PROPHETIC LAW REVIEW
Volume 1, Issue 1, December 2019

THE EFFECTIVENESS OF ADMINISTRATIVE REVIEW IN INDONESIA'S ADMINISTRATIVE COURT SYSTEM

Umar Dani[1]

Citation Guide:
Umar Dani,
'The Effectiveness of Administrative Review In Indonesia's Administrative Court System'[2019] 1 (1) Prophetic Law Review 58.

Received:
25 October 2018
Accepted:
3 April 2019
Published:
2 December 2019

DOI:
10.20885/PLR.vol1.iss1.art4

Abstract

This research aims to describe the use of administrative review in Indonesia. There are two rules of administrative review: administrative review according to Act Number 5 Year 1986 on State Administrative Judicial Action, and administrative review according to Act Number 30 Year 2014 on Government Administration. Both of these rules contradict each other and are equally authorized at the same time, and thus, in practice, we must determine which regulation is the most appropriate to use as a legal basis. This study analyzes the use of administrative review and its effectiveness in providing legal protection. To discuss these issues, the researcher has used normative or dogmatic legal research method. The results of the study show that in general, administrative review procedure has applied the system as determined in Act Number 30 Year 2014 on Government Administration, except those specifically regulated by Act No 5, such as personnel disputes. The new version of Administrative review does not provide effective legal protection because the process of resolving state administrative disputes is lengthy and does not comply with the principles and theories of administrative review in general terms.

Keywords: *Administrative law, administrative review, objection, State Administrative Court.*

A. Introduction

Since the establishment of the State Administrative Court in 1986, the settlement of state administrative disputes has been directed throughs the State Administrative Court, a judicial institution/ The organization, substantive law, and rules of procedure of the State Administrative Court are arranged in a simple manner in one law. This structure requires legislative action to change either the substantive law and procedural law or procedural

[1] Administrative Judge, State Administrative Court of Jakarta, e-mail: oemardani@gmail.com

rules. The lack of complete substantive law and procedural rules at the level of positive law leads to a dominant role of general principles or doctrines of administrative law as the legal basis alternative to resolve state administrative disputes.

Currently, state administrative disputes tend to be directly resolved by the internal government itself (*premium remedium*), while the court is the last resort only when internal review fails (*ultimum remedium*). Internal settlement by government is often referred to as administrative review.

The use of administrative review to resolve state administrative disputes in Indonesia is a unique improvement. There are significant changes of paradigm between the administrative review system regulated in Statute No. 5 of 1986 on State Administrative Judicial Act with a system of administrative review regulated in Statute No. 30 Year 2014 on Government Administration. The changes are not only about procedural rules, but also affects widely known principles of administrative review.

Regulatory changes regarding the administrative review system are only based on pragmatic thinking and are not based on theories and principles of administrative review that are generally applicable, so that in practice there are many obstacles that can hamper the legal process. These normative constraints are, for example: first, *norm antinomy* between procedures for administrative review according to the Statute No. 5 Year 1986 on State Administrative Judicial Act with the Statute No. 30 Year 2014 on Government Administration. Those regulations are at the same level and equally applicable at the same time; second, the new paradigm requires that administrative review be conducted before a dispute can move to the court, in the absence of the procedural law, organization, facilities, or infrastructure to support it; and third, the process of administrative review according to the new paradigm does not guarantee effective legal protection.

Based on the dynamics of administrative review implementation, the author argues that it is important to research administrative review in Indonesia to provide an understanding of the principles of administrative review to ensure effective legal protection. Aside from the main purpose, there are several benefits from the administrative review mechanism, and it can provide a clear concept regarding administrative review procedure to apply to the settlement system of state administrative disputes in Indonesia.

To discuss the aforementioned legal issues, the author reviewed relevant data. The data were collected through normative research or dogmatic legal research. Preliminary observations indicate many contradicting regulations as the main obstacle that State

Administration Courts face in examining disputes after citizens petition for administrative review. To analyze and discuss these problems, the researcher used the principles of law and legislation, doctrines, and comparative legal analysis in this study.

To provide an overview of administrative review procedure in judicial system, the author will focus on two aspects: how administrative review is used to settle state administrative disputes in Indonesia; and whether administrative review can ensure effective legal protection.

