

THE ROLE OF ACTIVE JUDGES: A COMPARATIVE STUDY OF CIVIL CASES AND ADMINISTRATIVE DISPUTES

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Abstract

The active role of judges is essential in ensuring the fair resolution of administrative and civil disputes. In the Administrative Court, judges are required to act under the *dominus litis* principle, which empowers them to take proactive steps in clarifying facts, guiding proceedings, and balancing the unequal positions between individuals and government authorities. This active role aims to uphold justice and protect citizens from administrative actions that violate legal norms or principles of good governance. In civil cases, by contrast, judges generally adopt a passive stance in accordance with the *audi et alteram partem* and party autonomy principles, although limited judicial intervention may still be necessary to safeguard fairness when power imbalances arise. This study employs a normative legal research method using statutory and conceptual approaches to examine the active judicial role's legal framework and theoretical justification. Drawing on theories of legal certainty, judicial activism, and due process of law, the study finds that while judicial activism is crucial to achieving substantive justice and transparency, it must operate within defined limits to preserve impartiality and procedural balance. Thus, the proper calibration of judicial activism serves not only to protect the integrity of the judicial process but also to ensure that justice remains both fair and effective in practice.

Keywords: Active Judges, *Dominus Litis*, Civil Cases, Administrative Disputes.

Introduction

Indonesia chooses and defines its country as a state law. According to Julius Stahl, one of the essential elements of a *Rechtsstaat* (rule of law) is the existence of administrative courts.¹ The concept of a constitutional state of Indonesia is stated in Article 1, paragraph (3) of the 1945 Constitution of the Republic of Indonesia, and makes it an instrument for creating a harmonious and orderly national life.² The realization of a harmonious and orderly national life is ensured through establishing judicial institutions as mandated by Article 24 of the 1945 Constitution, which entrusts the Supreme Court and the Constitutional Court with the independent exercise of judicial power to uphold law and justice.³

Article 24(1) of the 1945 Constitution establishes the Supreme Court as an independent executor of judicial power, meaning it operates freely and is not subject to any other authority.⁴ Lubet said judicial independence contains fundamental values: fairness, impartiality, and good faith. An independent judge will provide equal and open opportunities for each party to be heard without relating it to the identity or social position of the parties. An independent judge will be impartial, free from unrelated influences, and immune from external pressure. An independent judge decides in good faith, based on the law as he knows it, regardless of personal, political, or financial consequences.⁵ Article 1, point 1 of Law Number 48 of 2009 on Judicial Power affirms that: "Judicial power is an independent state power to administer justice to uphold law and justice based on

¹ Spvendik Bernadus Blegur, "Main Legal Principles of Administrative Court Procedural Law", *Jurnal Hukum Peratun*, Vol. 5 No.1 Februari 2022, hlm. 40.

² George H. Sabine, *A History of Political Theory*, Third Edition, Holt, Rinehart and Winston: London, 1961, page 35.

³ Ismail Rumadan, dkk, "Budget Independence of The Supreme Court in The Implementation of The Functions of Judicial Power", *Jurnal Hukum dan Peradilan*, Vol. 10, No. 3 (2021), p. 422.

⁴ Muchsin, 2004, *Independent Judicial Power and Fundamental Policy*, Jakarta: STIH IBLAM, p. 10.

⁵ Steven Lubet, *Judicial Dicipline and Judicial Independence: Law and Contemporary Problems*, Vol. 61, No. 3, Year 1998, Page 61

Pancasila and the 1945 Constitution of the Republic of Indonesia, for the realization of the Rule of Law in the Republic of Indonesia." Thus, a constitutional guarantee ensures that judges are free from any external pressure. Following the four amendments to the 1945 Constitution, judicial power has transformed into an independent authority and is now explicitly regulated within the main body of the Constitution.⁶ As mandated by the Constitution, the primary objective of judicial power is to realize the ideals of Indonesia's independence—namely, establishing a just and prosperous society.

The role of judges in judicial processes is a critical aspect of law enforcement. In the context of Indonesia's legal system, judges bear the responsibility of ensuring the realization of substantive justice and the upholding of the rule of law. However, the role of judges is not confined to passive adjudicators who merely assess facts and legalities based on evidence submitted by the parties. In certain types of cases, such as civil cases and administrative disputes, judges are often required to assume an active role to balance the parties' legal interests and the anticipated justice. *Dominus Litis* is derived from two Latin words: *Dominus*, meaning "owner" or "controller," and *Litis*, meaning "case" or "dispute." Literally, *Dominus Litis* refers to the party that controls the case.

In this context, the judge, in handling a dispute, acts as the controlling authority over the case, with the power to order the parties to take specific actions necessary to resolve the dispute.⁷ In civil cases, which are based on the principle of *dominus litis*—where the parties control the proceedings—judges have limited opportunities to play an active role. Conversely, in administrative disputes, judges are tasked with upholding general principles of good governance and protecting individuals' rights from administrative actions that exceed authority. This necessitates a more involved role for judges in uncovering facts and evaluating the substance of administrative decisions.

