



# *Dynamics of Judicial Review in State Administrative Disputes in Indonesia*

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**Abstract**—This research aims to analyze legal issues related to the dynamics of the authority of the State Administrative Body or Official in filing a judicial review, especially in state administrative disputes after the Constitutional Court Decision Number 24/PUU-XXII/2024. An examination of the authority dynamics in State Administrative disputes is anticipated to enhance the advancement of State Administrative procedural law in the Supreme Court. This will be achieved by imposing restrictions on the submission of judicial reviews to the Supreme Court by Administrative Bodies or Officials, specifically in state administrative disputes. This study employs a normative juridical research methodology, utilizing a legislative approach to examine judicial review in state administrative courts. The research findings indicate that the Constitutional Court Decision Number 24/PUU-XXII/2024 has brought about significant changes in the procedural legislation of state administrative courts, particularly in relation to the process of judicial review to the Supreme Court. Since the judgment of the Constitutional Court is final and binding, the recipient of the decision must carry out and support the decision made by the Constitutional Court. Due to the inherent characteristics and assertiveness of the Constitutional Court's decision, the recipient of the decision is compelled to carry out its implementation.

**Keywords**—Judicial Review; State Administrative Agency or Official; State Administrative Court; Constitutional Court Decision

## I. INTRODUCTION

The Reglement op de Rechtsvordering (Rv), which introduces a system of legal proceedings known as request civil or recess civil, is the source of judicial review (PK) in Indonesia. [1] The regulations detailed in Law Number 48 of 2009 regarding legal power serve as the legal basis for judicial review. [1] At the request of the parties concerned in a matter, the Supreme Court has the jurisdiction to examine a court judgment that has lasting legal validity. The procedure for requesting a judicial review is contained in the law on the Supreme Court. [2]

The judicial branch known as the State Administrative Court oversees state administrative justice in Indonesia. Indonesia possesses four distinct categories of judicial institutions: general courts, religious courts, military courts, and state administrative courts. [3] The State Administrative Court has a key function in safeguarding the rights of individuals affected by State Administrative Decisions (KTUN) issued by government authorities. Furthermore, the PTUN's jurisdiction in examining the behavior of government officials might function as a means of supervising their activities.

In the post-reform era, the State Administrative Court's presence underscores its role in providing judicial oversight of the decisions made by State Administrative Officials, which can occur because the life of the state's life is increasingly democratic and transparent. Judicial practice is very likely to happen in the event of a decision that makes the losing party take legal action because there is dissatisfaction for one party or both parties (plaintiff and defendant), then exercise their rights by taking legal action to cancel the decision. The Court's power to receive, consider, and make decisions on cases brought before it is referred to as jurisdiction or adjudicative authority. At the

initial stage, The Administrative Court possesses the ability to effectively resolve conflicts connected to state administration, with the State Administrative High Court serving as the appellate level and the Supreme Court handling cassation and judicial review levels.[4] The Supreme Court and the State Administrative Court are the courts with the authority to execute judicial decision reviews within the judicial system.

State Administrative Courts contains provisions for appealing to the Supreme Court. Indeed, it is accurate to state that filing a judicial review with the Supreme Court does not suspend the implementation of the cassation ruling. Nevertheless, there is still a level of legal ambiguity experienced by individuals who have emerged victorious in cassation cases against State Administrative Agencies or Officials. Even though the State Administrative case's decision has conclusive legal effect, it doesn't automatically compel the State Administrative Agency or Official to implement the cassation decision as they have appealed for a review to the Supreme Court. This increasingly does not fulfill a sense of justice for individuals and legal entities who win cases at the cassation level. So a progressive legal breakthrough is needed to achieve legal certainty for parties who have won cassation, especially in state administrative disputes. The Constitutional Court's Decision Number 24/PUU-XXII/2024 has imposed restrictions on the power of State Administrative Bodies or Officials, prohibiting them from filing for judicial review, particularly in state administrative conflicts.