B. Research Method

The method in research here is defined as “how to obtain and collect data” which is functioned to identify the truth accordingly with the problems raised in this study. It is mainly aimed to test and to analyze the use of administrative review in the settlement state administrative disputes under the Indonesian legal system as well as the guarantee for effective legal protection. This normative legal research applies legal theories, legal principles, legislation, doctrine, and legal comparison.

C. Discussion and Result

1. Definitions

Administrative review is a means of preventive legal protection carried out internally by the relevant government agency (*review intern*). There are several *review intern* terms. For example, in the Netherlands it is known as administrative review (*bestuurlijke toetsing*), which consists of "objection" (*bezwaar schrift*) and "administrative appeal" (*administratief beroep*). In France, it is known as *recour gracieux* and *recour hie'rarchique,* while in Australia, the UK and South Africa, it is known as an administrative appeal tribunal, a kind of independent special commission (*quasi-court*) that is classified as part of government and not an independent court.

In the Netherlands, there are two phases in resolving state administrative disputes, namely the administrative review (*bestuurlijke toetsing*) phase and the judicial review (*rechterlike toetsing*) phase. These two phases are called the civil service arbitration tribunal because they do not have State Administrative Court institutions that are hierarchically independent as in Indonesia and France. This administrative review phase is a prerequisite for petitioning the court for judicial review. The administrative review consists of an "objection procedure" which must be addressed to an administrative

authority who has issued a decision.[2] The second form is administrative appeal (*administratief beroep*), namely the process of appeals addressed to other bodies of those who have issued decisions (Higher officials who have issued a decision). Administrative appeals in particular can only be used if they have been specified in the legislation and have the same aim as the objection process even though it may contain an element of administrative control (*bestuurlijk toetzicht op de naleving*). To provide public legal protection, every decision must mention (commonly referred to as legal protection clause or *rechtsmiddelen clausule*) to whom an objection or appeal can be filed, or which court has authority to handle a complaint from the public regarding the decision by also including limitation period.

The Dutch objection and administrative appeal procedures are not levels such as in Indonesia, but more like choices or alternatives at the government level. The use of these two institutions is specifically regulated in the legislation, meaning that after an objection, it can be directly appealed to the court or through the administrative appeal procedure without going through the objection procedure first.

Countries that adopt the Civil Law system generall have various ways of using this administrative review. *First*, there is a connectivity between administrative review and judicial review (to the court) as applied by the Netherlands and Germany,[3] meaning that administrative review must be carried out before disputes submitted to the Court; or *Second*, there is no connectivity between administrative review with judicial review (to the court) as in France,[4] meaning that judicial review can be directly carried out without having to first submit a dispute for administrative review.

In Indonesia, the definition of administrative review is set forth in the explanation of Article 48 of Statute No. 5 of 1986 on State Administrative Judicial Act, as follows:

> Administrative review is a procedure that can be taken by a person or civil legal entity if he or she is not satisfied with a state administrative decision. The procedure is carried out in self-governing environment in two forms. In case the settlement must be carried out by a superior agency or other agency from which the decision is issued, the procedure is called "administrative appeal"….. in the event that the settlement of the state administrative decision must be carried out by the state administration body or official issuing the decision, the procedure adopted is called an objection....

[2] Marieke van Hooijdonk and Peter Eijsvoogel, *Litigation in the Netherlands: Civil Procedure, Arbitration and Administrative Ligitation* (2nd Ed., Wolters Kluwer 2012) 164

[3] F. Stroink and E. van der Linden, *Judicial Lawmaking and Administrative Law* (Intersentia Antwerpen 2005) 162 – 164

[4] Ibid 157, see also Dacian C. Dragos and Bogdana Neamtu, *Alternative Distpute Resolution in Europan Administrative Law* (Springer Heidelberg 2014) 63

> Section (2): if the procedure and opportunity in the elucidation of section (1) have been taken, and the party concerned is still not satisfied, the problem can be sued and brought to court.

