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THE ABOLUTE COMPETENCE OF THE COURT IN RESOLVING LAWSUITS FOR UNLAWFUL ACTS BY THE GOVERNMENT (ONRECHTMATIGE OVERHEIDSDAAD)

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Abstrack

The complexity of government actions has led to disputes regarding the absolute competence of courts in resolving unlawful government actions (onrechtmatige overheidsdaad). The issuance of Law No. 30 of 2014 on Government Administration and Supreme Court Regulation No. 2 of 2019 has normatively shifted the authority from general courts to administrative courts. However, in practice, dualism of competence still occurs, as reflected in the Padang Panjang District Court Decision No. 1/Pdt.G/2026/PN.Pdp which was overturned by the Padang High Court Decision No. 105/PDT/2026/PT PDG. This study aims to analyze the absolute competence of courts in resolving onrechtmatige overheidsdaad disputes and the legal implications after the enactment of the Government Administration Law. This research employs a normative legal method with statutory, case, and conceptual approaches. The results show that normatively, absolute competence has shifted to the administrative court, but in practice, dualism of interpretation still occurs between general courts and administrative courts.

Keywords: *absolute competence, onrechtmatige overheidsdaad, administrative court, general court, government administration*

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A. INTRODUCTION

The development of public administration, which is becoming increasingly complex and dynamic, carries implications for the growing variety of government actions that can lead to disputes. Government actions in administrative law literature are known in two main forms, namely beschikking (administrative decisions) and factual acts (feitelijke handeling) (Hadjon, 2011). Disputes arising from administrative decisions have long had a resolution mechanism through the State Administrative Court (Pengadilan Tata Usaha Negara / PTUN), as regulated in Law Number 5 of 1986 as last amended by Law Number 51 of 2009. Meanwhile, government actions that cause harm to citizens on the grounds of Onrechtmatige Overheidsdaad were channeled through the General Court (Ridwan, 2013).

With the enactment of Law Number 30 of 2014 concerning Government Administration (UU AP), Onrechtmatige Overheidsdaad disputes were shifted from the General Court to the State Administrative

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Court (PTUN). As stated in the provisions of Article 85 of the UU AP, lawsuits regarding Government Administration disputes that have been registered at the general court but have not yet been examined are, with the enactment of this Law, transferred to and resolved by the Court (PTUN). Lawsuits regarding Government Administration disputes that have been registered at the general court and have been examined shall, with the enactment of this Law, continue to be resolved and decided by the court within the general court environment, where the court decision as referred to is executed by the general court that made the decision.

Transitional provisions regarding the authority of the PTUN to resolve Onrechtmatige Overheidsdaad disputes are contained in the UU AP. Previously, Onrechtmatige Overheidsdaad was regulated under Article 142 of the PTUN Law, as also specified in Supreme Court Circular Letter Number 1 of 1991 concerning Guidelines for Implementing the Transitional Provisions of Law Number 5 of 1986, which stated that State Administrative Disputes that at the time of the establishment of the Court under this Law had not been decided by the General Court shall remain examined and decided by the General Court, and State Administrative Disputes that at the time of the establishment of the Court under this Law had been filed to the General Court but had not been examined, shall be transferred to the State Administrative Court (Arwanto, 2018).

The problem arises in Decision No. 105/PDT/2026/PT PDG, which overturned the interlocutory decision of the Padang Panjang District Court Number 1/Pdt.G/2026/PN.Pdp. Both decisions stemmed from a lawsuit filed by a resident of Padang Panjang against the City Government of Padang Panjang over alleged government actions that caused loss to the public. In the interlocutory decision of the Padang Panjang District Court, the panel of judges dismissed the lawsuit. In its considerations, the panel opined that with the enactment of the UU AP, the judge was not authorized to examine and proceed with the a quo case. However, the panel of judges of the Padang High Court held the opposite view; according to them, the a quo case was not related to a State Administrative Decision (KTUN), so it was not within the competence of the PTUN to adjudicate it. Therefore, in its decision, the panel of judges of the Padang High Court ordered the Padang Panjang District Court to reopen the trial to examine and decide the merits of the case.

Consequently, this research, titled "Juridical Review of the Absolute Competence of Courts in Resolving Lawsuits for Unlawful Acts by the Government (onrechtmatige overheidsdaad)", poses the following formulation of problems: first, what is the authority of the PTUN, and second, what are the juridical implications regarding the object of PTUN disputes after the enactment of the UU AP?

