competence, on the other hand, refers to the court's ability to decide a case based on the particular object, material, or subject of the dispute.<sup>[24]</sup> The Big Indonesian Dictionary gives the sense that competence can be interpreted as the authority (power) to determine or decide something.<sup>[25]</sup>

Observing the description above, competence is defined as authority or authority. Therefore Judicial Competence means Judicial Authority. Usually from the opinions encountered, it is not

uncommon to juxtapose authority and competence. In the judiciary, the terminology of Judicial Competence is often found, in which the aims and objectives rest on the authority or authority of a judicial institution. For the judiciary itself, two types of judicial competence are found, namely Absolute and Relative Competence. In terms of the Administrative Court's absolute competence, it is obvious that it has increased. Previously, only written judgments could be used to resolve state administrative disputes with an administrative decision as the object.

According to Enrico Simanjuntak, the Law on Government Administration governs the expansion of the Administrative Court's power.<sup>[26]</sup> This was further strengthened by Yodi Martono Wahyunadi's opinion by saying that there was a change in the legal concept regulated in the Administrative Court Law, expanding the competence of the Administrative Court.<sup>[27]</sup> The expansion of absolute authority found includes:<sup>[28]</sup>

1. According to Article 87 of the Government Administration Law, conflicts regarding administrative decisions fall under the Administrative Court's purview. According to these provisions, the Administrative Court not only examines and resolves disputes related to written administrative decisions but also has the authority to receive, examine, and decide on factual actions or government administrative actions carried out by state administration officials. Additionally, the Administrative Court has the power to examine, decide, and resolve decisions that have an impact on the community, as evident in class action cases where the lawsuit's object causes harm to society.
2. Articles 17 and 18 of Law No. 30 of 2014 concerning Government Administration outline the prohibition and categorization of abuse of authority by government agencies and officials. Article 17 states that it is prohibited to abuse authority, which includes exceeding authority, mixing authority, and acting arbitrarily. Article 18 further specifies that government agencies and officials are considered to act arbitrarily if their decisions and/or actions are without a legal basis or contradict court decisions that have a final and binding legal force. These provisions establish the legitimacy of challenging an Administrative Decision that violates a court decision with permanent legal force as an abuse of authority and arbitrary government action, making it eligible for a dispute in the Administrative Court.
3. According to Article 53 of the Government Administration Law, the Administrative Court has the power to receive, consider, and decide on requests for the admission of positive fictional judgments. However, this authority has been altered by Law Number 11 of 2020 Concerning Job Creation (also known as the Job Creation Law) by Article 75 of the Job Creation Law. The Administrative Court is no longer permitted to decide on positive fictional lawsuits as a result. This amendment has caused confusion among the public seeking justice when faced with a lawsuit involving a positive fictitious decision. A positive fictitious decision occurs when the public requests a decision, but the agency or official fails to respond within a specified period, resulting in the request being deemed granted (positive) and the agency or official being considered to have issued a fictitious decision. It is important to note that a positive fictitious decision is a legal action, not a factual action. Therefore, it is inappropriate to resolve a positive fictitious case using the mechanism for factual action cases.

Based on the several examples of cases that have been described, the main thing that is the main challenge in cases of testing factual actions or government administration actions is the existence of misperceptions regarding the concept of government administrative actions. Government administration actions are, factual actions, not interpreted as government actions in a broad sense or known as *bestuurshandelingen*. It is necessary to pay attention to this because, in Administrative Court, the mechanisms and paradigms for resolving judicial review (legal action) and legal action are different, in which decision testing deals with aspects of rights and obligations, while factual action deals with aspects of factual losses that arise.

### Conclusion

The extension of the Administrative Court's absolute competence is caused by the legal ramifications of factual activities serving as the subject of administrative disputes. as factual events were not previously considered issues of dispute in the Administrative Court. The Supreme Court Regulation Number 2 of 2019 concerning Guidelines for the Settlement of Disputes on Government Actions and Authority to Tries Unlawful Acts by Government Bodies or Officials

(Onrechmatige Overheidsdaad) has been used in several factual action lawsuit cases that have been tried at the Administrative Court since the adoption of the Government Administrative Law.

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