Based on this explanation, the author argues that administrative review (*upaya administrasi*) in Indonesia should not be interpreted as *administratief beroep* because the administrative review itself consists of objections (*bezwaar schrift procedure/recour gracieux and administratief beroep/ recour hie'rarchique*), so that the equivalent of administrative review (*upaya administrasi*) in Indonesia is *administrative review* or *administrative appeal.*

2. Benefits of Administrative Review

Administrative review is a tool for the legal protection for citizens, both individuals and legal entities, who are affected by state administrative decisions (*beschikking*). Reviewing (*toetsing*) in administrative review is different from judicial review in State Administrative Court. Reviewing in State Administrative Court is merely examining disputes from a legal aspect, while administrative review process is not only reviewing it from a legal perspective. but also taking into account government policy, so dispute resolutions that come from administrative review tend to be more comprehensive.[5]

According to Karianne Albers, there are several advantages of administrative review. First, it can reduce cases in the state administrative court. Second; because the substance of the case has been examined in the objection process, it will be easier for state administrative courts to understand the core of the disputed issue. The objection procedure can also be used to clarify the facts and correct decisions if there are any errors in them. Third, the procedure can offer informal disposition of a dispute, including the possibility of mediation[6] There has been a recent tendency in Netherlands to use informal approaches to settle disputes, either before using the objection procedure or during the objection process itself.

Authorized officials must reconsider their decisions not only from legal perspective but must also consider fairness and political. They should be based on situations relating to both the facts and the law at the time when decisions are tested (*ex nunc*).[7] In this *administrative review* process, authorized officials are able to change or revoke the

[5] Hari Sugiharto and Bagus Oktafian Abrianto, 'Administrative Efforts as Legal Defenses for the People in State Administrative Disputes', (2018) 11 (1) *Arena Law Journal*, 34

[6] Zoltan Szente and Konrad Lachmayer, *The Principle of Effective Legal Protection in Administrative Law*, (Routledge Taylor & Francis Group 2017) 234

[7] Merieke Hooijdonk and Peter Eijsvoogel, Op. Cit., 168

disputed decision and if necessary, they are allowed to issue a new decision to replace existing one. The decision issued by authorized officials requested for objection is referred to as an objection decision, even though in the objection decision it will not change any part of an initial decision. However, if it has been reviewed by the objection institution, it will be called as an objection decision. To provide legal protection for decisions that have been examined, there must be a statement that the concerned parties appeal within a determined period and which court has competency to conduct the review.

The main difference between judicial review and administrative review is that judicial review is an external protection against maladministration, while administrative reviews including administrative appeal of the tribunal are an internal protection, as Hoexter notes:

> Effective administrative appeal tribunals breed confidence in the administration as they give the assurance to all aggrieved persons that the decision has been considered at least twice and reaffirmed. More importantly, they include a second decision-maker who is able to exercise a 'calmer, more objective and reflective judgment' in reconsidering the issue.[8]

Furthermore, Hoexter said that the administrative appeal has several advantages over judicial review. First, Administrative officials mostly become the best judges in making decisions for administrative institutions because they have specific expertise and seem to have a deeper understanding of the policy decision in question. Second, they are usually less costly and have faster processes than courts. Third, the doctrine of separation of powers states that the courts are not competent to carrying out political functions in the case of adjudicating administrative matters. As is often stated in some cases, procedure can be said to function as an extension of the government.[9]

Because of the importance of administrative review, in Netherlands and Germany, administrative review must be submitted first as a pre-requisite to petition the court for judicial review. There is an argument that administrators themselves are best prepared to handle disputes because judges may not always have a full understanding of the nuanced administrative functions and the way administrative authorities balance individual interests in the whole system, especially considering the increasing administrative activities in many fields.[10]

---

[8] Cora Hoexter and Rosemary Lyster, *The New Constitutional and Administrative Law Volume II: Administrative Law* (1st Ed., Juta Law 2002) 37

[9] Ibid

[10] Dacian C. Dragos and Bogdana Neamtu, Op. Cit., 63

In addition to the above benefits, according to Rhita Bousta, there is a negative side in administrative review/administrative appeals, in that there is no guarantee of impartiality in its resolution, especially in the case of "*recours gracieux*" aimed at the same authorized officers who have made the original decision. Even in the case of the *recour hie'rarchique* addressed to higher authorities or agencies, there is no guarantee that these agencies would be neutral.[11]

