HOW STATE ADMINISTRATIVE DISPUTE SETTLEMENT SYSTEM WORKS IN INDONESIA, THE NETHERLANDS, AND FRANCE: A COMPARATIVE STUDY

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Abstract *– This paper provides a comparative legal study in terms of state administrative dispute settlement system in Indonesia, the Netherlands, and France. Selection of the three countries is based upon two primarily reasons namely 1) all the countries represent both developing and developed countries; and 3) the legal system of each country is typical as that of Indonesia is influenced by that of the Netherlands and France. This comparative legal research aims to explain similarities and differences between the state administrative dispute settlement system between Indonesia, Netherlands, and France. The data were collected from secondary sources in the forms of documents. Through qualitative analysis process, the results show that as for the similarity, both of them have the means of resolving the administrative disputes, both through administrative efforts and through the judiciary, and settlement through administrative efforts is taken before resolving disputes through the judiciary. As for the difference, the Netherlands does not have an Administrative Court as a judicial institution that is separate from the district court. Administrative dispute settlement is carried out by the administrative dispute chamber in the district court, while in France, the Administrative Court is one of the judicial environments under the Supreme Court, the Administrative Court in France is separate from the Supreme Court and is under the Conseil d'Etat.*

Keywords*: comparison; Indonesia-Netherlands-France; administrative efforts; state administrative disputes (TUN); administrative court*

INTRODUCTION

The pattern of administrative dispute settlement plays a crucial role in ensuring fairness, accountability, and efficiency within governmental systems[1]. By providing a structured framework for resolving disputes between individuals or organizations and administrative bodies, this pattern serves as a fundamental mechanism for upholding the principles of the rule of law[2]. First and foremost, the pattern of administrative dispute settlement safeguards the rights and interests of individuals and entities affected by administrative decisions. It offers a formal avenue for them to challenge or appeal decisions they perceive as unjust, arbitrary, or unlawful[3]. This empowers citizens and organizations to seek redress, promoting access to justice and protecting against potential abuses of power. Moreover, the existence of a transparent and impartial dispute settlement process instills public confidence in the administrative system and reinforces the legitimacy of governmental actions. Furthermore, the pattern of administrative dispute settlement enhances accountability within public administration[4]. It establishes clear procedures and standards by which administrative bodies must operate and make decisions. This creates a system of checks

[1] Barbara A Cosens and others, 'The Role of Law in Adaptive Governance', *Ecology and Society: A Journal of Integrative Science for Resilience and Sustainability*, 22/1 (2017), 1.
[2] Petra Bárd and others, 'An EU Mechanism on Democracy, the Rule of Law and Fundamental Rights', *CEPS Paper in Liberty and Security in Europe*, 2016.
[3] Joycelyn M Pollock, *Ethical Dilemmas and Decisions in Criminal Justice* (2021).
[4] David H Rosenbloom, Robert S Kravchuk and Richard M Clerkin, *Public Administration: Understanding Management, Politics, and Law in the Public Sector* (2022).

and balances, allowing independent review and assessment of administrative actions. By subjecting administrative decisions to scrutiny, it encourages responsible and reasoned decision-making, discourages corruption and favoritism, and fosters a culture of transparency and integrity[5]. Additionally, the pattern of administrative dispute settlement contributes to the efficiency of governance[6]. By providing an alternative to costly and time-consuming litigation in regular courts, it enables prompt resolution of administrative conflicts. This not only saves valuable resources but also ensures that disputes are addressed in a timely manner, preventing unnecessary delays and disruptions in the functioning of public administration[7]. Moreover, the predictability and consistency offered by a well-established pattern of dispute settlement enable administrators to make informed decisions, promote stability, and encourage compliance with legal requirements[8]. In conclusion, the pattern of administrative dispute settlement is of paramount importance in upholding the principles of fairness, accountability, and efficiency within governmental systems. By protecting the rights of individuals and organizations, promoting transparency and integrity, and facilitating efficient resolution of disputes, it contributes to the overall functioning and legitimacy of public administration.

The comparison of patterns, particularly between the legal systems of Indonesia, the Netherlands, and France, holds significant importance in understanding the diversity of legal frameworks and fostering cross-cultural dialogue[9]. Such comparative analysis provides valuable insights into the strengths, weaknesses, and unique characteristics of each legal system, promoting legal harmonization, and facilitating the exchange of best practices. Firstly, comparing the patterns of administrative law in Indonesia, the Netherlands, and France allows for a deeper understanding of the different approaches and principles adopted by these countries. It sheds light on the historical, cultural, and socio-political factors that have shaped their legal systems. By examining the similarities and differences, policymakers, legal scholars, and practitioners can identify effective solutions and strategies for addressing legal challenges and improving their respective systems. Furthermore, the comparison of legal patterns encourages learning and adaptation. It enables countries to draw inspiration from successful practices implemented elsewhere and adapt them to their own contexts. For instance, Indonesia may learn from the Netherlands' well-established administrative dispute settlement mechanisms, while France can benefit from the streamlined administrative procedures found in Indonesia. This exchange of ideas and experiences can foster legal innovation and contribute to the continuous development and improvement of legal systems. Moreover, comparative analysis helps in identifying areas where legal harmonization can be pursued. It facilitates the identification of common principles, standards, and best practices that can serve as a basis for regional or international collaboration. This, in turn, promotes legal certainty, enhances cross-border cooperation, and facilitates trade, investment, and cultural exchange.

