

# Examining The Shift in The Procedural Law of The Administrative Court: Discourse on Changes in Society and The Judiciary

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**Keywords :** *Administrative Court, Procedural Law, Legal Shifting*

**Abstract :** *Shifting the procedural law of the Administrative Court is a necessity. This happened as an effort to respond to the absence of arrangements for resolving administrative disputes and government administration regulated in sectoral laws. The Supreme Court through Perma responded to the void in legislations regarding the procedures or procedures for this matter. To analyze the context, this study uses a legal approach, a historical approach, and a conceptual approach. Based on the analysis, it can be seen that there is a shift in the conservative setting from the procedural law of the Administrative Court towards a procedural law system with a progressive setting nuance. This can be seen with changes in procedures, both in terms of reducing the levels of examination, reducing the process of proceedings, and determining the grace period for the event process. With this progressive system, the renewal of the case administration system and the electronic trial go hand in hand. Interpreting the dynamics between law and the judiciary with changes in society, the momentum for changes in the procedural law of the Administrative Court with social changes in society accommodates legal certainty and the principles of a simple and fast trial. Consequently, the shift in the character of the Administrative Court requires proper legislation in a law that regulates the procedural law of the Administrative Court*

**Kata kunci :** Peradilan Tata Usaha Negara, Hukum Acara, Pergeseran Hukum

**Abstrak :** Pergeseran hukum acara Peradilan Tata Usaha Negara merupakan keniscayaan. Hal tersebut terjadi sebagai upaya merespon ketiadaan pengaturan penyelesaian sengketa tata usaha negara maupun administrasi pemerintahan yang diatur dalam undang-undang sektoral. Mahkamah Agung melalui Perma merespon kekosongan peraturan mengenai tata cara atau prosedur dari hal tersebut. Guna menganalisis konteks yang terjadi, kajian ini menggunakan pendekatan undang-undang, pendekatan historis, dan pendekatan konseptual. Berdasarkan analisis terlihat pergeseran stelsel konservatif dari hukum acara Peradilan Tata Usaha Negara ke arah sistem hukum acara yang bernuansa stelsel progresif. Hal tersebut terlihat dengan perubahan prosedur baik dari segi dikurangnya tingkatan-tingkatan pemeriksaan, dan dikurangnya proses beracaranya, dan ditentukan tenggang waktu proses acara. Dengan stelsel progresif tersebut pembaruan sistem administrasi perkara dan persidangan secara elektronik menjadi beriringan. Memaknai dinamika

antara hukum dan peradilan dengan perubahan masyarakat, maka momentum perubahan hukum acara Peradilan Tata Usaha Negara dengan perubahan sosial dalam masyarakat, mengakomodasi kepastian hukum serta asas peradilan yang sederhana dan cepat. Konsekuensinya pergeseran karakter Peradilan Tata Usaha Negara memerlukan pengaturan yang tepat dalam sebuah undang-undang yang mengatur hukum acara Peradilan Tata Usaha Negara.

## I. INTRODUCTION

The shift in the unitary procedural law in the procedural law system of the administrative court with its juridical instrument, Law Number 5 of 1986 concerning the Administrative Court (AC Law) cannot be avoided. This can be seen in the settlement of administrative disputes, with the inception of several sectoral laws that give the Administrative Court the authority to handle and resolve State Administration or Government Administration (GA) disputes in certain (special) fields. In practice, these sectoral laws have not regulated or determined the procedures/procedures for handling and resolving them when the sectoral laws were enacted. Especially after the enactment of Law Number 30 of 2014 concerning Government Administration (GA Law), *mutatis mutandis* turned out to have legal implications for changing the procedural law system in the Administrative Court.

Several sectoral legislations, such as Law Number 2 of 2012 concerning Land Procurement for Development in the Public Interest, give the Administrative Court authority to decide whether to accept or reject objections from parties entitled to the location determination issued by the Governor/Regent/Mayor.<sup>1</sup> Likewise, disputes related to Public Information Disclosure in Law Number 14 of 2008 also leave problems in dispute resolution at the Administrative Court after the non-litigation adjudication route by the Information Commission was deemed unsatisfactory for one party, even the two parties to the dispute<sup>2</sup>. The inception of legislations in the field of elections, one of which is Law Number 8 of 2012 concerning General Elections for members of the DPR, DPD and DPRD has expanded the authority of the Administrative Court to resolve new disputes in the field of general elections.<sup>3</sup>

From the examples of these three sectoral legislations, apart from the handling of the case or the procedural law that must be carried out by the judge examining the dispute, there have been various changes, one other aspect is related to procedures and time limitations in filing a lawsuit, duration of the trial, cassation and reconsideration. In other aspects, the procedural law of state administrative courts is no longer able to accommodate changes and developments (dynamics) of state administrative law and law enforcement.

Based on the need for the rules for implementing the procedural law for the smooth running of the trial to ensure the effectiveness of law enforcement itself cannot

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<sup>1</sup> Indah Tri Haryati, "The Authority of the State Administrative Court in Adjudicating Disputes on Land Acquisition for Development in the Public Interest" (Atma Jaya Yogyakarta, 2015).

<sup>2</sup> Tony Prasetyo, "Public Information Disclosure Dispute Resolution at the Semarang State Administrative Court," *Journal of Legal Spectrum* 14, no. 2 (2017): 181–198.