In an effort to maintain neutrality, in the Netherlands, the authorized administrative officers can establish an Advisory Committee (*bezwaarscriftencommissie*) to carry out the objection process, advise the authorized authority, and to assess the validity of the objection. Then, they may ask the officers to change or even to pull (cancel) the decision that becomes an object of objection. The Objection Committee (*bezwaarscriftencommissie*) may consist of civil servants from the authorized administrative officials and people who come from outside the government, such as legal practitioners, legal academics, or judges. In principle, the authorized officials will remain to be responsible for examining the decision. Generally, the objection process is open for public and everyone can attend it.[12]

3. Administrative review According to Law No. 5 of 1986

The function of the court in the context of judicial review relates to the accuracy of decisions in terms of the law and it cannot assess the side of benefits. As Brightman revealed, "the judges do not concentrate their judgment on the content or purpose of the decision, but the focus of the assessment is the decision-making process." This is a big challenge from the aspect of justice that people want to achieve, where the boundaries between legality and benefits are blurred. HWR Wade observed that:

> The doctrine that power must be exercised reasonably has to be reconciled with the no less important doctrine that the court must not usurp the discretion of the public authority which Parliament appointed to make the decision. Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion. If it passes those bounds, it acts ultra vires. The court must therefore resist the temptation to draw the bounds too tightly, merely according to its own opinion. It must strive to apply an objective standard, which leaves to the deciding authority the full range of choices, which the legislature is presumed to have intended[13].

[11] Ibid 63-64

[12] Marieke van Hooijdonk and Peter Eijsvoogel, Op. Cit., 167

[13] HWR Wade, *Administrative Law* (7th Ed., Oxford University Press 1994) 399, see also David Stott and Alexandra Felix, *Principles of Administration Law* (Cavendish Publishing limited 1997) 21

Cora Hoexter states that judicial control of administration is one of the most interesting and controversial issues in administrative law. This is because the principle of judicial review contains a contradiction between two opposing ideas: on the one hand is the dream of freedom of government in its actions, and on the other hand is the idea of control by the judiciary.[14] In a number of cases, in fact, this conflict emboldens views that the court would not be able to solve a substantial problem because they did not review the aspect of benefits. Thus, a dividing line had been drawn between the benefits of the decision and its legality.

The practice of legal protection for citizens against government actions always starts from the government itself through administrative review as a preventive protection, while judicial review is a means of protection from repression when citizens are not satisfied with administrative review made by government.

Procedural rules of the Civil Service Arbitration Tribunal do not concretely regulate administrative review, but rather only regulates them in general. Whether a dispute is available for administrative review or not is still dependent on sectoral regulations. Article 48 of Statute No. 5 Year 1986 on State Administrative Judicial Act:

(1) In case that a State Administration Agency or Officer is authorized by or based on legislation to administratively resolve certain State Administrative dispute, the state administrative dispute must be resolved through available administrative review.
(2) The court only has the authority to examine, decide, and settle the State Administration dispute as referred to in paragraph (1) if all administrative reviews concerned have been used.

The formulation of the articles above shows the connection between administrative review and judicial review. A development of understanding is that administrative review is considered equivalent to the first level of judiciary, so that after carrying out an administrative review, the court authorized to examine it is the State Administrative High Court as the court of original jurisdiction.

In its development, administrative review has rarely been used because sectoral regulations do not provide much administrative review in dispute resolution systems. Implementation of administrative review in Statute No. 5 Year 1986 turned out to separate the objection procedure and administrative appeals procedure, similar to that in the Netherlands, in which both were not levels but choices in accordance with sectoral regulations. If sectoral regulations only provide an objection procedure, after this

[14] Cora Hoexter and Rosemary Lyster, Op. Cit., 67

procedure the claim is submitted to the Administrative Court. Whereas, if the sectoral regulations only regulate administrative appeals, the authorized party is the State Administrative High Court.