Previous studies related to the pattern of administrative dispute settlement have shed light on various aspects of this important area of administrative law[10]. These studies have contributed to

[5] Girmaw Assemie Asseres, 'New Public Management, Ethics, and Accountability: The Case of Addis Ababa City Administration, Ethiopia' (2017).

[6] H George Frederickson and others, *The Public Administration Theory Primer* (2018); Jacob Bercovitch, *Social Conflicts and Third Parties: Strategies of Conflict Resolution* (2019); Rosenbloom, Kravchuk and Clerkin, *Public Administration: Understanding Management, Politics, and Law in the Public Sector*.

[7] Gambhir Bhatta, *International Dictionary of Public Management and Governance* (2015).

[8] Marc Jacob and Stephan W Schill, 'Fair and Equitable Treatment: Content, Practice, Method', *International Investment Law: A Handbook (Nomos/CH Beck/Hart: Baden-Baden/München/Oxford, 2015)*, 2015, 700–763.

[9] Johan Olsen, 'Towards a European Administrative Space?', *Journal of European Public Policy*, 10/4 (2003), 506–31.

[10] Paul Craig, *UK, EU and Global Administrative Law: Foundations and Challenges* (2015); Nestor M Davidson, 'Localist Administrative Law', *Yale Law Journal*, 126/2 (2016); Tina Nabatchi, 'Public

the understanding of different patterns, their effectiveness, and their impact on governance and justice systems. One area of research has focused on comparative studies of administrative dispute settlement patterns across different countries. These studies have examined the legal frameworks, procedural rules, and institutional structures of various jurisdictions to identify similarities, differences, and best practices. For example, scholars have compared the administrative dispute settlement patterns in countries such as Germany, the United States, Japan, and Australia, analyzing factors such as access to justice, independence of decision-makers, and efficiency of the process[11]. These studies have provided valuable insights into the strengths and weaknesses of different patterns and have informed discussions on potential reforms and improvements. Another area of research has explored the impact of administrative dispute settlement patterns on governance and public administration[12]. Scholars have investigated how the existence of a robust and fair dispute resolution mechanism influences administrative decision-making, accountability, and transparency. These studies have highlighted the importance of a well-functioning pattern in ensuring responsible and lawful administrative actions[13]. They have also examined the role of administrative courts or specialized tribunals in resolving disputes and their impact on the overall efficiency of the administrative process. Moreover, studies have examined the experiences and perspectives of individuals and organizations involved in administrative disputes[14]. These empirical studies have explored the challenges faced by parties in navigating the dispute settlement process, their satisfaction with outcomes, and their perceptions of fairness and access to justice. By capturing the voices of those directly affected by administrative decisions, these studies have provided insights into the effectiveness of the pattern from a user's perspective.

Based on the explanations of the previous studies, it has been found that there have been very few studies comparatively describing the patterns of administrative disputes, particularly ones focusing on developed and developing countries. In order to fill in such a research gap, this study attempts to answer the following questions:

1. How is the administrative dispute settlement pattern in Indonesia?
2. What are the similarities and differences of the pattern of administrative dispute settlement in Indonesia, the Netherlands, and France?

3. RESEARCH METHODS

The research method used is comparative legal research. In comparative legal research, the central element in comparative work is the comparison, meaning confronting comparable elements of two or more legal systems against each other to find differences and similarities[15].

The approach method used in this study consists of 3 (three) approach namely, statutory approach (statute approach), approach conceptual (conceptual approach), and a comparative approach (comparative approaches). Approach to the law (statute approach) in research law, according to

Values Frames in Administration and Governance', *Perspectives on Public Management and Governance*, 1/1 (2018), 59–72.

[11] Ilhyung Lee, 'The Law and Culture of the Apology in Korean Dispute Settlement (with Japan and the United States in Mind)', *Mich. J. Int'l L.*, 27 (2005), 1; William S Dodge, 'Investor-State Dispute Settlement between Developed Countries: Reflections on the Australia-United States Free Trade Agreement', *Vand. J. Transnat'l L.*, 39 (2006), 1.

[12] Rosemary O'Leary and Tracy Yandle, 'Environmental Management at the Millennium: The Use of Environmental Dispute Resolution by State Governments', *Journal of Public Administration Research and Theory*, 10/1 (2000), 137–55.

[13] Tom Christensen, Per Lægreid and Lise H Rykkja, 'Organizing for Crisis Management: Building Governance Capacity and Legitimacy', *Public Administration Review*, 76/6 (2016), 887–97.