The description provided emphasizes the significance of conducting research related to the procedures involved in seeking judicial review from state administrative bodies or officials during administrative disputes in Indonesia. There are several previous studies on this matter, but they are not too specific in examining the same thing that the author wants to do. Some of the preceding studies include a journal entitled "The Basis for Consideration of the Supreme Court Judges on the Acceptance and Granting of Judicial Review in Decision Number 175 PK/TUN/2016 and the Application of Legal Remedies for Positive Fictitious Decisions in State Administrative Courts Associated with its Implications for the Government Administration Law".[5] The journal discusses the judicial review filed by the Head of the Central Kalimantan Provincial Mining Office, in this case as a State Administrative Officer, against PT Coalindo Utama regarding a mining permit case. Another study is titled "Juridical Review of the Termination of the Island I Reclamation Implementation Permit in DKI Jakarta Province." (Analysis of the Supreme Court Ruling with Reference Number 32 PK/TUN/2021) with the Applicant for Reconsideration, namely the Governor of DKI Jakarta against PT Jaladri Kartika Pakci in the form of a case regarding the granting of an island reclamation permit.[6] The author also aims to inquire into the dynamics associated with the command of the State Administrative Body or Official in submitting a judicial review, particularly in administrative problems at the state level following the Constitutional Court's decision in case number 24/PUU-XXII/2024.

## II. LITERATURE REVIEW

### A. *State Administrative Court*

The State Administrative Court is a court vested with jurisdiction to look into, decide, and settle state administrative disputes. These are disagreements in the area of state administrative law that happen between people or civil legal entities and state administrative bodies or officials (government) at the central and regional levels after state administrative decisions are made. They can also be labor disputes based on the laws and rules that apply. [7] State administrative bodies or officials issue State Administrative Decrees (KTUN), which are written rules that outline legal activities made by state administrative authorities in conformity with existing laws and regulations. The fundamental traits of concreteness, uniqueness, and finality are designed to enforce legal penalties on an individual or a civil legal body.[8]

KTUN has a close relationship with authority. Authority is the power to do or not do something in order to achieve specific goals. According to public law, authority can be defined as regulations that govern the acquisition and exercise of power by individuals or bodies. In the realm of state administration, officials can acquire authority in three ways, one of which is through attribution, which involves legislators granting authority to government organs. Legation of authority is the act of transferring power from a superior government agency or official to a subordinate government agency or official. This transfer includes the entire shift of duty and accountability to the receiver of the delegation. The next step is acquiring authorization through a mandate. A mandate is the delegation of authority from a superior government entity or official to a subordinate government entity or official, although the responsibility for the mandate still rests with the providing entity. [9]

Government agencies and officials in Indonesia transfer their legal actions to the State Administrative Court. Government administrative law regulates the provisions for granting PTUN authority to end disturbances related to government legal actions.[10] KTUN should be seen as a written provision that includes real acts and choices made by the executive, legislative, judiciary, and other state administrators. These actions and decisions are directed by

statutory norms and the principles of good governance. Furthermore, it encompasses decisions that could potentially lead to legal consequences or decisions that impact society.[8]

Every administrative officer in a state institution is required to comply with higher laws, regulations, and the General Principles of Good Governance (AUPB). The concepts encompassed in this list are legal clarity, efficiency, impartiality, correctness, prevention of authority abuse, transparency, consideration of public interest, and provision of high-quality service. The state administrative court conducts a thorough examination of the issuance of a state administrative decision letter, with a specific focus on concerns pertaining to authority, methodology, and substance. In order to achieve effective governance, it is necessary for both state administrative personnel and the community to take action in order to resolve the violations of their rights by state administrative actions. Furthermore, the state administrative court serves as a regulatory authority and adjudicates conflicts between administrative authorities.[11]

The distinctive characteristics of PTUN procedural law, in comparison to other courts, include its mandate to ascertain the material truth, the active involvement of the judge in the trial proceedings, a conclusive evidence system that presents irrefutable evidence, the absence of automatic stay of the disputed decision upon filing a lawsuit, and the requirement for the judge's decision to not exceed the Plaintiff's request, while allowing for the imposition of more unfavorable circumstances. The existence of the Plaintiff's claim is legally determined, and the judge's order applies not only to the directly involved parties, but also to those who have a link or contact with them. Therefore, the judge is obligated to make a judgment. The parties to the dispute are given the opportunity to present their arguments. The argument is that before issuing a decision, the plaintiff must have a legitimate interest in order to start the legal process.[12]

