

COMPARATIVE ANALYSIS OF STATE ADMINISTRATIVE COURT AUTHORITY BETWEEN INDONESIA AND EGYPT

ANALISIS PERBANDINGAN KEWENANGAN PERADILAN TATA USAHA NEGARA ANTARA INDONESIA DAN MESIR

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ABSTRACT

Administrative courts, specialized judicial bodies, resolve disputes related to administrative law and government actions. State Administrative Courts in various countries, exemplified by Egypt and Indonesia, represent critical pillars of administrative justice. However, their structures, functions, and roles differ significantly. This paper aims to comprehensively analyze and compare these courts, exploring their importance, theoretical underpinnings, and implications within legal systems. It seeks to elucidate the significance of researching State Administrative Courts, emphasizing the importance of comparative analysis between Egypt and Indonesia. It aims to examine theoretical concepts within the context of administrative courts. Egypt and Indonesia showcase distinct strengths and challenges within their administrative justice systems, providing insights for potential reforms and enhancements in administrative law mechanisms.

Keywords: Administrative laws; Indonesia and Cairo; State administrative court.

ABSTRAK

Pengadilan Tata Usaha Negara, merupakan badan peradilan khusus yang menyelesaikan sengketa yang berkaitan dengan hukum administrasi dan tindakan pemerintah. Pengadilan Tata Usaha Negara di berbagai negara, seperti yang dicontohkan oleh Mesir dan Indonesia, merupakan pilar penting dalam peradilan administrasi. Namun, struktur, fungsi, dan perannya berbeda secara signifikan. Makalah ini bertujuan untuk menganalisis dan membandingkan pengadilan-pengadilan tersebut secara komprehensif, mengeksplorasi pentingnya, dasar-dasar teoritis, dan implikasinya dalam sistem hukum. Makalah ini berusaha menjelaskan pentingnya meneliti Pengadilan Tata Usaha Negara, dengan menekankan pentingnya analisis komparatif antara Mesir dan Indonesia. Penelitian ini bertujuan untuk menguji konsep-konsep teoritis dalam konteks pengadilan administrasi. Mesir dan Indonesia menunjukkan kekuatan dan tantangan yang berbeda dalam sistem peradilan administrasi mereka, memberikan wawasan untuk potensi reformasi dan peningkatan dalam mekanisme hukum administrasi.

Kata Kunci: Hukum administrasi; Indonesia dan Kairo; Pengadilan tata usaha negara.

A. BACKGROUND

State Administrative Courts are specialized judicial bodies that handle administrative law cases concerning disputes between citizens and the state administration. These courts play a crucial role in ensuring the proper functioning of administrative law and safeguarding the rights of individuals and entities against government actions. These courts also primarily deal with disputes involving administrative decisions, actions, or regulations made by governmental authorities. They ensure that government actions are in accordance with the law and that individuals' rights are protected against arbitrary or unlawful administrative actions. All courts are different from a state to another, administrative courts vary significantly between states or countries in terms of their structure, jurisdiction, and specific functions. The way administrative court is different from a state to another is by some sides like jurisdiction, independence and structure, composition of judges, appeals and review processes, procedures and remedies, and legal framework.

The jurisdiction of administrative courts can differ widely among states. Some countries have separate administrative courts dedicated solely to handling administrative law cases, while others might have general courts with specialized chambers or divisions to deal with administrative matters. The scope of cases that fall under administrative courts can also vary, including disputes related to public procurement, regulatory compliance, taxation, public services, employment, etc. While the level of independence and structure of administrative courts can differ based on the legal systems and constitutional frameworks of each state. In some countries, administrative courts may operate as a distinct branch of the judiciary, completely separate from general courts. In others, they might be integrated into the general judicial system or closely linked with administrative agencies. The appointment, qualifications, and expertise of judges

in administrative courts may vary. Some countries may require specialized knowledge or experience in administrative law for judges presiding over administrative cases, while others may not have such specific requirements. When it comes to appeals and review processes, differences exist in the appeal mechanisms and review processes associated with administrative court decisions. Some countries may have multiple tiers of appeal within the administrative court system, while others might allow for appeals to general courts or higher specialized courts.¹