[14] Cynthia L Uline, Megan Tschannen-Moran and Lynne Perez, 'Constructive Conflict: How Controversy Can Contribute to School Improvement', *Teachers College Record*, 105/5 (2003), 782–816.

[15] Muhammad Imran Ali, 'Comparative Legal Research-Building a Legal Attitude for a Transnational World', *Journal of Legal Studies "Vasile Goldiş"*, 26/40 (2020), 66–80.

Susanti and Efendi[16], is: "... carried out by examining all laws and regulations related to legal issues being handled. The result of the study is an argument for solve the issues at hand". Conceptual approach (conceptual approach) is used to understand concepts and theories related to Tun's dispute settlement system integrated (integrated administrative justice system). Comparative approach (comparative approach) is used to examine the comparison of Tun's dispute resolution system in other countries, namely the Netherlands and France. The choice of the Netherlands for comparison was based on the reason that the Indonesian law in general is heavily influenced by the Dutch legal system, as a result of Dutch colonization of Indonesia. France is chosen since historically and conceptually, the Peratun system that was founded in Indonesia mostly follows the administrative dispute resolution system in France.

The data used in this study is secondary data supplemented by primary data. Secondary data was obtained from library materials originating from primary, secondary, and tertiary legal materials. Primary legal material is legal material that has authority (authoritative) consisting of : (a) laws and regulations, …; (b) official records or treatises in making a statutory regulation; (c) decision judge…" [17]. Secondary legal materials are all publications about laws that are not official documents. Publications on law include text books, legal dictionaries, journals law, and comments on decision court[18].

The determination of the sample is done by sampling technique purpose (purposive sampling). Purposive sampling is a sampling technique sample data sources with certain considerations. Reasons for using the technique purposive sampling is to obtain samples that have appropriate criteria with the phenomenon under study.

The method of data analysis is qualitative, that the data analysis that does not use numbers, but provides descriptions in words of the findings, and because of this it prioritizes the quality of the data, and not quantity[19].

ADMINISTRATIVE DISPUTE SETTLEMENT PATTERNS IN INDONESIA

The milestone in the history of the establishment of the State Administrative Court (Peratun) in Indonesia began with the issuance of Law Number 5 of 1986 concerning State Administrative Court, promulgated in the State Gazette of the Republic of Indonesia of 1986 Number 77, December 29, 1986. Prior to Law Number 5 1986 concerning the State Administrative Court applied, Indonesia does not yet have a judicial institution that specifically (purely) resolves the administrative disputes. The settlement of the administrative dispute refers to the laws and regulations that existed during the Dutch East Indies era with several changes/adjustments in sectoral laws and regulations.

Law Number 5 of 1986 Concerning State Administrative Court, in its development, has undergone 2 (two) amendments. The changes referred to are through: Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning the State Administrative Court, and Law Number 51 of 2009 concerning the Second Amendment to the Law Number 5 of 1986 Concerning State Administrative Courts. The three laws governing the State Administrative Court referred to above are hereinafter referred to as the Administrative Court Law.

The patterns or procedures for settlement of civil disputes, prior to the operation of Administrative Courts in Indonesia, can be broadly grouped into 3 (three) types of examination procedures, namely[20]:

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[16] Dyah Ochtorina Susanti and A'an Efendi, *Penelitian Hukum: Legal Research* (2022).

[17] Vicki Dwi Purnomo, 'Transaction Fraud Buy and Sell Online Through Restitution as Criminal Addition in the Electronic Information and Transaction Law', *Asian Journal of Community Services*, 2/3 (2023), 265–86.

[18] Susanti and Efendi, *Penelitian Hukum: Legal Research*.

[19] Jessica Nina Lester, Yonjoo Cho and Chad R Lochmiller, 'Learning to Do Qualitative Data Analysis: A Starting Point', *Human Resource Development Review*, 19/1 (2020), 94–106.

[20] Heni Rosida and others, 'The Effectiveness of The Implementation of The E-Court Justice System and The Impact on Administrative Court in Indonesia', *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal*, 2/2 (2022).

1. Examination of state administrative cases (TUN) whose authority is delegated to officials/committees/bodies within the government itself;
2. Examination of state administrative cases (TUN) whose authority is delegated to bodies that are outside the government environment;
3. Examination of state administration cases (TUN) whose authority is left to the judiciary.

The means for resolving administrative disputes regulated in the Administrative Court Law, not only through the Administrative Court, but can also be reached through administrative efforts. This can be seen from the provisions of Article 48 of the Administrative Court Law. This provision does not only serve as a basis for administrative efforts, but also provides a normative reference regarding the relationship between administrative agencies and Administrative Courts in the settlement of administrative disputes. These provisions are interpreted as follows:

a. In the event that the laws and regulations which are the basis for the issuance of the administrative decisions (object of the dispute) have regulated the settlement of administrative disputes through administrative means, then the administrative dispute settlement in question must first take available administrative measures, and the new statute has the authority to examine, judge, and resolve the administrative dispute, if all available administrative means have been used or pursued;
b. In the event that the laws and regulations which are the basis for the issuance of the administrative decisions (object of dispute) do not regulate the settlement of administrative disputes through administrative means, then the administrative dispute settlement referred to can be carried out directly through a lawsuit to the Administrative Court.