#### *B. State Administrative Bodies or Officials Conduct Judicial Review in State Administrative Disputes*

State administrative officials aim to protect individuals harmed by government actions in administrative matters by making decisions based on legal certainty, truth, and justice. A state administrative agency or official is an agency or individual responsible for carrying out government duties under statutory regulations, which can issue state administrative decrees. Permits for administrative, technical, judicial, and general administration matters.[13] If a disturbance occurs in the future, the person who must be sued is the State Administrative Body or Official mentioned in the basic regulations that have obtained the government's attributive authority.[14] Judicial review is a legal process used to challenge a court judgment that has final legal authority and may be enforced. This process involves uncovering new facts or situations, sometimes referred to as *novum* or fresh evidence.[15] Documents of a decisive nature that are unavailable at the time of the case's examination constitute new evidence.[16]

According to the Supreme Court's norms, the state administrative court outlines the procedures for judicial review when examining a case. There are several special reasons to reconsider a case decision that already has permanent legal force. This includes situations when the opposing party's dissemination of inaccurate information or deliberate falsehoods, which were only discovered after the completion of the case, had an impact on the result. Another reason could be if the decision relies on evidence that the judge later reveals to be incorrect. Furthermore, if the same court makes conflicting decisions on the same grounds, this may also serve as a basis for judicial review.[2]

The state administrative court serves an essential part in upholding the fundamental concept of the rule of law. It serves as a supervisory institution that oversees the implementation of government functions, ensuring that the government's administrative jurisdiction operates within the bounds of the rule of law. On the other hand, it is also a forum for protecting individual and community rights from abuses carried out by state administration officials.[11] In various legal remedies for state administrative disputes, the conflicting parties, both individuals and legal entities, are given the same position in submitting legal remedies for the case at hand, including appeals, cassations, and judicial review.

As is well known, the judicial review process at the PTUN underwent significant changes following the Constitutional Court's review of the law. The Constitutional Court has the ability to evaluate whether legislation comply with the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). It's widely considered the guardian of judicial ideology and law because of its authority to conduct judicial review.[17] Judges can make legal discoveries to reach the most optimal decision based on their own ideas and interpretations.[18] The Constitutional Court has achieved significant legal progress by deciding that state administrative bodies or officials are no longer permitted to conduct material trials at the Supreme Court, in accordance with Constitutional Court Decision Number 24/PUU-XXII/2024. Every decision must be based on philosophical values and have binding legal certainty due to the importance of justice.[19]

### III. METHOD

The study implements normative legal research methodologies. According to Soerjono Soekanto and Sri Mamuji, normative legal research necessitates the examination of library resources. Normative legal study is a form of legal inquiry that focuses especially on analyzing rules or principles. It views law as a collection of norms or standards that are derived from laws, regulations, court rulings, and the opinions of prominent legal scholars.[20] This research comprises main legal instruments and secondary legal instruments. The process of gathering legal documents is accomplished through conducting literature reviews. Conducting literature research with a focus on prioritization is a form of legal research. Using secondary legal tools to look over a primary legal document is better because they help you understand the many legal ideas in the primary document. The secondary instruments are obtained from many sources, including journals, books, papers, and other academic books and articles. Normative legal studies rely solely on secondary data sources due to the perception of law as a norm, encompassing both existing “*ius constitutum*” and potential “*ius constituendum*” norms. A thorough review of the existing literature concludes the data collection technique. The statute approach, which emphasizes regulatory content in the form of regulations, is the methodology implemented.

#### IV. RESULTS AND DISCUSSIONS

##### A. *Judicial Review by State Administrative Bodies or Officials Subsequent to the Constitutional Court Decision Number 24/PUU-XXII/2024*

The development of judicial review is marked by a dynamic and continuous progression. The dynamics originate from the Constitutional Court. It is a governmental body with the authority to assess how laws align with the UUD NRI 1945 and its establishment, primarily through the lens of judicial review. Because of its authority to carry out judicial reviews, people widely regard the Constitutional Court as the guardian of court ideology and law.