B. Research Methode

This research utilizes a normative or doctrinal legal research method, which examines legal norms (Susanti & Efendi, 2022). The approaches used include the statutory approach, case approach, and conceptual approach.

The focus is on the authority of the State Administrative Court (PTUN) in handling Onrechtmatige Overheidsdaad cases and the need for juridical reform in state administrative law. The approaches are employed to understand the interconnection between legal norms and the issues faced. Data were collected through literature study, encompassing primary legal materials (statutes and court decisions), secondary legal materials (literature, journals, expert opinions), and tertiary legal materials (dictionaries, legal encyclopedias) (Zainuddin, 2021).

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The analysis was conducted qualitatively by identifying, grouping, and examining legal substances to answer what constitutes the authority of the PTUN according to administrative law principles and how the competence of the PTUN is influenced after the enactment of the UU AP. The results of the analysis are presented in a descriptive-analytical manner to provide an overview and recommendations regarding the development of administrative law in Indonesia.

C.Results and Discussion

Chronology of Decision 105/PDT/2026/PT PDG

In early September 2025, the Padang Panjang City Government allegedly intended to execute an eviction on land belonging to the plaintiff's parents. According to the plaintiff's legal counsel, this action constituted an unlawful act as referred to in Article 1365 of the Indonesian Civil Code (KUHPerdata). According to counsel, based on Supreme Court jurisprudence (Supreme Court Decision No. 324 K/Sip/1971), actions by government officials/state administrative agencies can be sued in the District Court (Pengadilan Negeri / PN) if an unlawful act (onrechtmatige overheidsdaad) occurs. Therefore, the plaintiff's counsel filed a lawsuit at the Padang Panjang District Court.

In the decision of the Padang Panjang District Court (Decision No. 1/Pdt.G/2026/PN Pdp), the panel of judges granted the exception raised by the defendant regarding the absolute competence of the court to adjudicate the disputed object. In its considerations, the panel assessed that the object disputed by the plaintiff fell under the competence of the State Administrative Court. This was based on the expansion of the object of PTUN disputes under the UU AP and Supreme Court Regulation (PERMA) No. 2 of 2019. This decision was a final interlocutory decision, leading the plaintiff to file an Appeal.

However, this decision was overturned by the High Court through Decision No. 105/PDT/2026/PT PDG. In considering the substance of the exception regarding Absolute Competence, the Appellate Judges disagreed with the First-Instance Judges, because the basis of the lawsuit was an Unlawful Act committed by the Appellee (formerly Defendant) as referred to in Article 1365 of the Civil Code, arising from the actions of the Defendant/Appellee which, according to the Plaintiff/Appellant, harmed the Plaintiff/Appellant's parents. The High Court Judges considered that in the a quo case, there was no KTUN in the form of a written decree issued by a state administrative official containing concrete, individual, and final administrative legal actions that created legal consequences.

Furthermore, in its considerations regarding the civil law context—as in Supreme Court Decision No. 324 K/Sip/1971—it was explained that "an unlawful act by a government official causing loss to an individual can be sued at the District Court based on Article 1365 of the Civil Code and is not automatically shifted to the State Administrative Court (PTUN), especially if the dispute concerns a concrete consequence in the form of civil losses suffered by citizens". This is reinforced by legal doctrine written by Soerjono Soekanto in his book titled Pokok-Pokok Hukum Perdata Indonesia, which emphasizes that an unlawful act occurs whenever a person or legal entity acts against the law, causes damage to another party, and there is a causal relationship between the act and the damage. Therefore, through this decision, the Padang High Court ordered the Padang Panjang District Court to reopen hearings to examine and decide the merits of the case.

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Dualism Of Absolute Competence In Resolving Onrechtmatige Overheidsdaad Disputes

The dualism of jurisdiction in resolving *onrechtmatige overheidsdaad* disputes in Indonesia is rooted in theoretical debates regarding the nature of government actions. In administrative law doctrine, government actions can be categorized into two main types: public legal actions (*publiekrechtelijke handeling*) and private legal actions (*privaatrechtelijke handeling*) (Simanjuntak, 2019). Public legal actions include actions carried out based on public authority, such as issuing state administrative decisions, whereas private legal actions are actions performed by the government in its capacity as a civil legal subject, such as buying and selling, leasing, or general contracts.