<sup>3</sup> Herma Yanti, "Election State Administrative Dispute," *Legality* VI, no. 1 (2014): 75–93.

be avoided. In this context, the need for implementing legislations is responded to through a Supreme Court Regulation (Perma). This response is an indication of the shift in the procedural law system in the administrative court in the current state which includes aspects of instruments and content. At least the process of resolving disputes over state administration or government administration currently uses two juridical instruments of procedural law, namely the Administrative Court Law and Perma. Meanwhile, the content of the procedural law covers aspects of absolute competence (vertical and horizontal) of the State Administrative Court, aspects of the subject of the lawsuit/application, aspects of the object of the lawsuit/application, aspects of evidence, aspects of time limits and stages of settlement of state administrative disputes/government administration, aspects the type of procedural law used, and the administrative aspects of handling cases that are already based electronically in the electronic justice system.

Based on the context described previously, this study will focus on discussing, **first**, the character of the Procedural Law in the Administrative Court; **second**, shifting the legislation on the implementation of the administrative court function towards the aspects regulated in sectoral legislations; and **third**, response or regulation in the Perma as part of the adaptation of the legal and judicial fields for the justice-seeking community.

This writing has novelties and differences compared to previous research because the researcher examines the dialectic of the dynamics of the shift in the administrative procedural law system which includes aspects of competence (vertical and horizontal), the subject of the lawsuit/application, the object of the lawsuit/application, evidence, types of procedural law, limits time and stages of completion, and forms of administrative handling. Umar Dani's research on the Absolute Competence of the Administrative Court in the Context of Law Number 30 of 2014 concerning Government Administration focuses on the discussion of the failure of the administrative dispute settlement system, describes the current procedural law and its weaknesses and reconstructs the ideal procedural law by exploring theories and judicial principles<sup>4</sup>. Saldi Isra's research with the title "Shifting Legislative Functions in the Indonesian Government System After the Amendment to the 1945 Constitution of the Republic of Indonesia" discusses in-depth the shift in the legislative function in the Indonesian government system which wants to return the roles and functions of the executive, legislative, and judiciary to their proper roles. While this research is on the shift in the procedural law system of the state administrative court<sup>5</sup>. Meanwhile, Yodi Martono Wahyunadi's research with the title "Absolute Competence of the Administrative Court in the Context of Law Number 30 of 2014 concerning Government Administration" in-depth discusses the legislation of expanding the absolute competence of the administrative court in the context of the GA Law which is regulated by way of setting hidden norms in GA Law (*in de wet*), which is not under the laws and legislations, and the legislation of the general principles of good

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<sup>4</sup> Umar Dani, "Reconstruction of the Procedural Law System of the State Administrative Court as Access to Effective Dispute Resolution" (Universitas Islam Indonesia, 2019).

<sup>5</sup> Saldi Isra, "Shifting the Function of Legislation in the Indonesian Government System After the Amendment to the 1945 Constitution of the Republic of Indonesia" (Gajah Mada University, 2010).

governance that have been formulated as norms in the GA Law not just unwritten principles<sup>6</sup>.

## II. METHODS

This study focuses on the problem of how the shift in the procedural law of administrative courts responds to contemporary conditions. Based on these problems, this study is normative legal research which also includes doctrinal legal research, which is legal research conducted by examining library materials or secondary data<sup>7</sup>. The nature of the research is explanatory prescriptive, namely trying to provide and explain the research on the legal issues under study. So that with such research construction, it is hoped that it will provide answers holistically and systematically related to the dialectic of shifting the administrative law system. This is in line with Soetandyo Wignjoesobroto's view that doctrinal legal research is legal research that is carried out (its activities) not only in the form of searching limited to norms (positive law/ statutory regulations) but also continuing until the discovery of its basic teachings (doctrine/opinions of legal experts).

Furthermore, this study uses a statutory approach, a historical approach and a conceptual approach.<sup>8</sup> Researchers use several of these approaches in this paper to complement each other to be able to do comprehensive problem solving because one approach is not sufficient to analyze a case that is a legal issue.<sup>9</sup>

## III. DISCUSSION

### Character The Procedural Law System in the Administrative Court

To look by intact about the urgency and characteristics function procedural law in the legal concept, we need to look at some opinion expert law. The relevance of the urgency of the procedural law functions that Justice without material law will be paralyzed, because no know what will incarnate. Otherwise, Justice without formal law will be wild, because no there are clear boundaries in do his authority.<sup>10</sup> Based on content, the legal classification itself consists of two things, that is *first*, material law or law applied; *second*, formal law or procedural law or law procedure. Material law is governing law \_ connection law Among subject one law - with subject another law in all field law, which gave rights and obligations on the subject law. Whereas the law of the event alone is governing law \_ method or procedure maintain material law. Therefore, procedural law or law procedure could also say law help or *hulprecht*.

Against this view, Djamali has an assessment that is almost similar to stating procedural law, namely legal legislations that regulate the procedures for maintaining and

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<sup>6</sup> Yodi Martono Wahyunadi, "The Absolute Competence of the State Administrative Court in the Context of Law Number 30 of 2014 concerning Government Administration" (Trisakti University, 2016).

<sup>7</sup> Soerjono Soekanto; Sri Mamudji, *Normative Legal Research A Brief Overview* (Jakarta: PT.Raja Grafindo Persada, 2007).