Conducting comprehensive research on State Administrative Courts in various countries, specifically focusing on Egypt and Indonesia, holds paramount importance due to several significant reasons that some of them will explained later on in this paper. About procedures and remedies, the procedures followed by administrative courts can differ in terms of rules of evidence, timelines, and available remedies. Certain states may have administrative courts that employ more informal procedures, while others may have stricter adherence to formal legal processes. And lastly the framework, each state may have its own unique legal framework governing administrative courts, including laws, regulations, and precedents that shape the functioning and decision-making processes of these courts. All in all, administrative courts across different states vary in their structure, jurisdiction, composition, procedures, and relationship with other branches of government. These variations are influenced by legal traditions, historical backgrounds, constitutional arrangements, and specific legal needs within each jurisdiction. Comparing and analysing these differences can provide

¹ Egypt Justice, OVERVIEW OF EGYPT'S ADMINISTRATIVE COURTS, ALSO KNOWN AS THE STATE COUNCIL, <https://egyptjustice.com/administrative-courts> accessed 15 December 2023.

European Committee of The Regions, Egypt, <https://portal.cor.europa.eu/divisionpowers/Pages/Egypt.aspx> accessed 15 December 2023.

insights into the diverse approaches to administrative justice and the rule of law across different legal systems.²

Such research of comparatives holds implications for governance, accountability, policy reforms, academic discourse, and the global understanding of administrative justice mechanisms. Such research can potentially lead to improvements in administrative law and justice systems, fostering fairer and more accountable governance worldwide.

This paper covers comparisons of both administrative courts providing examples and showing the benefits behind all of the whole comparison in three specific perspectives.

B. RESEARCH QUESTIONS

1. How does the level of judicial independence in State Administrative Courts of Egypt and Indonesia influence the impartiality and fairness of administrative decisions, and what factors contribute to variations in their independence?
2. What disparities exist between State Administrative Courts in Egypt and Indonesia concerning the accessibility of legal remedies, procedural ease, and affordability for individuals and entities seeking justice in administrative disputes?
3. To what extent do the roles and functions of State Administrative Courts in Egypt and Indonesia align with democratic principles, ensuring transparency, accountability, and adherence to the rule of law, and what implications do these alignments or disparities have on democratic governance?

² "The Oxford Handbook of Comparative Law" edited by Mathias Reimann and Reinhard Zimmermann. "Administrative Law and Governance in Asia: Comparative Perspectives" edited by Tom Ginsburg and Albert H. Y. Chen

"Administrative Law Review" on administrative law and court systems. "Public Administration Review" on governance, public accountability, and administrative justice.

C. RESEARCH METHODS

The research methodology for this comparative study of State Administrative Courts in Egypt and Indonesia employs a mixed-method approach, combining a thorough literature review, comparative legal analysis, and qualitative data collection. It involves reviewing scholarly literature to understand theoretical frameworks, analyzing legal documents for court structures and procedures, and engaging legal experts through database interviews or surveys. The synthesis of findings from these methods allows for a comprehensive exploration of judicial independence, access to justice, and the impact of administrative courts on democratic governance in both countries. This methodology aims to provide nuanced insights into the administrative justice systems of Egypt and Indonesia, highlighting differences, strengths, and potential areas for improvement.

D. DISCUSSION/ANALYSIS

1. General Understanding of State Administrative Courts in Egypt and Indonesia

Egypt's Supreme Administrative Court is based in Cairo, headed by a Chief Justice of the Supreme Administrative Court. The court hears cases in panels of five judges, the structure of which is broadly similar to the Court of Cassation in the ordinary justice system. The concept of the administrative court system in Egypt is drawn from the French legal heritage. The administrative court system functions parallel to the conventional court system. With jurisdiction covering a wide range of legal issues related to the exercise of government power, the system is sometimes regarded as a court representing the public interest. The administrative court system is structured in four types of courts which include:

First, there is the High Administrative Court which handles cases relating to administrative matters. Then, there are the Administrative Courts which also deal specifically with similar issues.