The concept of *Onrechtmatige Overheidsdaad* is an essential element in legal studies, particularly in regulating relations between the government and citizens (Maarif, 2024). The concept was first developed through the jurisprudence of the Dutch *Hoge Raad* in the case of *Lindenbaum v. Cohen* (1919), which was later adopted into Indonesian judicial practice (Jayantara, 2026). R. Wirjono Prodjodikoro defined the word *onrechtmatigedaad* as an unlawful act. According to him, the word "act" in the phrase "unlawful act" can be interpreted not only positively but also negatively, including situations where a person remaining silent can be said to violate the law because, by law, that person ought to act. The intended negative act is "active" in nature; a silent person can only be said to commit a legal act if they are aware that remaining silent violates the law. Thus, what moves is not the person's body, but their mind and feelings. Hence, the moving element of the concept of an "act" remains. The word "violating/against" in the phrase "unlawful act" is active; thus, according to him, the most accurate translation for *onrechtmatigedaad* is "perbuatan melanggar hukum" (unlawful act), as this term applies to the law generally in force in Indonesia, much of which derives from customary law (*hukum adat*) (Prodjodikoro, 2000).

Before the enactment of the UU AP, *onrechtmatige overheidsdaad* lawsuits were submitted to general courts under Article 1365 of the Civil Code (Sudarsono & Izroiel, 2022). The underlying rationale was that an unlawful act by the government is inherently an unlawful act within the civil realm, making its resolution the competence of general courts. Supreme Court jurisprudence, such as Decision No. 324 K/Sip/1971, affirmed this approach by recognizing that government actions violating citizens' civil rights can be sued under civil law.

However, this approach created theoretical issues when the challenged government action derived from public authority. The main criticism was that general courts lacked specialized expertise in evaluating the legality of government actions rooted in public law (Barokah, 2021). Furthermore, using civil legal parameters such as appropriateness and due care was deemed inadequate to measure government actions that must adhere to General Principles of Good Governance (*Asas-Asas Umum Pemerintahan yang Baik* / AUPB). This critique prompted a paradigm shift through the UU AP.

This paradigm shift is evident in Articles 85 and 87 of the UU AP. Article 85 governs transitional provisions, where lawsuits regarding Government Administration disputes registered in general courts but not yet examined are transferred to and resolved by the PTUN. Meanwhile, Article 87 of the UU AP states that the court (meaning the PTUN) is authorized to examine, adjudicate, and decide administrative disputes, including government actions in issuing decisions and/or factual actions. This provision implicitly encompasses *onrechtmatige overheidsdaad* as part of government actions whose legality can be tested via the PTUN.

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This change in absolute competence was strengthened by the issuance of Supreme Court Regulation Number 2 of 2019 concerning Guidelines for Resolving Government Action Disputes and Competence to Adjudicate Unlawful Acts by Government Bodies and/or Officials (*onrechtmatige overheidsdaad*). Article 2 paragraph (1) of PERMA 2/2019 explicitly states that cases of unlawful acts by Government Bodies and/or Officials fall under the jurisdiction of state administrative courts. Thus, normatively, an absolute competence shift from general courts to the PTUN has taken place.

Expansion Of The Object Of Absolute Competence Of The Ptun

The State Administrative Court Law (*UU PTUN*) previously served as the primary foundation for resolving administrative disputes before the UU AP was introduced. The UU PTUN provided various grounds to test and invalidate government administrative actions. However, its regulations were purely normative—merely containing grounds to cancel a KTUN without clearly explaining grounds for canceling factual government actions. Only after the enactment of the UU AP, reinforced by PERMA 2/2019, were details provided for canceling government factual actions. Through PERMA 2/2019, it was emphasized that lawsuits against factual government actions (*onrechtmatige overheidsdaad*) fall under the absolute competence of the PTUN. Article 18 of PERMA 2/2019 outlines two main grounds to declare that the government has committed an unlawful act:

1. Contrary to laws and regulations;
2. Contrary to general principles of good governance.

Furthermore, the transitional provisions of PERMA 2/2019 specify that every phrase "State Administrative Decision" (*Keputusan Tata Usaha Negara*) and "State Administrative Dispute" (*Sengketa Tata Usaha Negara*) in Chapter IV of Law No. 5 of 1986 (as amended) must also be interpreted as "Government Action" (*Tindakan Pemerintahan*) within the framework of resolving Government Action Disputes under this Regulation.