The form or type of administrative effort is contained in the Explanation of Article 48 of the Administrative Court Law. In simple terms, it can be described that the administrative efforts referred to in Article 48 of the Administrative Court Law only cover two types, namely:

a. The objection procedure, if the authority to resolve the administrative dispute rests with the State Administrative agency or official who issued the administrative decisions which disputed;
b. The administrative appeal procedure, if the authority to resolve the administrative dispute lies with the superior agency or administrative official who issued the disputed administrative decisions, or the authority lies with another agency.

Article 48 of the Administrative Court Law and its Explanations do not expressly stipulate that administrative measures must be taken in stages, which are through an objection procedure, then through an administrative appeal procedure. The provision only mentions that there are two forms of administrative measures, namely the objection procedure and the administrative appeal procedure.

The link between administrative efforts and filing a lawsuit can be seen in Article 51 paragraph (3) and paragraph (4) of the Administrative Court Law, which actually develops a 2 (two) level judicial pattern for administrative disputes that previously had to go through administrative procedures. After taking administrative measures, either the objection procedure or the administrative appeal procedure, lawsuit filed to state administrative high court (PTTUN), and if you are not satisfied with the state administrative high court, you can appeal to the Supreme Court.

The administrative dispute settlement pattern above, in practice, does not work as it should. Based on the technical guidance contained in the Supreme Court Circular Letter (Sema) Number 1 of 1991, in point IV.2, the administrative dispute settlement has been arranged through administrative efforts and lawsuits, which are basically as follows:

a. A lawsuit is submitted to the Administrative Court, if the laws and regulations which are the basis for the issuance of the administrative decisions being sued only regulate the objection procedure;
b. Lawsuit filed to Administrative High Court, if in the statutory regulations which are the basis for the issuance of the administrative decisions being sued regulates administrative appeal procedures.

Thus, the 2 (two) level judicial pattern in Administrative Court only works for administrative disputes which are required to go through an administrative appeal procedure. As for the administrative dispute, which is only required to follow the objection procedure, it will continue to pursue a lawsuit at the Administrative Court (first level), appeal to Administrative High Court, and cassation to the Supreme Court.

Settlement of administrative disputes based on the Administrative Court Law, in addition to providing space for settlement through administrative efforts, also still provides space for dispute resolution through civil courts. Administrative disputes whose objects are outside the administrative decisions, such as acts against the law by the Government, do not become the authority of the Administrative Court, but a lawsuit is filed in the Civil Court.

After the entry into force of the Administrative Law, the paradigm of the administrative dispute resolution pattern has also changed. Administrative Law provides a legal basis for strengthening administrative institutions in the settlement of administrative disputes. This can be seen in Article 76 paragraphs (1), (2), and (3) Administrative Law. This provision requires that filing a lawsuit at the State Administrative Court must first go through administrative procedures. Administrative efforts are tiered, namely through the objection procedure, then through the administrative appeal procedure.

To follow up on the provisions of Article 76 paragraph (3) Administrative Law, Supreme Court Rules Number 6 of 2018 has been issued. Supreme Court Rules Number 6 of 2018 was born to fill the legal void in the application of Article 76 paragraph (3) Administrative Law in the practice of examining the disputes at Administrative Courts.

Supreme Court Rules Number 6 of 2018 can also function as a legal means to harmonize provisions regarding administrative efforts in relation to filing lawsuits, which are regulated by Article 48 of the Administrative Court Law and Article 76 of the Administrative Law. The same thing was stated by Dani Elpah as follows:

"If combined with the administrative dispute settlement after Administrative Efforts based on Law no. 5 of 1986 and Law Number 30 of 2014 implicitly formed an integrated administrative justice system perfectly because all state administrative dispute settlements must first be through administrative efforts. Arrangements for administrative efforts in Law no. 5/1986 and the arrangement of administrative efforts in Law no. 30 of 2014 cover and complement each other. Administrative Efforts as *primum remedium* and Administrative Court institutions as *ultimum remedium*" [21].

Several provisions in Supreme Court Rules Number 6 of 2018 which form the legal basis regarding the importance of administrative efforts in the administrative dispute settlement system, are as follows:

a. Article 2 paragraph (1) which reads: "*The court has the authority to accept, decide and resolve government administrative disputes after taking administrative measures*";
b. Article 3 paragraph (1) and paragraph (2) which reads:

(1) *The court in examining, deciding, and resolving government administrative dispute lawsuits uses the basic regulations governing these administrative efforts.*;
(2) *In the event that the basic regulations for issuing decisions and/or actions do not regulate administrative efforts, the Court shall use the provisions stipulated in Law Number 30 of 2014 concerning Government Administration.*"

Based on the provisions above, all administrative dispute settlement must first go through administrative efforts, before a lawsuit is filed at the Administrative Court. Administrative efforts domiciled as*premium premium*, while Administrative Court as a means of final settlement of administrative disputes (*ultimum remedium*).