Regarding the confusion of the term "objection" within administrative appeals in some basic rules of the agency or institution concerned, the Supreme Court gave an explanation through the Supreme Court Circular No. 2 Year 1991 on Implementation Guidelines for Several Provisions in Statute No. 5, Year 1986, on the State Administrative Judicial Act:[15]

1. What is meant by administrative review is:
   a. Submission of an objection letter (*bezwaarschrift*) addressed to the State Administration Agency or Official who has issued the decision (*decree* or *beschikking*) initially.
   b. Submitting an administrative appeal letter (*administratief beroep*) addressed to superior of an official or other agency of the State Administration Agency or Official who has issued decision authorized to re-examine decision of the State Administration concerned.

2.a. If the basic regulation only determines that there is administrative review in the form of submission of objection letter, the lawsuit against relevant State Administration Decree is submitted to the State Administrative Court.

2.b. If the basic regulation states that there is administrative review in the form of submission of objection letter and/or requires the submission of administrative appeal letter, the lawsuit against the State Administration Decision that has been decided at the administrative appeal level should be submitted directly to the first level of State Administrative High Court.

The authority of officials to conduct administrative review is different from judicial review in State Administrative Court. According to the explanation of Article 48 of Statute No. 5 Year 1986, the matter to be examined in administrative review is:

> …different from procedures in the state administrative court. Administrative appeals procedures and objections are carried out in a complete assessment, both in terms of legal application and in terms of policy by the deciding agency. From the rule of the legislation as the basis for the issuance of the state administration's decision, it can be seen whether against administration's decision is open or not open about the possibility of administrative review being carried out.

This means that the scope of administrative review is not only limited to normative testing or *rechtmatig but* can also cover assessing in terms of *doelmatig* and even assessing the policy.

[15] Supreme Court Circular No. 2 Year 1991 on Implementation Guidelines for Several Provisions in Statute No. 5, Year 1986, on the State Administrative Judicial Act

Although the law on Civil Service Arbitration Tribunals has affirmed the concept of objections and administrative appeals, the sectoral regulations might deviate from the concept and procedural law itself, such as administrative review regulated in Government Regulation No. 53 of 2010 on Discipline of Civil Servants. For example, the Government Regulation stipulates that the objection procedure is submitted to the authorized superior official to punish, not to the official authorized to punish. This concept is actually more akin to administrative appeals.

Interestingly, in the assessment of both the objection process and administrative appeals, the superior or reviewing official has authority not limited only to cancellation but also to commuting or aggravating the disciplinary punishment imposed by the authorized officer. Decisions of officials' superiors in the objection process are final and binding, meaning that they are no subject to administrative appeal, but appealable directly to the first level the State Administrative Court.

Administrative appeals according to Article 38 paragraph (1) Government Regulation No. 53, Year 2010, on Discipline of Civil Servants is submitted directly to the Personnel Advisory Board (*Badan Pertimbangan Kepegawaian*/BAPEK), without having to first exhaust the objection procedure, meaning that the objection and administrative appeals procedures are not a hierarchy but an alternative remedy decided in each sectoral regulation. The procedural law regarding administrative appeals is specifically regulated by the legislation governing the Personnel Advisory Board.

Administrative review in the Civil Service Arbitration Tribunal system in Indonesia under the Law No. 5 of 1986 is the most famous administrative appeals that is the Personnel Advisory Board, an advisory board that has decisions that could be submitted to the State Administrative High Court.

4. Administrative Review According to Law No. 30 Year 2014

Administrative review after the enactment of Statute No. 30 Year 2014 on Government Administration experienced a significant paradigm shift, especially concerning the time limitation for administrative review settlement, administrative review hierarchy, and authority to create a decision in administrative review.

Article 75 paragraph (3) of the Statute No. 30, Year 2014, on Government Administration stipulates that administrative review consists of 1) objection and 2) appeal. The administrative review procedure specified in the Government Administration Act is tiered, meaning that in the event that the community are not satisfied by the settlement of

objection by the Government Agency and/or Official (*recour gracieux* or *bezwaar schrift procedure*), the Community has the right to petition for review by a higher official (*recour hie'rarchique* or *administratief beroep*). Then, if the community is not satisfied by the appeal decision of higher official, the community "can" file a lawsuit in the court.

The drawback of the administrative review process in the Government Administration Act is that the decision in administrative review can only declare null or void decisions with or without claim for compensation and administrative demands. In addition, the examination at the administrative review phase is very short, and government officials are only given a short time for resolving either their objections or their appeals, a maximum of 10 (ten) working days. If they do not complete the process within that time limit, the objections and/or appeals are granted by default.