In addition, there are Disciplinary Courts which are specialized courts that focus on disciplinary actions against civil servants in various institutions such as the executive branch of government, local governments, public institutions, companies whose profits are insured by the government, labor union officials, and several other organizations.

Then, the Administrative Court is a judicial institution with limited jurisdiction. It handles disputes involving government employee decisions such as appointment to public office, promotion, failure to promote, transfer, retirement, salary, pension, and so on. Also, administrative contract disputes with a value of less than 500 Egyptian pounds (approximately \$65) also fall under its jurisdiction.

Furthermore, the Administrative Justice Courts are courts that have general jurisdiction in broad administrative matters, which are similar to the Court of Appeal in the general justice system. Decisions in this court are made by a panel of three judges. It acts as a court of first instance in administrative disputes that do not fall under the specialized jurisdiction of administrative or disciplinary courts, and also acts as a court of appeal in cases of appeals from other courts.³

The purpose of the establishment of the Administrative Court in Indonesia is to ensure a sense of justice in society, and its role can be strengthened as part

³ Egypt, State Council Law, Law 47 for 1972. <https://static1.squarespace.com/static/554109b8e4b0269a2d77e01d/t/554b8c3fe4b05198a8a4eb53/1431014463143/State+Council+Law-Arabic.pdf> accessed on 15 Desember 2023

of the administrative process. This court functions as a component of the government's public service to its citizens, which aims to maintain a balance between the interests of the government's public service to its citizens so that the balance between individual interests and public interests can be maintained.⁴ The purpose of the establishment and position of the state administrative court in a country is closely related to the philosophy adopted by the country. In the context of the Unitary State of the Republic of Indonesia, this country is a state of law based on Pancasila and the 1945 Constitution, which emphasizes respect for the rights and interests of individuals in addition to the rights of society.⁵

The State Administrative Court is part of the judicial system that exercises independent judicial authority and is under the jurisdiction of the Supreme Court. The focus of the State Administrative Tribunal's role is to ensure the enforcement of the law as a protection of the rights and interests of the public against unlawful administrative decisions issued by government officials.

2. The Role of Judicial Independence in the Fairness of Administrative Decisions in Egyptian and Indonesian Administrative Courts

Independence in judicial authority is an essential requirement for the effective application of law and justice. Without such independence, it is certain that the protection of law and justice will not be realized. Conceptually and in practice, the relationship between democracy and the rule of law with an independent judiciary is very close.⁶

As Chief Justice of the Constitutional Court, Anwar Usman emphasized that judicial independence in the context of creating a free judiciary seeks to empower

⁴ S.F. Marbun, *Peradilan Tata Usaha Negara*, (Yogyakarta: Liberty, 2003), hal. 37

⁵ Hendrik Salmon, *Eksistensi Peradilan Tata Usaha Negara*, hal.18.

⁶ Mahkamah Konstitusi Republik Indonesia, Ketua MK Paparkan Independensi Kekuasaan Kehakiman kepada Mahasiswa FH Universitas Riau, <https://www.mkri.id/index.php?page=web.Berita&id=17392>. Accessed on 15 December 2023.

judges and judicial institutions. Structurally, judicial institutions must be empowered and freed from interference and influence from other state powers. Within this framework, judges as executors of the judiciary must remain independent of certain political views and interests. Politically, the judiciary must be clearly separated from other branches of state power such as the executive and legislative branches, to create a healthy balance and oversight in the political system.

Independence, a term that often appears in the context of "judicial power" or "judicial system", might lead us to believe that there is clear agreement on its meaning. However, in reality, there is no absolute agreement. In fact, there are various understandings of the term.