Based on these provisions, the testing grounds for KTUN in Chapter IV of the UU PTUN also apply to *onrechtmatige overheidsdaad* lawsuits. The UU PTUN further elaborates that being "contrary to applicable laws and regulations" comprises three types: (i) procedural contradiction; (ii) material/substantial contradiction; and (iii) issued by an unauthorized official. Reasons (i) and (ii) are recognized as abuse of authority (*penyalahgunaan wewenang*), whereas reason (iii) is recognized as arbitrary action (*tindakan sewenang-wenang*). This is also reiterated in the UU AP, which specifically outlines three benchmark elements for testing government actions: authority defects, procedural defects, and substance defects.

From all the provisions regarding *onrechtmatige overheidsdaad*, the author categorizes 5 elements required to file an *onrechtmatige overheidsdaad* lawsuit. These five elements are alternative, meaning that if even one element is met, it constitutes sufficient grounds to declare a government action as an *onrechtmatige overheidsdaad* (Triwulan, 2014):

1. **Inconsistency of Authority:** Article 53 paragraph (2) of the UU PTUN in conjunction with Article 7 paragraph (2) letter a of the UU AP details authority inconsistencies.
2. **Procedural Inconsistency:** A government action carried out procedurally incorrectly is subject to invalidation. Procedural inconsistency occurs when an action is contrary to procedures outlined in regulations or standard operating procedures. For actions placing burdens on citizens, prior dissemination regarding the legal basis, requirements, documents, and facts is mandatory. The

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government must notify affected parties at least 10 (ten) days before taking actions that burden citizens.

3. **Substance Inconsistency:** Substantive inconsistency provides grounds to classify an act as an *onrechtmatige overheidsdaad*. It is divided into three aspects (Articles 54, 64, and 71 UU PTUN):
    - *Substance defect:* includes non-execution of a decision by the recipient within the deadline, altered legal facts/conditions, actions posing public risk/harm, or actions used outside their intended scope.
    - *Substance error:* mismatch between intended material and the drafted act, such as conflicts of interest, juridical defects, physical/psychological coercion, or fraud.
    - *Contradiction with statutory material:* actions violating substantive/material statutory provisions.
4. **Inconsistency with Laws and Regulations:** A broad ground where an action conflicts with statutory provisions. It overlaps with other element clusters, such as exceeding authority (Article 18 paragraph (1) letter c UU AP), procedural defects (Elucidation of Article 71 paragraph (1) letter a UU AP), and substance defects (Elucidation of Article 53 paragraph (2) letter a number 2 UU PTUN).
5. **Inconsistency with General Principles of Good Governance (AUPB):** Principles serving as benchmarks for exercising governance authority. The eight core AUPB principles in the UU AP are: Legal Certainty; Benefit; Impartiality; Accuracy; Non-Abuse of Authority; Openness; Public Interest; and Good Service.

Conclusion

Regarding the absolute competence in resolving *onrechtmatige overheidsdaad* disputes in Indonesia, it can be concluded that a paradigm shift in court jurisdiction occurred following Law No. 30 of 2014 (UU AP) and Supreme Court Regulation No. 2 of 2019. Normatively, both regulations shifted the authority to adjudicate government unlawful acts from General Courts to State Administrative Courts (PTUN). This is reinforced by Articles 85 and 87 of the UU AP, alongside Article 2 paragraph (1) of PERMA 2/2019. This shift stems from expanding the PTUN dispute object beyond written administrative decisions (KTUN) to include factual government actions. Thus, normatively and juridically, the absolute competence of the PTUN has expanded.

However, in practice, a dualism of absolute competence persists, causing legal uncertainty. This is illustrated by Padang Panjang District Court Decision No. 1/Pdt.G/2026/PN.Pdp, which accepted the defendant's exception and declared PTUN competence, only to be overturned by Padang High Court Decision No. 105/PDT/2026/PT PDG. The Appellate Panel held that because the lawsuit relied on Article 1365 of the Civil Code and lacked a KTUN object, it fell under General Court competence. This divergence stems from theoretical debates over public versus private legal acts of government. Unclear criteria and lack of unified interpretation among judicial bodies remain primary factors. Consequently, despite the normative shift to the PTUN, further harmonization and clarification of absolute competence boundaries between the PTUN and General Courts remain necessary.

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