<sup>8</sup> Peter Mahmud Marzuki, *Legal Research* (Jakarta: Prenada Media, 2014).

<sup>9</sup> Enid Campbell, *Legal Research*, Fourth. (Sydney: The Law Book Company, 1996).

<sup>10</sup> Abdul Rachmad Budiono, *Introduction to Legal Studies* (Malang: Bayumedia Publishing, 2005).

implementing material legal legislations. The procedural law acts as an enforcer of material legal rules that do not impose social obligations.<sup>11</sup> Likewise, Kansil defines procedural law as a law that contains legislations that regulate how to implement and maintain material law or legislations that regulate how to file a case before a court and how a judge gives a decision.<sup>12</sup> Sudarsono defines procedural law as legislations/rules that regulate procedures to maintain material legal principles. Then material law itself is a law that fills the rules that regulate interests and relationships in the form of commands and prohibitions.<sup>13</sup>

In the Dutch literature, the material element in procedural law as mentioned above is known as "*actienrecht*" (*substantive law of procedure*), which is a provision that regulates legal relations that occur due to proceedings. The legislation regulates the creation and elimination of rights claims or lawsuits, legal efforts to ward off or deny, efforts to enforce laws or rights, the effect of procedural actions, arrangements regarding evidence and making decisions. As for the formal elements of the procedural law, it regulates the method that must be considered in proceedings, namely regulating how to use authority as specified in the material element. Based on these two elements, procedural law in principle regulates the implementation of case resolution (disputes) for the sake of the interests and peace of the community so that "*eigenrechting*" can be prevented.<sup>14</sup>

According to Van Galen and Van Maarseven, the administrative law principles that underlie the administrative law procedure are "*het heiden van rechtsbescherming tegen bestuurs handelingen*", includes *Actieve rechter* (active judge); *Ongelijkheidcompensatie* (compensation for inequality); *Uniteitsbeginsel* (principle of unity); *Non-cumulate* (non-accumulation/buildup); *Vrij bewijs* (free proof); *Procesmondigheid* (oral handling); *Vermoden van rechtmatigheid* or presumption of *rechtmatig* - the "legitimate" presumption of an estimate of the validity of.<sup>15</sup>

Specifically, the characteristics of the administrative law procedure into two aspects, namely:

Table 1. Characteristics of Procedural Law<sup>16</sup>

Material Procedure Law	Formal Procedural Law
Competence absolute and relative	Regular event
Right sue	Quick event
grace time sue	Short event
Reason Sue	
Evidence	

<sup>11</sup> R Abdul Djamali, *Introduction to Indonesian Law* (Jakarta: Raja Grafindo Persada, 1996).

<sup>12</sup> CST Kansil, *Introduction to Indonesian Law and Legal Administration* (Jakarta: Balai Pustaka, 2018).

<sup>13</sup> Sudarsono, *Study of Procedural Law Reform in the State Administrative Court* (Jakarta: Kencana, 2021).

<sup>14</sup> Phillipus M Hadjon, *Introduction to State Administrative Law in Indonesia* (Yogyakarta: Gadjah Mada University Press, 1994).

<sup>15</sup> Zairin Harahap, *State Administrative Court Law* (Jakarta: Raja Grafindo Persada, 2008).

<sup>16</sup> Ibid.

Based on the characteristics of procedural law – good material and formal as implementation principle unity talk are fundamental principles in the enforcement process law administration for realizing certainty law. Principle unity talk that is unity talk in case kind of good in examination in court *judex factie*, as well as cassation with Supreme Court as a peak. So that on-base one unity law based on outlook archipelago, then dualism procedural law within the territory of Indonesia does not again relevant.

Referring to the whole characteristics of procedural law then the relationship based on the implementation of the modern conception of the rule of law will occur enhancement role government in creating a just society. Government expected could more play a role in realizing justice and can defend weak people, especially protect people from arbitrariness ruler. This thing is what causes importance formed administrative court. This is also one form of the rule of law principle.<sup>17</sup> Development thinking about democracy, rule of law, and power-sharing philosophically became the basis for the formation of this administrative court.<sup>18</sup>

The existence administrative court is the embodiment of the ideals of the rule of law and at the same time proves that our country, besides upholding human rights individually, also recognizes the existence of the human rights of the community. The inception of the administrative court also shows a commitment to creating harmony and balance between the interests of the community and the interests of the Agency and/or government administration officials if the two interests' conflict with each other. Therefore, in the aspect of governance, this Peratun acts as an instrument of control for the authorities in carrying out government duties based on applicable laws and/or general principles of good governance and at the same time as a judicial means in the context of implementing the principles of legal protection.<sup>19</sup>

In a state of law, one of the main principles is the protection of the people against arbitrary government actions. This context is carried out for the protection of civil and political rights, as well as economic, social and cultural rights. This is the character of rights in a democratic rule of law, namely the right to act and the right to receive.<sup>20</sup> Starting from that concept, the background is the establishment of state administrative courts as a means to protect individual and public rights against government actions. The government in its governmental duties is expected to act fairly and not arbitrarily which harms the interests of the peoples<sup>21</sup>.

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<sup>17</sup> Elidar Sari; Hadi Iskandar, *State Administrative Court Procedural Law*, ed. Malahayati (Lhokseumawe: CV BeNa Education, 2014).