In a strict interpretation, independence, especially in an institutional context, denotes "the state of a public institution that has the ability to make decisions freely, free from any external instruction or pressure"⁷. The focus is on legal aspects and objective standards. As public institutions are made up of individuals, we can also envision the "personal" independence of judges. This type of independence, which can be defined as a spirit of superiority, is more influenced by education. It depends more on subjective factors than objective standards. Therefore, it is more complicated to understand.⁸ A legal system that has independence is a legal system that has high competence, is effective in providing decisions within a reasonable time, and is accessible at an affordable cost.

Article 1 paragraph (3) of the 1945 Indonesian Constitution states that Indonesia is a state based on law. The concept of the rule of law, according to The

⁷ Legal vocabulary, PUF, 2006, p. 472

⁸ On the distinction between institutional and personal independence, see T. Elbishri, *La justice égyptienne entre indépendance et endiguement*, Maktabet ElShorouk ElDawleya, 2006, p. 9

Commission of International Jurists, includes the principles of: (1) The state's obligation to obey the law; (2) The government's respect for individual rights; (3) The presence of an independent and impartial judiciary.⁹

In the Egyptian Constitution, Article 165 states that the judicial power must essentially be independent. This means that judicial power is exercised through different types of courts that have different powers. These courts are expected to issue their decisions in compliance with the law. Meanwhile, Article 166 emphasizes that judges must have strong independence and not be subject to any authority other than the law. No other party or authority should interfere in judicial cases or in judicial affairs. This emphasizes the importance of maintaining the freedom of judges in carrying out their duties and protecting the judicial process from external interference that could influence judges' decisions.

The differences in judicial independence between Egypt and Indonesia are influenced by several factors. One of them is the legal framework underlying the administrative justice system in both countries. The political structure, government policies related to the judiciary, and the level of autonomy of the judiciary also play a role in determining the extent to which judicial independence can be maintained.

In Indonesia, judicial reform has been an important cornerstone in efforts to improve judicial independence. However, challenges remain, especially in ensuring judges can truly act independently without any interference or pressure from external parties, be it politics or vested interests.

In Egypt, judicial independence is often questioned due to the strong political influence in the judicial system. Political interference can affect the

⁹ Jimly Asshiddiqie, "Gagasan Negara Hukum Indonesia" (online), www.jimly.com.

decision-making process of judges, which in turn can affect the impartiality and fairness of administrative decisions.

Efforts to improve judicial independence in both countries need to be carried out simultaneously with increasing the transparency and accountability of the judicial system. In addition, the importance of upholding the principles of judges' independence in carrying out their duties without external pressure, whether from political or other interests, is a crucial step in ensuring fairness and impartiality in administrative decisions at the Administrative Court.

3. Comparison of Legal Accessibility in the Egyptian and Indonesian Administrative Courts

This refers to the structure of administrative law in Egypt, where the Administrative Court has jurisdiction over administrative disputes involving administrative bodies. The apex of this legal structure is held by the Supreme Administrative Court. There is also an opinion and legislation department that advises public bodies on aspects of public law such as administrative contracts, tenders, ministerial decrees, and so on.

Each government agency has a member of the Council of State who has an important role in providing opinions on administrative law matters, outside of the legal department. This demonstrates the need for consultation in the context of administrative law across different government agencies.

In the context of jurisdiction, it is necessary to distinguish between national jurisdiction relating to purely domestic disputes and international jurisdiction involved in disputes involving foreign elements. A brief overview of both has been completed. Domestic or national jurisdiction is divided between two main judicial bodies: general courts and administrative courts (Council of State). This shows the difference in the scope and extent of decisions taken by the courts in dealing

with domestic and international cases as well as the special role that administrative courts have in terms of administrative dispute resolution.