Supreme Court Circular (*Surat Edaran Mahkamah Agung/*SEMA) No. 4 Year 2016 on Implementation of the Resolution of Supreme Court 2016 Chamber Plenary Meeting as Guidelines of the Exercise of the Courts Duties, stipulates that: “State administrative decisions that have been examined and decided through administrative appeals will be an authority of the State Administrative Court”. The idea of this thought tends to be based on interpretation of Article 76 paragraph (3) *jo*. Article 1 number 13 the Government Administration Act. Article 73 paragraph (3) stipulates that “In the event that Community Members are not satisfied with the appeal resolution by a superior of Official, the Community Members can file a lawsuit to the Court.” Then, Article 1 Number 13 states that: “The Court is the State Administrative Court.” Indeed, after going through an administrative appeal, the dispute is then submitted to the first level of the State Administrative Court. This determination is quite different from a determination under Article 48 of Statute No. 5 Year 1986 on State Administrative Judicial Act, which requires that after an administrative appeal, a lawsuit is filed in the State Administrative High Court as the first level court.

Interestingly, in transition between administrative review of Administrative Court Act to Government Administration Act version, the decision of the Personnel Advisory Board which previously was determined on State Administrative High Court authority, after enactment of Government Administration Act is transferred to the State Administrative Court authority. Whereas normatively the administrative review referred to Government Administration Act is tiered. In other words, it starts from the objection process then appealed. Only after exhausting both of these procedures, disputes will be

allowed to proceed to the State Administrative Court. On the other hand, the Personnel Advisory Board process is not preceded by the objection process. In practice, the Personnel Advisory Board decision is immediately cognizable in the Administrative Court, which according to the author, deviates from the necessity of objection process which is regulated limitatively the Government Administration Act.

TABLE: The fundamental differences between administrative review concept of Indonesia and the Netherlands

The Netherlands AwB	Statute No. 5 Year 1986	Statute No. 30 Year 2014
1. Administrative review is mandatory before a judicial review is submitted to the court.	There is a possibility (not for all) of administrative review procedure to be mandatory before the case is filed to the court.	Administrative review is mandatory before a judicial review is submitted to the court. (but the use of administrative review is interpreted as a "choice" in SEMA No. 1 of 2017)
2. Administrative review consists of objection and administrative review. These two institutions are not hierarchies, meaning that objection and administrative review are choices, not levels;	Administrative review consists of objection and administrative review. These two institutions are not hierarchies, meaning that objection and administrative review are choices, not levels;	Administrative review consists of objection and appeal. Both institutions are hierarchical, not optional. Administrative appeal can only be used when objection review has been taken.
3. Authority at administrative review level is very broad, not only about canceling decisions.	Authority at administrative review level is very broad, not only about canceling decisions.	Administrative review authority is limited to canceling decisions.
4. There are 3 levels of justice/trial, namely: (1) Objection or administrative appeal (2) Appeal to District Court. (3) Higher appeal to Administrative Tribunal	There is a distinction between objection and administrative appeal. After an objection, the judicial review goes to the Administrative Court, while after an administrative appeal, the judicial review goes to the State Administrative High Court. There are 3 levels of trial on administrative appeal, namely: (1) Administrative appeal; (2) State Administrative	There are probably 6 trial levels: (1) Objection; (2) Administrative appeal; (3) Lawsuit to State Administrative Court. (4) Appeal to the State Administrative High Court (5) Cassation to Supreme Court (MA) (6) Judicial Review to Supreme Court

The Netherlands AwB	Statute No. 5 Year 1986	Statute No. 30 Year 2014
	High Court (3) Cassation (4) Judicial Review	
5. There is spacious time in administrative review settlement.	There is spacious time in administrative review settlement.	Administrative review settlement is relatively short.

Supreme Court Circular No. 1 Year 2017 on Implementation of the Resolution of Supreme Court 2017 Chamber Plenary Meeting as Guidelines of the Exercise of the Courts of Duties in part E of formulation of Law of the State Administration Chamber point 3 letter d, stated that: "administrative review in the form of objection / appeal according the rule of Article 75 paragraph (1) of Government Administration Act are a legal choice, because Government Administration Act uses the term "CAN" (in Bahasa: *DAPAT*).