<sup>18</sup> Rifqi Ridlo Pahlevy; Aidul Fitriada Azhari, "Paradigm Shifting State Administrative Courts in Indonesia and the Netherlands," *Legal Arena* 12, no. 3 (2019): 576–591.

<sup>19</sup> Mamudji, *Normative Legal Research A Brief Overview*.

<sup>20</sup> Dani Habibi, "Comparative Law of the State Administrative Court and Verwaltungsgerecht as People's Legal Protection," *Kanun Journal of Legal Studies* 21, no. 1 (2019): 1–22.

<sup>21</sup> Dani, "Reconstruction of the Procedural Law System of the State Administrative Court as Access to Effective Dispute Resolution."

### Shift Settings implementation Administrative Court function against regulated aspects in legislation sector

The norms of Article 24A Paragraph (5) of the 1945 Constitution of the Republic of Indonesia After the Amendment (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia), stipulates that the composition, position, membership, and procedural law of the Supreme Court and the judicial bodies under it are regulated by law. Referring to this fundamental norm, the procedural law legislation of the Administrative Court should use a statutory instrument/*bij de wet* (AC Law). However, in reality, the legislation of procedural law in the administrative court for handling the examination, in addition to using the Administrative Court Law, also uses the Supreme Court Regulation instrument which is not a product of law but a product of statutory regulations (*regeling*) alone.

Therefore, even though the presence of a Perma is a response to the development and demands of the legal needs of the community (social) and existentially it can also be said that the existence of a Perma is a law that applies in judicial practice (*ius operatum*) as the adagium *cursus curiae est lex curiae* is lacking. more means that court practice is the law for the court itself, but it does not mean the existence of the Indonesian Supreme Court Regulation instrument as a legal product free from "constitutional blemish" and the potential to conflict with the Administrative Law itself.

Observing the existence of sectoral laws that have given authority to the Administrative Court to examine, hear, decide and resolve administrative disputes in certain (special) administrative law fields, thus giving birth to the Regulation of the Supreme Court as a complementary instrument for the lack of procedural law in the Administrative Court, in practice, produce new variants of judicial practice that are very different from the procedural law arrangements in the Administrative Court Law. **First**, the variants of the types of procedural law are simple procedural law and special procedural law. The examination system in the conventional administrative court procedure law, in principle, only recognizes case examination with 3 (three) types of procedural law, namely brief procedure, fast procedure, and ordinary procedure, but with developments and changes, the procedural judicial system of administrative justice State business can be said to have metamorphosed into brief, fast, ordinary, simple and special procedural law. **Second**, the time-variant, stages and levels of administrative dispute resolution are 15 working days, 20 working days, 21 working days, 30 working days, and 60 working days. Likewise, *mutatis mutandis*, the time limit and stages of handling examinations and resolving disputes in state administration/government administration, in practice also undergoes a metamorphosis. **Third**, the variant stages and levels consist of one stage and the level is only in the administrative court; and two stages with levels: 1). Administrative Court and Administrative High Court; 2). Administrative High Court and Supreme Court; 3). Administrative Court and Supreme Court.

The metamorphosis of the time limit and stages of the practice of handling the examination and settlement of state administration/government administration disputes at the Administrative Court using simple and special procedures can be found as described in the following table:

Table 2. Metamorphosis of Administrative Procedure Law<sup>22</sup>

Legal basis	Type of Dispute	Stages and Completion Time	Procedural Law
<p>Article 47 paragraph (1):                      "The filing of a lawsuit is carried out through the Administrative Court if the claimant is a State Public Agency";                      (Law No. 14 of 2008 concerning Disclosure of Public Information and Perma No. 2 of 2011)</p>	<p>Public Information Dispute</p>	<p>Settlement of two levels, namely at the administrative court for 60 working days and the Supreme Court of the Republic of Indonesia, the cassation level for 30 working days</p>	<p>Simple</p>
<p>Article 23 paragraph (1):                      "If after the determination of the location of development as referred to in Article 19 paragraph (6) and Article 22 paragraph (1) there are still objections, the Party entitled to the determination of the location may file a lawsuit to the local Administrative Court no later than 30 (thirty) days. work since the issuance of the location determination.                      (Law No. 2 of 2012 concerning Land Procurement for Development in the Public Interest and Perma No. 2 of 2016)</p>	<p>Land Acquisition Dispute for Development in the Public Interest</p>	<p>Settlement of administrative disputes at two levels, namely:                      1. Administrative Court (settlement of the first level for 30 working days);                      2. Supreme Court (cassation) settles for 30 working days</p>	<p>Special</p>
<p>Article 21 paragraph (1)                      "The court has the authority to accept, examine and decide whether or not there is an element of abuse of authority</p>	<p>Dispute on Application for Abuse of Authority Testing</p>	<p>Settlement of administrative disputes at two levels, namely:                      1 Administrative Court (first level</p>	<p>Special</p>

<sup>22</sup> processed by the author, 2021.