Based on the value of the dispute, the general jurisdiction is divided into two main sections in the Egyptian Courts. Firstly, there are courts that deal with disputes with a value of less than L.E. 40,000 (forty thousand Egyptian pounds), where the decision is final without the option of appeal if the amount in dispute does not exceed 5,000 (five thousand Egyptian pounds). Secondly, there is a court of first instance that handles disputes that are outside the jurisdiction of other courts, and its decision is final without the option of appeal if the value of the dispute does not exceed 40,000 (forty thousand Egyptian pounds). This shows the difference in the handling of cases based on the value of the dispute and the limit of the final decision in the Egyptian court system.¹⁰

In terms of accessibility to legal remedies, Egypt may have a more formal and complex system, which can make the process of filing administrative disputes difficult for individuals and legal entities with less experience or limited resources. In Indonesia, efforts to improve accessibility to the administrative legal system have been made with judicial reforms aimed at making it easier for individuals or legal entities to file disputes.

In terms of procedural ease, differences in approach and clarity of rules of procedure can be one of the gaps between the two countries. Although both countries have their own procedures for handling administrative disputes, possible differences in the transparency, clarity and complexity of procedural rules may affect the ease of following the legal process.

¹⁰ Hauser Global Law School Program. UPDATE: An Overview of the Egyptian Legal System and Legal Research, https://www.nyulawglobal.org/globalex/Egypt1.html#_6.10._Administrative_Courts, di akses pada 15 Desember 2023.

Affordability of costs is also an important factor. In Egypt, the costs associated with filing an administrative dispute may be an obstacle, especially for individuals or legal entities with financial limitations. While in Indonesia, efforts have been made to ensure more affordable fees and a better understanding of the financial aid or legal aid system.

Therefore, the gaps in accessibility, procedural ease, and affordability in accessing justice in the Egyptian and Indonesian Administrative Courts may be an important concern in efforts to improve the administrative law systems of both countries

4. The Role of the Administrative Court in Realizing the Principles of Democracy and Governance

In Indonesia, the State Administrative Court System was first regulated in Law Number 5 of 1986 concerning State Administrative Courts, which then underwent two revisions. First, through Law Number 9 Year 2004 which is an amendment to Law Number 5 Year 1986 on the State Administrative Court. Second, through Law Number 51 of 2009 as the second revision of Law Number 5 of 1986 concerning State Administrative Courts. According to Koesoemahatmadja, the State Administrative Court refers to the court of pure state administrative cases and civil cases related to state administration, including civil cases arising from state administrative actions.¹¹

The purpose of establishing the State Administrative Court is to uphold justice in society, while enhancing the role of the State Administrative Court as part of the government's public service to its citizens. This is intended to achieve a better balance between individual interests and the public interest.¹² The

¹¹ R.D.H. Koesoemahatmadja, *Pengantar Hukum Tata Usaha Negara Indonesia*. (Bandung: PT. Citra Aditya Bakti, 1975). hal. 42.

¹² S.F. Marbun, *Peradilan Tata Usaha Negara*, (Yogyakarta: Liberty, 2003), hal. 37.

purpose of the establishment and position of a state administrative court in a country is connected to the principles held by the state itself. In the case of the Unitary State of the Republic of Indonesia, which refers to the legal basis of Pancasila and the 1945 Constitution, the rights and interests of the individual are prioritized along with the rights of the community.¹³

Consideration of the jurisdiction possessed by the State Administrative Court relates to the object of the dispute that must be examined, adjudicated and resolved. The object of dispute investigated is a written decision issued by a State Administrative Body or Official covering concrete actions in state administration that are specific, individual, final, and have legal consequences for individuals or civil legal entities.

The Administrative Courts in Egypt and Indonesia play a significant role in supporting the principles of democracy, transparency, accountability and adherence to the rule of law, albeit with differences that may affect democratic governance. Nonetheless, these differences may affect democratic governance. For example, the independence and political influence of the judicial system may be key factors affecting the extent to which PTUN decisions reflect the principles of democracy, transparency, accountability and adherence to the rule of law.