In its development, there are a number of administrative disputes that do not need to take Administrative Efforts before filing a lawsuit at the Administrative Court. This is contained in the

[21] Dani Elpah, *Philosophical, Juridical and Historical Review of Administrative Dispute Settlement, Including Disputes on State Civil Apparatuses after Administrative Efforts* (2019).

Supreme Court Circular Letter of the Republic of Indonesia (SEMA) Number 10 of 2020 Concerning the Enforcement of the Formulation of the Results of the 2020 Supreme Court Chamber Plenary Meeting as a Guideline for the Implementation of Tasks for the Court and SEMA Number 5 of 2021 Concerning the Enforcement of the Formulation of the Results of the Supreme Court's Plenary Meeting of the 2021 As a Guideline for the Implementation of Duties for the Court, namely cases related to:

a. Law Number 14 of 2008 Concerning Public Information Disclosure.
b. Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest.
c. Law Number 7 of 2017 Concerning General Elections.
d. Article 21 and Article 53 of Law Number 30 of 2014 Concerning Government Administration.
e. Dismissal with respect based on the decision of the Criminal Court and the Ethics Commission.
f. Lawsuit against Unlawful Acts by Government Officials in the form of omissions

ADMINISTRATIVE DISPUTE SETTLEMENT PATTERNS IN THE NETHERLANDS AND FRANCE AND COMPARISON WITH INDONESIA

1. Administrative Dispute Settlement Patterns in the Netherlands and Comparison with Indonesia

History has recorded that Indonesia for centuries was under the Dutch colonialism known as the Dutch East Indies. Therefore, it is only natural that the legal system in Indonesia that has developed so far has been heavily influenced by the legal system in the Netherlands. Administrative dispute settlement system in Indonesia cannot be separated from the influence of administrative dispute settlement in the Netherlands.

As a country that adheres to civil law system, the development of thinking about the concept of the rule of law and democracy in the Netherlands have encouraged the development of the function of Administrative Law in the protection of Human Rights (HAM). Along with the development of the institutional context and social culture, according to van de Berge that:

"*… the system of Dutch administrative law underwent some significant changes, slowly but surely drifting away from its classical orientation on the lawful division of goods and services among all members of society towards dispute settlement and the protection of individual rights as its primary aims*" [22].

The Dutch Administrative Law System has undergone significant development. From the classic orientation for the fulfillment of goods and services for members of the community to a means of dispute settlement and the protection of individual rights as its main purpose.

Before the birth of Wet AROB which was later followed by AWB/GALA (*General Administrative Law Act of Netherland*), the legal tradition and Dutch Administrative Law do not recognize the existence of specific and autonomous courts and arrangements related to administrative disputes [23]. The tradition developed in the Netherlands places the administrative dispute resolution mechanism within the internal systems and mechanisms of the organization or government agency itself [24].

The above conditions are in line with Muchsan's description[25], that:

"... the administrative justice system in the Netherlands actually does not have a systematic rationale. This is because whenever it is deemed necessary to supervise a certain government agency by an impartial third party, incidental arrangements and regulations are made. ... .

The method adopted by the Dutch government is actually not an actual administrative justice, but is more in character supervision within the government itself, so that the implementation of

[22] Lucas van de Berge, 'The Rational Turn in Dutch Administrative Law', *Utrecht Law Review*, 2022 <https://www.utrechtlawreview.org> [accessed 2 June 1BC].

[23] Rifqi Ridlo Phahlevy and Aidul Fitriciada Azhari, 'Pergeseran Paradigma Peradilan Tata Usaha Negara Di Indonesia Dan Belanda', *Arena Hukum*, 12/3 (2019), 576–91.

[24] Phahlevy and Azhari, 'Pergeseran Paradigma Peradilan Tata Usaha Negara Di Indonesia Dan Belanda', 576–91.

[25] Muchsan, *Peradilanadministrasi Negara(State Administrative Court)* (Yogyakarta, 1981).

government is actually carried out based on law, general principles that apply to good state administration and the public interest".

Wet AROB (*Administrative Rechtspraak Overheidsbeschikkingen*) or Administrative Jurisdiction Government Orders was published in 1976. With reference to Wet AROB, specifically Article 7 paragraph (1) explained the settlement of administrative disputes in the Netherlands, as follows:

"So, the settlement of the dispute is not carried out by an independent judiciary. Rather it is completed by an institution that is part of *Raad van State or* Council of States. So, this court is special in nature, which is tasked with resolving disputes resulting from decisions issued by government agencies or officials. The procedure taken was not filing a lawsuit, but filing an appeal (*beroep*)" [26].