Legal basis	Type of Dispute	Stages and Completion Time	Procedural Law
<p>committed by a Government Official"</p> <p>(Law No. 30 of 2014 concerning Government Administration and Perma Number 4 of 2015)</p>		<p>completion for 21 working days);</p> <p>2 Administrative Hight Court as the level of appeal for 21 working days)</p>	
<p>Article 153 in conjunction with Article 154:</p> <p>"Administrative Court in accepting, examining, adjudicating and deciding on Election administrative disputes...etc, filing lawsuits over Election administrative disputes to Administrative Hight Court...etc"</p> <p>(Law No. 10 of 2016 concerning the Second Amendment to Law No. 1 of 2015 concerning the Stipulation of Perpu No. 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law, and Perma No. 11 of 2016 concerning Procedures for Settlement of Election Administration Disputes and Disputes Election Administration Violation</p>	<p>Election Administration Dispute</p>	<p>Settlement of administrative disputes at two levels, namely:</p> <p>1 Administrative Hight Court (first level completion for 15 working days);</p> <p>2. Supreme Court as the level of Cassation for 20 working days</p>	<p>Special</p>
<p>Article 471 Paragraph (1)</p> <p>"Submission of a lawsuit over the election administrative dispute as referred to in Article 470 to the administrative court, is carried out after the administrative efforts at Bawaslu as referred to in Article 467, Article 468, and Article 469 paragraph (2) have been used"</p> <p>Law Number 7 of 2017 concerning General Elections and Perma Number 5 of 2017</p>	<p>Election Administration Dispute</p>	<p>Completion of one level is only in Administrative Court as the first level which is final and <i>binding</i>. 21 working days</p>	<p>Special</p>

Several aspects that are specifically captured from these changes, especially in the aspect of competence itself include: (a) the authority to adjudicate cases in the form of lawsuits and applications; (b). authorized to adjudicate unlawful acts committed by holders of government power (Government Agencies/Officials) commonly referred to as *onrechtmatige overheidsdaad* (OOD); (c) State administrative decisions that have been examined and decided through administrative appeals are under the authority of the Administrative Court (first level).

Regarding the legislation of the relative authority of the Administrative Court as the first level court authorized to hear and decide on administrative disputes after taking administrative appeals, it has been revised (improved) as regulated by Circular Letter Mahkamah Agung No. 2 of 2019 which determines the Administrative High Court remains authorized as the Court of First Level to examine and adjudicate administrative disputes after administrative measures have been taken if the basic legislations regulate administrative measures in the form of administrative appeals and the basic regulations have explicitly stipulated that Administrative High Court has the authority to adjudicate.

Furthermore, the aspects of the lawsuit/application include the subject matter of the plaintiff/applicant and the defendant/respondent. Then in the aspect of the object of the lawsuit/application, **firstly**, the object of the lawsuit at the Administrative Court includes (1) written decisions and/or factual actions; (2). Issued by Government Agency/Official; (3). Published based on statutory legislations and/or general principles of good governance (decisions and/or actions originating from binding authority or free authority); (4). Characteristics: individual-concrete (eg IMB), abstract-individual (eg decision on conditions for granting permits), general-concrete (eg UMR decision); (5). Decisions and/or Actions that are final in a broad sense, namely decisions that have legal consequences even though they still require approval from superior agencies or other agencies (eg investment licensing by BKPM, environmental permits); (6) Decisions and/or actions that have the potential to cause legal consequences (eg LHP BPKP). **Second**, concerning the object of the lawsuit in the form of state administrative decisions and/or Fictitious Positive Actions; and **Third**, the object of the lawsuit is the decision of the APIP agency requesting a test of abuse of authority as referred to in Article 21 of Government Administration Law. Meanwhile, in the aspect of the evidence, it regulates the existence of evidence in Article 100 of the Administrative Law plus electronic evidence as stipulated in Law Number 11 of 2008 concerning Information and Electronics.

Back in its development, the existence of the GA Law made a significant contribution that resulted in a *big bang* along with changes in the meaning of decisions (*beschikking*) as objects of State Administration (Government Administration) disputes. Historically, the decision (*beschikking*) of state administration was first introduced by the German scholar, Otto Meyer, with the term *verwaltungsakt*. This term was introduced in the Netherlands under the name *beschikking* by Van Vollenhoven and CW van der poot, which by several researchers, such as AM.Donner, HD van Wijk/Willem Konijnbelt, and others, are considered as "*de vader van het moderne beschikkingbegrip*", (father of the modern *beschikking* concept). In Indonesia, the term *beschikking* was first introduced by WF Prins. The term *beschikking* has been translated by decree, such as E. Utrecht, Bagir Manan,

Sjachran Basah, and others, and by decisions such as WF Prins, Philipus M. Hadjon, SF Marbun, and others.<sup>23</sup>

Enrico Simanjuntak, quoting Dani Elpah, stated that “the concept of the decision in the norm of Article 1 point 7 of the GA Law has deconstructed or overturned the concept of state administrative decisions as referred to so far in Article 1 point 9 of the Administrative Court Law”.<sup>24</sup> The qualification of the nature and character of the norm is not limited to decisions that are concrete-individual, but multi-characteristic, namely abstract-individual, and concrete-general. Through the norms of Article 1 point 7 of the GA Law, the administrative system with a special character has shifted into an administrative system that can examine and test all actions of Government Agencies and/or Officials including concrete/factual abstract individuals and general concrete actions.<sup>25</sup>

Based on this, if one observes the paradoxical relationship between the AC Law and the GA Law, it can be described as a condition in which the two products of legislation have an interrelationship that cannot be ruled out, but between the two there is an antinomy of norms.<sup>26</sup> The disharmony or contradiction in the content of norms between them can at least be mapped, among others as follows:

Table 3. Contradictions of norms between Administrative Court Law and Government Administrative Law<sup>27</sup>

Arrangement	Norm antinomy
Article 1 point 9 of the Administrative Court Law with Article 1 point 7, Article 1 point 8, and Article 87 GA Law	<p>The norm antinomy relates to the concept of the meaning of an administrative with the elements of its normative nature which includes factual action as the object of the lawsuit/object of the application.</p> <p>There is a pattern of reconstruction of administrative decisions according to the GA Law which includes, among others, naming state administrative decisions, making new definitions (stipulative definitions) of state administrative decisions, reducing elements or elements of state administrative decisions, and making meanings of administrative decisions country. However, there is a note on the pattern of reconstructing the meaning of decisions through the transitional provisions of Article 87 of the GA Law, which is a covert change</p>

<sup>23</sup> HR Ridwan, *State Administrative Law* (Jakarta: PT Raja Grafindo Persada, 2008).

<sup>24</sup> Enrico Simanjuntak, “Restatement Tentang Yurisdiksi Peradilan Mengadili Perbuatan Melawan Hukum Pemerintah,” *Jurnal Masalah-Masalah Hukum* 1, no. 48 (2019): 42–43.

<sup>25</sup> Ibid.

<sup>26</sup> Enrico Simanjuntak, *State Administrative Court Procedural Law (Transformation & Reflection)* (Jakarta: Sinar Graphic, 2018).

<sup>27</sup> Processed by the author, 2021

Arrangement	Norm antinomy
	<p>in the meaning of decisions (covered changes) and is not per Attachment II of Law Number 12 of 2011 concerning the Establishment of Legislation. Meanwhile, the meaning of the decision according to Article 1 Number 7 of the GA Law which reconstructs Article 1 Number 9 of Law Number 5 of 1986 concerning Administrative Courts is by Appendix II Number 135 of Law No. 12 of 2011 concerning the Establishment of Legislation.</p>
<p>Article 1 Number 11, Article 1 Number 12 of the Administrative Court Law with Article 21, Article 53 of the GA Law</p>	<p>The antinomy of norms, in the Regime of the Administrative Law, in general provisions only regulates the legal subjects of the Plaintiff and Defendant with the procedural process through a lawsuit.</p> <p>Meanwhile, the GA Law has regulated the legal subject of the Petitioner and the Respondent with the procedure process through the application</p>
<p>Articles 48 and 51 of the Administrative Court Law with Article 1 number 18, Articles 75-78 of the GA Law</p>	<p>The antinomy of norms relates to the administrative dispute resolution forum after administrative efforts have been carried out. In the Administrative Court Law, if the basic legislations require Administrative Efforts (AE) both objections and appeals to be taken, then after the EA has been adopted, the Administrative High Court as the First Level Court has the authority to settle. Whereas in the GA and SEMA Law Regime Number 2 of 2019 if the basic legislations do not regulate administrative efforts (objections or administrative appeals) and the basic legislations only regulate administrative efforts in the form of objections, then the first level Administrative Court has the authority to resolve them.</p>
<p>Article 67 of the Administrative Court Law with Article 65 of the GA Law</p>	<p>Norm antinomy, concerning the <i>scoring system</i> (delay). The difference between the legal subject of the applicant and the executor of the suspension of the administrative decision, as well as the object of the administrative and/or factual action that can be postponed.</p>
<p>Article 55 of the Administrative Court Law and Supreme Court Jurisprudence rules related to it,</p>	<p>Norm antinomies relate to the calculation and use of calendar days and working days. Apart from that, it is also related to the basis for calculating the time</p>

Arrangement	Norm antinomy
with Article 76, Article 77, and Article 78 of the GA Law	limit for submitting administrative efforts which have been limitedly determined in the GA Law (administrative efforts) and the deadline for filing a lawsuit with a time limit of 90 (ninety) calendar days calculated on a case-by-case basis since knowing and feeling aggrieved as a result of its issuance. Administrative Decisions
Article 116 of the Administrative Court Law with Article 80, Article 81, Article 82, Article 83, and Article 84 of the GA Law	Norm antinomy, concerning the procedure for executing <i>inkeracht</i> decisions and administrative sanctions against Government Officials

Metamorphosis of the procedural law system of the Administrative Court from time to time which includes changes in aspects of competence (vertical and horizontal), aspects of the subject of the lawsuit/application, aspects of the object of the lawsuit/application, aspects of evidence, aspects of the time limit and stages of settlement of state administrative disputes/government administration, aspects of the type of procedural law used, and administrative aspects of handling cases that are already electronic-based where changes in the development of the procedural law system in the administrative court can at least be said to be real variables and indicators of a paradigm shift or shift called interpolation, which is an interpolated form of a procedural law system with a conservative setting (Procedural Law of the Administrative Court) to a procedural law system with a progressive style nuance.

The procedural law system with a conservative setting is characterized by, among other things, the level of examination in which there are many stages of the procedural process, too many procedural models, and the grace period for the procedural process is not determined. Meanwhile, the procedural law system with a progressive setting is characterized, among others, by the number of procedural leaps, both in terms of reducing the levels of examination, reducing the proceedings, and determining the grace period for the proceedings.<sup>28</sup>

In addition, the dialectic of shifting the procedural law system in administrative courts can be seen in the aspect of updating the system for handling case administration and trials in court electronically (*the electronic justice system*), which of course also shows traces of the legal system. events in the administrative court morphed into an electronic court (*e-court*). The electronic justice system in the context of handling case administration and trials electronically is an actualization of the demands of the times that require more effective and efficient case administration and trial services in court as formulated in the Perma Number 1 of 2019 concerning Case Administration and Trials in Courts Electronically.