The importance of the State Administrative Tribunal is in line with democratic principles as they are responsible for upholding the rule of law and ensuring that administrative decisions are in accordance with applicable laws. They are also an important foundation for ensuring that the government acts in a transparent, open and accountable manner in carrying out its administrative duties. This misalignment can have implications for democratic governance. If the State Administrative Tribunal is not fully independent or influenced by political

¹³ Hendrik Salmon, *Eksistensi Peradilan Tata Usaha Negara*, hal.18.

forces, it can disrupt the balance of power between the executive, legislative and judicial branches. This can threaten the checks and balances of power that are essential in a democratic system, which in turn can reduce government accountability and hinder transparency and adherence to the rule of law.

A high degree of independence is crucial in ensuring that the administrative courts in Egypt and Indonesia can effectively perform their functions. This independence includes freedom from political pressure or interference that could influence legal decisions. This is important because independence guarantees that the PTUN can act in accordance with the law and principles of justice, without being influenced by political or external interests.

However, challenges to this independence can take many forms. Political influence, pressure from the government, or interference from other forces may undermine the independence of the PTUN. Thus, concrete measures to protect the independence of the PTUN are important, such as establishing a strong mechanism to enforce independence, strengthening the legal framework governing administrative justice, and ensuring the appointment of judges in an objective and transparent manner.

From an Indonesian perspective, the independence of the State Administrative Tribunal is crucial in ensuring a well-functioning administrative justice system. Although independence rules are set out in law, the reality is often faced with challenges. At times, there are political interventions in the appointment process of state administrative tribunal judges that can affect its independence. There is also a need to continue strengthening the legal framework governing the independence of administrative justice institutions to make them more effective.

In Egypt, the concept of the independence of the Administrative Court is also recognized as an important element in the administrative justice system. However, limitations in this independence can be a reality due to the more significant political influence on the judicial process. There is a risk of political interference leading to an unfettered decision-making process.

Therefore, the implementation of the independence of the Administrative Tribunal in both countries faces similar challenges. Although Indonesia has a clearer legal framework, it is still sometimes faced with political interference. While in Egypt, the situation can be more affected by more significant political influence. Both require sustained efforts to strengthen the independence of the State Administrative Tribunal so that it can function in accordance with the desired principles of democracy, transparency and the rule of law.

By maintaining strong independence, the State Administrative Tribunal can play a critical role in upholding the rule of law and ensuring adherence to democratic principles. An independent State Administrative Tribunal enables fairer legal proceedings, reduces the risk of abuse of power, and gives the public confidence in the fairness of the justice system. This lays the foundation for transparency, accountability and overall democratic governance. Protecting the independence of the State Administrative Tribunal is thus an important cornerstone in ensuring a healthy balance of power, supporting the rule of law, and strengthening democratizing values in Egypt and Indonesia.

E. CONCLUSION

The State Administrative Court (PTUN) in Egypt and Indonesia is an important institution in handling administrative disputes between citizens and state administrative bodies. Although similar in structure, they have unique characteristics in the context of their respective jurisdictions.

Judicial independence is a critical point in determining fairness in administrative decisions in both countries' State Administrative Tribunals. Although the principle of independence is widely recognized, political influence and external pressures still pose challenges to judicial independence, which in turn can affect the fairness of administrative decisions.

In terms of legal accessibility, differences are seen in the availability, procedural ease and affordable costs for individuals and legal entities seeking justice at the State Administrative Court. While the state administrative tribunal is intended to be an open and accessible forum, the reality is often characterized by bureaucratic barriers, high costs, and complicated procedures.

The role of the State Administrative Tribunal in realizing the principles of democracy and governance is important in ensuring compliance with the law, transparency and accountability in government administrative actions. However, the challenges faced in ensuring independence, accessibility and fairness in administrative decisions point to the need for further efforts in strengthening the role of the State Administrative Tribunal as an enforcer of democratic principles and good governance. Concrete efforts are needed to maintain independence, improve accessibility, and ensure that decisions made by the State Administrative Tribunal reflect the values of justice and legal certainty, which are key pillars of democratic governance.

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