In June 1992 the government of the Netherlands issued *Algemene wet bestuursrecht* (Awb) or General Administrative Law Act (GALA) created to regulate administrative authorities and to create citizens' right of appeal to state administrative courts[27]. Awb/GALA is a General Administrative Law that regulates the decision-making process for state administration and provides a framework for legal protection of decisions issued by administrative agencies [28].

In contrast to Indonesia, in the Netherlands there is no separate administrative court environment which is directly under the Supreme Court. Administrative dispute settlement is handled by one of the fields (chamber) at the district level court (district court).

Netherland Court is divided into 11 (eleven) district courts, 4 (four) courts of appeal, and one Supreme Court. All disputes start from the district court [29]. Each district court consists of a maximum of 5 (five) fields, which always covers the field of state administrative law, the field of civil law, the field of criminal law, and the field of sectorial law. The highest court is the Supreme Court (*Hoge Raad*) which guarantees uniformity and fair treatment from the district courts to justice seekers [30].

An overview of the relationship between administrative dispute settlement through administrative efforts and through district courts, as follows:

"With only a handful of exceptions, administrative disputes are heard by the district court; in many cases the hearing by the administrative law sector is preceded by an objection procedure under the auspices of the administrative authorities. It is usual for these cases to be heard by a single-judge division, but here too the district court can decide to appoint three judges to a case which is complex or which involves fundamental issues"[31].

Administrative disputes are examined in district courts where most of administrative disputes first undergo an objection procedure which is the authority of the government administration. Administrative disputes in district courts are examined by a single judge, except for disputes which are complex in nature and related to fundamental legal issues, which are examined by three judges.

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[26] Muhammad Adiguna Bimasakti, 'Dispute Settlement in the Ombudsman and the Court of Law Regarding Compensation in Public Service Dispute', *Jurnal Hukum Dan Peradilan*, 10/2 (2021), 277–99.

[27] Eny Kusdarini, *Asas-Asas Umum Pemerintahan Yang Baik Dalam Hukum Administrasi Negara* (2020).

[28] Kusdarini, *Asas-Asas Umum Pemerintahan Yang Baik Dalam Hukum Administrasi Negara*.

[29] Government of the Netherlabds, 'Administration of Justice and Dispute Settlement', 2022 <https://www.government.nl/topics/administration-of-justice-and-dispute-settlement> [accessed 2 June 1BC].

[30] Leonard F M Besselink, 'The National and EU Targets for Reduction of Greenhouse Gas Emissions Infringe the ECHR: The Judicial Review of General Policy Objectives: Hoge Raad (Netherlands Supreme Court) 20 December 2019, Urgenda v The State of the Netherlands', *European Constitutional Law Review*, 18/1 (2022), 155–82.

[31] Lassche Advocaten, 'Judicial System in the Netherlands', 2022 <https://www.lassche.nl/en/court-system-netherlands> [accessed 2 June 1BC].

Objection as a preliminary procedure in government agencies guaranteed by laws and regulations, objections can be made by someone who cannot approve a decision regarding himself to Central Complaints Office within six weeks of the decision being sent
[Article 1 Appendix 8 Objection Procedure (General Administrative Law Act Regulations)][32].
The current settlement of the administrative dispute in the Netherlands, also conveyed by Enrico Simanjuntak, that:
"... a district court judge (administrative dispute chamber) is a first-level judge who has the authority to adjudicate administrative disputes (after first having an administrative objection by the plaintiff) as long as no specific administrative court has jurisdiction. Examination of disputes at the district court is parallel to an administrative appeal, and further appeal cases on social security and public services after being decided by the district court (administrative dispute chamber) are submitted to *CvB* (*Centrale Raad van Beroep*).
The administrative dispute settlement stage in the Netherlands can be said to consist of three stages: (1) calculated starting from the objection submitted internally to the government; (2) then an administrative appeal to the district court (administrative dispute room); and (3) an appeal against the decision of the district court (administrative dispute chamber) either to the state council or *CvB* (*Centrale Raad van Beroep*)"[33].
Departing from the description above, there are similarities and differences in the pattern of settlement of administrative disputes in the Netherlands and in Indonesia. Important similarities and differences include the following:

a. Similarities:

1) has a means of resolving administrative disputes, either through administrative efforts or through a judicial body;
2) before settlement through the judiciary, administrative disputes must first be settled through administrative efforts.

b. Differences:

1) The Netherlands does not have a separate administrative court directly under the Supreme Court as in Indonesia;
2) Administrative dispute settlement in the Netherlands is carried out by a district court (administrative dispute chamber) which is parallel to administrative appeals, whereas in Indonesia, administrative dispute settlement is carried out by the State Administrative Court as a separate judicial body authorized for this, while administrative appeal is a form of dispute resolution in administrative efforts;
3) Settlement of administrative disputes in the Netherlands consists of 3 (three) stages, namely: objection, then an appeal to the district court (administrative dispute chamber), and an appeal against the district court decision (administrative dispute chamber) submitted to the state council or *CvB*; while in Indonesia, in the context of administrative measures taken under Administrative Law, it can reach 5 (five) stages, namely: objection, administrative appeal, lawsuit to Administrative Court, appeal to Administrative High Court, and cassation to the Supreme Court.