<sup>28</sup> Dani Elpah, Wawancara Pribadi Hakim Tinggi Pengadilan TUN Jakarta, April 2019, Jakarta.

Perma *a quo* Number 1 of 2019 concerning the Administration of Cases and Trials in Electronic Courts is a product of regulatory law that is a refinement of the material for electronic trial procedures from Perma Number 3 of 2018 which previously regulated the same thing. In the dimensions of administrative reform and electronic trials, the anatomy of the electronic justice system itself generally consists of online/electronic case registration, online court fee down payment, summons of parties online, and electronic court proceedings.

The definition of electronic case administration is a series of processes for receiving claims/applications/objections/rebuttals/resistance/interventions, payments, submission of summons/notifications, answers, replicas, duplicates, conclusions, acceptance of legal remedies, as well as management, submission and storage of civil case documents/religious civil/military administration/state administration using the electronic system applicable in each judicial environment. Meanwhile, the electronic trial is nothing but a series of processes for examining and adjudicating cases by the courts carried out with the support of information and communication technology.<sup>29</sup>

In the context of the judiciary (including the Administrative Court) is facing three phenomena, namely the industrial revolution 4.0, the disruptive era, and the challenges of the Court. Then inevitably the Administrative Court must use *Design Thinking* as art in finding solutions to demands and the development of the times on the wishes of justice seekers who want judicial services that can be adapted to the information technology-based era. Thus, in the future, the Administrative Court needs to improve its ability to provide services that are under the demands of the information technology-based era<sup>30</sup>.

The Industrial Revolution Era 4.0 can be broadly said to be an era of IT-based real-time communication, human labour is replaced with automation, adaptive power is the key to its success, opportunities to accelerate the implementation of *e-government*. While the Disruptive Era itself is an era of disruption that comes with the phenomenon of the industrial revolution 4.0 so that it has the potential to change the way of life, work, organizational relations, and the administrative power sector which is automated.

Regarding the challenges of the Judiciary in the Industrial Revolution Era 4.0 and the Disruptive Era, it would not be an exaggeration if *Judge Dory Relling of Amsterdam District Court* reminded that the challenges of the judiciary should no longer be " *long delays, lack of access to justice and court corruption* ", while *Adriaan Bedner is a Professor The Head of the Department of the Van Vollenhoven Institute for Law Governance and Society* also reminded us to welcome the Industrial Revolution Era 4.0 and the Disruptive Era of Judicial challenges against the attitude of " *Accepting bribes to speed up the processing of a case* ".

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<sup>29</sup> Sunarto, *Courts Need to Find the Best Solutions to These 3 Phenomena*, Guidance of Leaders of the Supreme Court of the Republic of Indonesia for Leaders of Courts of Appeals throughout Indonesia (10, 2019).

<sup>30</sup> *Ibid.*

## Construction Response or Settings in Perma as Part of Adaptation Field Law and Justice

Shifting the procedural law system in the administrative court which includes the use of the Administrative Court Law and Perma as procedural law, setting the absolute competence aspect (vertical and horizontal) of the administrative court, the aspect of the subject of the lawsuit/application, the object aspect lawsuits/applications, aspects of time limits and stages of practice for handling examinations and resolving disputes in state administration/government administration, aspects of electronic evidence, aspects of types of procedural law, and aspects of updating the system for handling case administration in court electronically, can be said to be a real reflection of a change and developments in a big mirror of the dynamics of the current administrative judicial procedural law system.

Changes in the legal mechanism of the State Administrative Procedures in the aspect of land acquisition for the public interest which eliminates legal appeals that are common in administrative law and directs Cassation to the Supreme Court has become a phenomenon as a response to accelerating infrastructure development. This is reflected in a decision on Cassation Number 456 K/TUN/2015 which granted the Governor of DIY's appeal to the decision of the Yogyakarta Administrative Court on the Location Determination Permit (Ijin Penetapan Lokasi/IPL) No 68/KEP/2015 regarding the airport in Temon, Kulonprogo.

Likewise, the presence of Perma No. 2 of 02 of 2011 concerning Procedures for Settlement of Public Information Disputes in Court, the legal process is concise, only examining the decision of the Public Information Commission and matters of the objection, no mediation is required and the time is only 60 days since the Assembly was stipulated and only 14 (fourteen) days the appeal for a Cassation to the Supreme Court of the Republic of Indonesia is filed. This is reflected in the Jakarta Administrative Court which cancelled the Decree of the Central Information Commission No. 58/XII/KIP-PS-A-M-A/2015, dispute case between the Institute for Criminal Justice Reform and the Ministry of State Secretariat on the request for information on decisions on clemency of death convicts.

Therefore, in the dialectic of shifting the procedural law system in the administrative court, it also contains several things, namely, among others, **first**, the paradoxical relationship between the Administrative Court Law and the GA Law can be described as a condition where the two products of legislation have a relationship interrelation that can not be ruled out, but between the two at the same time there is an antinomy of norms.<sup>31</sup> **Second**, there is a paradigm shift or shift called interpolation, in which the form of interpolation from a conservative procedural law system to a procedural law system with a progressive setting is a real "sign" of the demands for change and developments in the times the development of the times that want the reform of the state administrative court procedure law in the future.