Regardless of whether the use of administrative review is mandatory or not, it is clear that construction of administrative review post- Government Administration Act according to the researcher is an ineffective and inefficient concept because:

a. The dispute resolution procedure becomes lengthy and burdensome;
b. There is not enough time at the phase of administrative review process; and
c. The purpose of administrative review is not achieved, because administrative review according to Government Administration Act only relates to declaring null and void decisions with or without claim for compensation and administrative demand. This function is the same as the court function, which is not in accordance with the principle of administrative review.

Throughout this time, the application of the concept of administrative review did not work in line with the spirit of legislators. Settlement of objections that are limited to 10 (ten) days is useless because in the practice of administrative review, it is rare for Government Officials to respond correctly and quickly to objections submitted by citizens. In the author's opinion, the slow response for the administrative review of citizens by the government is due to lack of time for them to examine and answer the problems posed to him or her. In addition, there were no procedures or rules to guide the implementation or response for administrative reviews.

5. The Solution to Norm Conflict

In judicial practice, because the validity of Supreme Court Regulation (*Peraturan Mahkamah Agung/*PERMA) No. 6, Year 2018, on Government Administration Dispute

Resolution Guidelines After Taking Administrative Efforts, there are two legal problems to solve: first, the period for filling a lawsuit to the State Administrative Court; and second, the competency of the State Administrative Court and State Administrative High Court after administrative review.

The State Administrative Judicial Act imposes a statute of limitations 90 (ninety) days after a decision is approved or announced, while Statute No. 30 Year 2004 juncto Supreme Court Rules No. 6 Year 2018 has contradictory stipulation. The period arranged by the government has been limited to no later than 21 (twenty-one) working days from the issuance of an administrative decision. If the government does not make any improvements, the citizen can accept the decision. Impact of Statute No. 30 Year 2004 *juncto* Supreme Court Regulation No. 6 Year 2018 against the deadline for filing suit more than 21 (twenty-one) days since a decision is issued, the citizen cannot file a lawsuit.

Second, in accordance with Article 48 juncto Article 51 Paragraph (3) of the State Administrative Judicial Act, if there is a basic rule governing administrative regulations, the judicial review goes directly to the State Administrative High Court as the court of original jurisdiction. Otherwise, if there is no basic rule governing an administrative regulation, the judicial review goes to State Administrative Court related to Statute No. 30 Year 2004 *juncto* Supreme Court Rules No. 6 Year 2018.

In accordance with Article 48 juncto Article 51 Paragraph (3) of the State Administrative Judicial Act, if there is a basic rule governing administrative regulations, the judicial review goes directly to the State Administrative High Court as the court of original jurisdiction. Otherwise, if there are no basic rules governing administrative regulations, the judicial review goes to State Administrative Court related to Statute No. 30 Year 2004 juncto Supreme Court Rules No. 6 Year 2018.

The solution above is actually not constructive because it still contradicts the State Administrative Judicial Act and Statute No. 30 Year 2004, even though Statute No. 30 Year 2004 is a legal bases for the State Administration Court system, and State Administrative Judicial Act is a law. It is expected that there will be conformity between legal material and law, so that the State Administrative Court system can be administered properly.[16]

[16] Ayu Putriyanti, 'Study of Government Administration Laws in Relation to State Administrative Courts' (2015) 10 (2) *Pandecta Journal*, 185

The contents of Statute No. 30 Year 2004 also contain new rules, which were not previously contained in the State Administrative Judicial Act.[17] Although Statute No. 30 Year 2004 only regulates material, it does not explicitly declare revocation and invalidity of several Articles in State Administrative Judicial Act and its amendments. However, according to the legal principle of *lex posteriory derogate legi priory*, the current law defeats past or earlier laws. In other words, some provisions in State Administrative Judicial Act that are no longer in accordance with Statute No. 30 Year 2004 should not be applied.[18]

To respond the above contradictions, the author believes that the most appropriate period to file a lawsuit with the Administrative Court is a period of 90 (ninety) days. The limitation of only 21 days can prevent a party to submit an objection attempt. Thus, as long as the community is still in the deadline for suing as specified in the State Administrative Judicial Act, he or she must be given the opportunity to make administrative review before submitting a claim to the State Administrative Court. It is also advised that the authority of the court, after having an administrative review, refers to the new paradigm set forth in the Statute No. 30 Year 2004., Regardless whether there are basic regulations or no basic rules after the lawsuit is submitted to the Administrative Court, it should not go to State Administrative High Court.