Administrative Dispute Settlement Patterns in France and Comparison with Indonesia

In contrast to the Netherlands, France is a country that has an independent Administrative Court. According to Held: "This means, there are Administrative Judges who are separate and separate from ordinary Judges. Or in other words implementing a twin system in its judicial organization,

[32] Syafrijal Latief and Anna Erliyana Chandra, 'Penerapan Penyelesaian Sengketa Tata Usaha Negara Melalui Upaya Administrasi: Perbandingan Indonesia, Australia Dan Belanda', *Journal of Judicial Review*, 22/2 (2020), 215–28.
[33] Enrico Simanjuntak, *Hukum Acara Peradilan Tata Usaha Negara: Transformasi & Refleksi* (2021).

which are not mutually dependent on each other and apply different laws"[34]. The specificity of the Administrative Judicial system in France is the existence of an organizational structure of the Administrative Judiciary that stands alone and is separate from the general court, not even included in the judicial power environment[35].

The characteristics of Administrative Court in France, are also explained by Muchsan, as follows:

"At the local level in France there are Administrative Courts named *Tribunaux Administratif* (before 1953 named *conseils de prefecture*), ... This Administrative Court acts as an adviser to the Regional Head on several mixed administrative-legal issues which he must submit to the Court. However, their main task is to act as an administrative court of first instance in the cases mentioned above, meanwhile *Conseil d'Etat* stands above it as an appellate administrative court for parties who do not accept the decision rendered by the local administrative court"[36].

Thus, the structure of the Administrative Judiciary in France has 2 (two) levels, namely *Tribunaux Administratif* (*Tribunal Administratif*) and culminating in *Conseil d'Etat*, which is an institution like the Supreme Advisory Council in Indonesia in the 1945 Constitution before the amendment. W. Riawan Tjandra explained that:

"Conseil d'Etat or *Tribunal Administratif* has two functions or multiple roles, namely as a government advisory body and at the same time as a state administrative court institution. Thus, it can be said that the supervisory function by *Conseil d'Etat* or *Tribunal Administratif* are preventive (advice to the government) and repressive (testing administrative decisions)"[37].

Unlike in France, the Administrative Court in Indonesia has not been given the authority to carry out a preventive supervisory function (advise to the government). The Administrative Court in Indonesia is only authorized in the repressive function in the form of external juridical control over the decisions and/or actions of government agencies or officials.

France also has special administrative justice bodies with competence in certain fields or limited to certain materials. This was explained by Enrico Simanjuntak, as follows [38]:

"In general, these institutions have the authority to examine at the first level and appeal while the cassation was made to *Conseil d'Etat*. The authority of the special agency, for example, concerns the following issues:

(1) state finances, which are examined and decided by *Cour des Comptes* (a kind of Financial Supervisory Agency);
(2) education is also related to university issues;
(3) taxes;
(4) social security;
(5) professional positions such as doctors, advocates, architects, and others."

Similar to France, Indonesia also has a special administrative court to resolve certain legal issues in the tax sector, namely the tax court. However, the tax court in Indonesia is structurally a part or specialty of the Administrative Court.

The reasons for holding administrative courts in France, according to Muchsan, are [39]:

1. Declaration *des Droits de l'homme et du citoyen* from 1789 declared, that "without separation, there would be no constitution. For maintain that separation, the practical course is

[34] Mateja Held, 'The Development of the Administrative Court Systems in Transition Countries and Their Role in Democratic, Economic and Societal Transition', *Hrvatska i Komparativna Javna Uprava: Časopis Za Teoriju i Praksu Javne Uprave*, 22/2 (2022), 209–36.

[35] W Riawan Tjandra, 'Perbandingan Sistem Peradilan Tata Usaha Negara Dan Conseil d'etat Sebagai Institusi Pengawas Tindakan Hukum Tata Usaha Negara', *Jurnal Hukum IUS QUIA IUSTUM*, 20/3 SE-Articles (2016), 423–39.

[36] Muchsan, *Peradilanadministrasi Negara(State Administrative Court)*.

[37] Tjandra, 'Perbandingan Sistem Peradilan Tata Usaha Negara Dan Conseil d'etat Sebagai Institusi Pengawas Tindakan Hukum Tata Usaha Negara', 423–39.

[38] Simanjuntak, *Hukum Acara Peradilan Tata Usaha Negara: Transformasi & Refleksi*.

[39] Muchsan, *Peradilanadministrasi Negara(State Administrative Court)*.

that ordinary courts should not interfere in executive matters. However, this situation creates an empty hole. Who will control (supervise) the actions of the employees which is called 'active administration'.

The answer is in the administration itself there must be *administration contentieux*, a court of disputes that will answer this challenge.