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<sup>31</sup> Simanjuntak, *State Administrative Court Procedural Law (Transformation & Reflection)*.

Still talking about legal and judicial issues with the dynamics of change, according to reaffirming that because the dynamics of society (the world) is so fast, it has implications for the need to make rules tend to increase.<sup>32</sup> As a result, there is *over-legislation* or *hyperlegislation*, which is a situation that occurs in both the *common law* and *civil law traditions*. As a result of *over-legislation*, there is a tendency for "legal alliances" (law to be increasingly alienated) from the community itself, even from the legal experts themselves.

So that in the context of reforming the procedural law of administrative courts, it is relevant to the role of the judiciary and social change. The context refers to two things, how courts respond to social change and whether courts can bring about social change<sup>33</sup>. Legal reform with an approach to the reformulation of the procedural law of administrative courts through the legislative process in the current situation is a necessity born of the demands and developments of the times to overcome obstacles and obstacles in the process of administering the judiciary to realize case administration services in courts that are more effective and efficient.

The phenomenon of a shift in the procedural law system of administrative courts dealing with social change shows that law is not just an expression consisting of a set of legislations.<sup>34</sup> Furthermore, there is an atmosphere of dialogue between the law and the existing social conditions of society. Thus the change in law points to the notion that the law is always growing.<sup>35</sup> The growth of law has an internal logic, that is, change is not only an adaptation of the old to the new but also part of a pattern of change. And this does not happen randomly but results from the reinterpretation of past rules with present conditions and future needs.

Objectively as a written rule or written law, laws and legislations have a limited range of mere *moment opname* of political, economic, social, cultural, and defence elements that influence each other during formation, because it is easily outdated when compared to the dynamics (changes) of people's lives.<sup>36</sup> This is no exception, including the Administrative Court Law itself which incidentally is a product of legislation.

The context that occurs is a spark of attraction between axiomatic thinking (systemic thinking) and topical (problematical) thinking. For this reason, the direction used in law is a settlement within the framework of the applicable legal order. Deeper than that, the framework of the legal order itself to a certain degree has been structured systemically, which ensures stability and predictability to create certainty and justice in society.<sup>37</sup>

Along with changes and developments, the shift in the procedural law system for administrative courts has resulted in two procedural law instruments, namely the

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<sup>32</sup> Supandi, *Capita Selecta of State Administrative Law* (Bandung: PT. Alumni, 2016).

<sup>33</sup> Justice Ronald Sackville, "Courts and Social Change," *Federal Law Review* 33, no. 3 (2005): 373–390.

<sup>34</sup> Roger Cotterell, *The Sociology of Law an Introduction* (London: Butterworths, 1984).

<sup>35</sup> Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (London: Harvard University Press, 1983).

<sup>36</sup> Bagir Manan, "The Role of State Administrative Law in Formation of Legislation" (Ujung Pandang, 1995).

<sup>37</sup> Bernard Arief Sidharta, *Indonesian Law: Efforts to Develop Systematic Law that is Responsive to Changes in Society* (Yogyakarta: Genta Publishing, 2013).

Administrative Court Law and Perma, as well as changes in the legal content of the Administrative Court in various aspects. So that dialectically, the situation with the existence of two procedural law instruments and changes in the content of the procedural law that lead to disharmony between the Administrative Court Law, the Government Administrative Law and Perma Laws of course require a re-unification of the procedural law system that can harmonize the instrument and material aspects of the procedural law (both material procedural law) as well as formal procedural law).

#### IV. CONCLUSION

Based on the previous description, normatively and practically with inception of several sectoral laws that have given authority to the Administrative Court to examine, hear, decide and resolve administrative disputes in certain (special) administrative law fields, thus inception to Perma as a complementary instrument for the lack of procedural law in the Administrative Court, *mutatis mutandis* has led to a shift in the procedural law system of the state administrative court which includes both instrument and material aspects. In the instrument aspect, at least it can be seen from the existence of 2 (two) procedural law instruments currently in use, namely the Administrative Court Law and Perma, as well as changes in the content of legal proceedings in the Administrative Court in the aspect of absolute competence (vertical and horizontal) of the Administrative Court, aspects of the subject of the lawsuit/application, aspects of the object of the lawsuit/application, aspects of evidence, aspects of the time limit and stages of dispute resolution of state administration/government administration, aspects of the type of procedural law used, and administrative aspects of handling cases that are already based electronically in the electronic justice system.

Therefore, the shift in the administrative procedural law system mentioned above can also be said to be a real indicator of a paradigm shift or shift called interpolation, in which the form of interpolation is from the procedural law system with a conservative nuanced setting (Administrative Court Procedure Law) towards the procedural law system. which has a progressive setting.

Thus, the renewal of the administrative procedural law with the approach to the reformulation of the procedural law of administrative courts through the legislative process in the current situation is a necessity born of the demands and developments of the times to overcome obstacles and obstacles in the process of administering justice to realize case administration services in courts that are more effective and efficient as well as an effort to synchronize and harmonize the Administrative Court Law, GA Law and Perma itself to produce state administrative judicial procedural law instruments (formal procedural law and material procedural law) based on legal unity.

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