In the practice of implementing state administrative dispute resolution and the characteristics of the government system in Indonesia, the author opines that administrative review cannot be implemented perfectly, except when in the future every public law (sectoral law) clearly regulates the provisions concerning administrative procedures. Regulations on administrative procedures must also pay attention to the level of difficulty of dispute resolution by providing sufficient opportunities for government officials to correct the decisions that have been issued, and then it should be connected to the State Administrative Court procedural law as a unit for resolving state administrative disputes.

D. Conclusion

There has been a paradigm shift in Indonesian administrative review from the concepts determined in the Administrative Court Act to the concepts determined in the

[17] Tri Cahya Indra Permana, 'Administrative Court after Government Administration Acts in Terms of Access of Justice' (2015) 4 (3) *Journal of Law and Justice,* 424

[18] Ibid 425

Government Administration Act. The shift changes various things such as: the obligation of using administrative review, the duration of dispute resolution, the authority in administrative review, the hierarchy between objections and administrative appeals, and the authorized court that has authority to resolve dispute after administrative review is carried out. Administrative review in Indonesian administrative court system is a prerequisite for citizens before they can file a lawsuit for judicial review in administrative court (as a *premium remedium*). Administrative review consists of objection to the officer who issues a decision and objection to the higher-level officer. This action needs to be taken unless its basic rules determine otherwise. In the case of the regulation of administrative review between Statute No. 30 Year 2004 and the State Administrative Judicial Act, and in the case of the authority to adjudicate between State Administrative Court and State Administrative High Court, the State Administrative High Court is only authorized to solve administrative review if the basic regulation authorizes it. Otherwise, when the basic regulations do not determine this, it should be against the time of period of filling a lawsuit to the court based on Article 55 of the State Administrative Judicial Act with the provisions of must have previously submitted administrative review.

Administrative review according to Government Administration Act does not guarantee effective legal protection, because 1) it does not provide flexibility in process of administrative review regarding time duration of dispute settlement and authority to decide disputes; 2) the process of state administrative dispute becomes longer and winding; 3) the benefit from administrative review that should provide extensive legal protection, not only reviewing *rechtmatigheid* aspect, but also reviewing *doelmatigheid* aspect, becomes unachievable.

References

Books

Dragos, Dacian C. and Bogdana Neamtu, *Alternative Distpute Resolution In Europan Administrative Law* (Springer Heidelberg 2014)

Hoexter, Cora and Rosemary Lyster, *The New Constitutional and Administrative Law Volume II: Administrative Law* (1st Ed., Juta Law 2002)

Hooijdonk, Marieke van and Peter Eijsvoogel, *Litigation in the Netherlands, Civil Procedure, Arbitration and Administrative Ligitation* (2nd Ed., Wolters Kluwer 2012)

Stott, David and Alexandra Felix, *Principles of Administration Law* (Cavendish Publishing limited 1997)

Stroink, F. and E. van der Linden, *Judicial Lawmaking and Administrative Law* (Intersentia Antwerpen 2005)

Szente, Zoltan and Konrad Lachmayer, *The Principle of Effective Legal Protection In Administrative Law* (Routledge Taylor & Francis Group 2017)
Wade, HWR, *Administrative Law* (7th Ed., Oxford University Press 1994)

Journals

Permana, Tri Cahya Indra, 'Administrative Court after Government Administration Acts in Terms of Access of Justice' (2015) 4 (3) *Journal of Law and Justice*
Putriyanti, Ayu, 'Study of Government Administration Laws in Relation to State Administrative Courts' (2015) 10 (2) *Pandecta Journal*
Sugiharto, Hari and Bagus Oktafian Abrianto, 'Administrative Efforts as Legal Defenses for the People in State Administrative Disputes' (2018) 11 (1) *Arena Law Journal*