Regarding applications for judicial review by officials or state administrative bodies, there are several cases related to this matter, including decision number 156 PK/TUN/2022 has been made, asking a judicial review. This decision orders the Mayor of Tangerang to take action against the Al Muhajirin Pondok Bahar Foundation regarding the issue of land permits [21], The Bali provincial administration has filed a judicial review under judgment number 121 PK/TUN/2022 concerning land conflicts [22], The Head of the Central Kalimantan Province Mining Service has filed a judicial review against PT Coalindo Utama about a mining permission issue, as stated in decision number 175 PK/TUN/2016 [23], The Governor of Jakarta's Special Capital Region has officially submitted a request for reconsideration against PT Jaladri Kartika Pakci, referring to decision number 32 PK/TUN/2021. The request concerns to the issuance of licenses for the process of reclaiming islands.[24], decision 157 PK/FP/TUN/2020 settled a legal dispute between The Governor of Jakarta Province's Special Capital Region and PT Muara Wisesa Samudra about permits for island reclamation. [25], and The Sumenep Regent has conducted a review of Ahmad Rasidi's position as the village head and has issued a judgment with the reference number 79 PK/TUN/2021.[26]

##### B. *Impact of Constitutional Court Decision Number 24/PUU-XXII/2024*

The Constitutional Court, in its decision Number 24/PUU-XXII/2024 dated March 20, 2024, has ruled that Article 132 paragraph (1) of the State Administrative Court Law is in conflict with the UUD NRI 1945. The court has determined that this article does not have any enforceable legal power unless it is interpreted as follows: "Against a court decision that has obtained permanent legal force, a petition for review may be filed with the Supreme Court, except by a State Administrative Body or Official." Therefore, the norm of Article 132 paragraph (1) of the State Administrative Law should be understood as "Against a court decision that has obtained permanent legal force, a petition for review may be filed with the Supreme Court, except by a State Administrative Body or Official".[1] The Constitutional Court Decision 24/PUU-XXII/2024 will undoubtedly have significant legal ramifications for the power of the State Administrative Body or Official and the procedural law in the Supreme Court.

MKRI's decision is self-executing, final and binding, from the time it is made.[27] Therefore, every decision must be based on philosophical values and possess a legally binding certainty, which is based on the importance of justice. The finality of the decision is obligatory on all parties, including citizens and state institutions, as it serves as legislative legislation (negative legislation). Consequently, all state institutions are obligated to cease the application of laws that have been revoked. This decision should serve as a benchmark or reference point within the structure of rights and powers.

The decision of the Constitutional Court *a quo* certainly impacts procedural law in the Supreme Court, particularly about the procedure of submitting a judicial review. Furthermore, there should be legal repercussions stemming from the decision, specifically concerning the procedural regulations of the State Administrative Court in the Supreme Court. This includes the provisions for submitting a judicial review and the restrictions on the authority to review State Administrative disputes by State Administrative Bodies or Officials.

## V. CONCLUSION

Taking in a judicial review with the Supreme Court does not stop or change how the cassation decision is carried out. However, in practice, there is still legal uncertainty in society regarding which party wins the cassation case. Prior to the Constitutional Court Decision Number 24/PUU-XXII/2024, the parties involved in a Supreme Court review case consisted of the State Administrative Agency or Official as the plaintiff and an individual or legal entity as the defendant. Following the Constitutional Court Decision, State Administrative Bodies or Officials are now prohibited from initiating judicial review proceedings. Due to the inherent characteristics and assertiveness of the Constitutional Court's decision, the recipient of the verdict is required to carry out its implementation. The decision will unavoidably lead to legal consequences, affecting the extent of the authority of judicial review in state administrative disputes by state administrative bodies or officials, as well as the procedural law of the state administrative court at the Supreme Court regarding the rules for submitting a judicial review.

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