2. Ordinary courts do not judge and do not enforce administrative orders. they cannot, as in England, order or terminate the acts of employees, or correct, or assign damages to acts of public administration. Protection in this case is the administrative court.

3. In ordinary courts there is no difference between civil judges and criminal judges, judges act in both types of cases. This causes good for the public prosecutor.

The settlement of administrative disputes in French administrative courts can generally be divided into 2 (two) types of nature of lawsuits, namely [40]:

(a) "A lawsuit intended to request the annulment of an administrative decision (administrative deed), which is referred to as a lawsuit for annulment (*recours en exces de puvoir*);

(b) A lawsuit which besides requesting the cancellation of an administrative decision product, also demands the payment of compensation to the government for the government's legal action that causes loss, which is referred to as a compensation claim for damages (*recours en plein contentinuex*)".

One of the prerequisites for submitting a lawsuit to an administrative court in France is to first submit an objection to the relevant administrative authority, this mechanism is referred to as *regle de la decision prelable;* the rule of preliminary decision [41]. These prerequisites are almost the same as the obligation to take administrative measures before filing a lawsuit at the State Administrative Court in Indonesia.

The characteristics of administrative efforts in France are further explained by Enrico Simanjuntak as follows:

"However *regle de la decision prelable* does not apply absolutely, some exceptions to the mechanism must be adapted to two types of administrative disputes in France namely *recours administratif prealable facultative* (facultative pre-trial administrative proceedings) or can be translated as an administrative effort that is facultative and *recours administratif prealable obligatoire* (obligatory pre-trial administrative proceedings) or it can be translated as a mandatory administrative effort.

Except in the field of public works or short events (summary proceedings), filing a lawsuit – which is termed an appeal (*appeal lodged against a decision*) – to the administrative court can only be accessed by means of an appeal against the "preliminary decision" as determined by the Administrative Justice Law (*code of administrative justice*)"[42].

Departing from the description above, there are similarities and differences in the pattern of settlement of administrative disputes in France and in Indonesia. Important similarities and differences include the following. First, it has a means of resolving administrative disputes, either through administrative efforts or through a judicial body. Second, it has an Administrative Court (Peratun) which stands alone or is separate from the General Court. Third, before submitting a lawsuit to the Administrative Court (Peratun), administrative measures must be taken first. Meanwhile, the first difference is that the structure of the Administrative Court (Peratun) in France boils down to *Conseil d'Etat*, outside the judiciary, while the Administrative Court in Indonesia leads to the Supreme Court (judicial institution). Second, the characteristics of administrative efforts in France are facultative and mandatory (imperative), while administrative efforts are based on Administrative Law *jo.* Supreme Court Rules No. 6 of 2018 is mandatory before submitting a lawsuit to Administrative Court. Third, the settlement of the administrative dispute in the French Administrative Court consists of 2 (two) stages, namely: through *Tribunal Administratif* for the first

[40] Simanjuntak, *Hukum Acara Peradilan Tata Usaha Negara: Transformasi & Refleksi*.
[41] Simanjuntak, *Hukum Acara Peradilan Tata Usaha Negara: Transformasi & Refleksi*.
[42] Simanjuntak, *Hukum Acara Peradilan Tata Usaha Negara: Transformasi & Refleksi*.

degree and appeal to *Conseil d'Etat* (center); whereas in Indonesia, in general, the settlement of administrative disputes in Administrative Court can reached 3 (three) stages, namely: lawsuit to Administrative Court, appeal to Administrative High Court, and cassation to the Supreme Court.

CONCLUSIONS AND RECOMMENDATIONS

This paper concludes that after the entry into force of the Administrative Law, the administrative dispute settlement pattern in Indonesia places Administrative Efforts and Administrative Courts as a unified dispute settlement system, in which Administrative Efforts as *primum remedium* and Administrative Court as *ultimum remedium*. The two courts have similarities and differences in the pattern of settlement of administrative disputes, as compared to Indonesian courts. Both of them have means of resolving administrative disputes, both through administrative efforts and through judicial bodies, and settlement through administrative efforts is taken before resolving disputes through judicial bodies. However, unlike in Indonesia, the Netherlands does not have an Administrative Court as a judicial institution that is separate from the district court. Administrative dispute settlement is carried out by the administrative dispute chamber in the district court. Meanwhile, in France, both have an Administrative Effort institution in resolving administrative disputes and both have Administrative Courts which stand independently apart from general courts. However, different from in Indonesia, where the Administrative Court is one of the judicial environments under the Supreme Court, The Administrative Court in France is separate from the Supreme Court and is under *Conseil d'Etat*.

Recommendations or suggestions for the development of an administrative dispute settlement pattern in Indonesia. First, the laws and regulations governing Administrative Efforts need to be simplified. Second, the Administrative Efforts are regulated in only one stage (not tiered). Third, it is important to develop a 2 (two) level judicial pattern in the Administrative Court for all types of administrative dispute settlement.

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