The Administrative Court, under the Supreme Court, is responsible for resolving disputes involving government

⁶ Zaki Ulya, "Institutional Dilemma Among Judicial Power Bodies in Pursuit of Legal Harmonization", *Jurnal Hukum dan Peradilan*, Vol. 10, No. 3 (2021), p. 339.

⁷ Muhammad Adiguna Bimasakti, 2018, *Unlawful Acts by the Government (Onrechtmatige Overheidsdaad) from the Perspective of the Government Administration Law*, Yogyakarta: Deepublish, p. 48.

administrative actions and serves as a safeguard of justice for individuals harmed by such actions or decisions. The nature of these disputes often results in an imbalance between the parties' positions. On one hand, the plaintiff—often an individual or a private legal entity—is in a weaker position due to limited knowledge of the legal norms underlying the contested decision.⁸ On the other hand, the defendant, representing a government body or official, possesses substantial expertise and resources related to the relevant regulations and authority.⁹ This disparity underlines the importance of an active judicial role in leveling the playing field.

In contrast, the Civil Court, another judicial body under the Supreme Court, is tasked with examining, adjudicating, and resolving disputes arising between individuals or private legal entities. Civil cases fundamentally stem from private legal relationships, such as disputes involving agreements, ownership, or specific obligations, where the parties generally hold equal standing. The core principle in civil cases is *dominus litis*, where the parties determine the course of judicial proceedings. The plaintiff is responsible for filing the lawsuit and presenting evidence, while the defendant has the right to submit defenses and counter-evidence. Within this system, judges play a more passive role, primarily assessing the facts and evidence presented by the parties. However, despite the theoretical equality of the parties, imbalances often arise in practice, particularly when one party has greater access to professional legal counsel or knowledge. Parties unfamiliar with legal processes often find themselves at a disadvantage, affecting their ability to protect their rights effectively. In this context, challenges emerge in ensuring substantive justice in civil cases. Judges are not only required to remain neutral but must also be sensitive to the circumstances of parties who may face limitations. This raises the discourse on the extent to which judges may assume an active role without breaching the *dominus litis* principle to ensure fair rulings.

⁸ Riawan Tjandra, W., 2009, *State Administrative Court. Promoting the Realization of a Clean and Authoritative Government*, Yogyakarta: Universitas Atma Jaya, p. 72.

⁹ Ni Komang Dewi Novita Indriyani Weda, et al., "Implementation of the Active Judge Principle (Dominus Litis) in Trials in Administrative Courts (Case Study of Decision No. 1/G/2017/PTUN.DPS)", *Jurnal Preferensi Hukum*, Vol. 2 No. 1, February 2021, p. 28.

Administrative procedural law explicitly incorporates the principle of active judges (*dominus litis*), granting judges the authority to play a more active role in balancing the parties' positions. Judges are not solely dependent on the arguments and evidence presented by the parties but are empowered to examine aspects beyond the core dispute.¹⁰ Administrative Court judges hold significant responsibilities in performing their duties—listening to both parties and actively uncovering facts and guiding the direction of court examinations.¹¹ Administrative Court judges are given active roles because they cannot permit and uphold decisions or actions that are manifestly flawed and clearly contrary to the law and general principles of good governance, merely because the parties have not raised such issues within the scope of the dispute.¹²

In civil cases, the prevailing principle tends to emphasize the passive role of judges compared to procedural law in the Administrative Court. Judges in civil cases adhere to the principle of *audi et alteram partem*, where decisions must be based on the arguments and evidence presented by the parties. In other words, judges are not authorized to seek evidence or facts beyond what the plaintiff or defendant has presented. This aligns with the *dominus litis* principle, placing the parties as the main controllers of the proceedings. However, the limitations of the judge's role in civil cases often create obstacles in achieving substantive justice, notably when one party lacks sufficient understanding of legal processes or the ability to provide adequate evidence. Judges can only decide based on the facts revealed during the trial, even if those facts do not reflect the actual situation.

This contrasts with Administrative Court procedures, which allow judges to take a more active role. Administrative procedural law enables judges to delve deeper into the facts, even beyond what the parties have presented. The Administrative Court judges are empowered to ensure that the decisions rendered are not only formally but also substantively just. This is crucial, given that

¹⁰ Peter JJ. Van Buren, *Active Judge*, Paper on Administrative Court Training, Indonesia-Netherlands Cooperation, Bandung, August 10-22, 1987, p. 2.

¹¹ Tjandra, W. R., "Comparison of the State Administrative Court System and the Conseil d'etat as an Institution Supervising Administrative Legal Actions", *Jurnal Hukum IUS QULA IUSTUM*, Vol. 20 No. 3, 2013, pp. 423–439.

¹² Marbun, S.F., 1997, *State Administrative Court and Administrative Efforts in Indonesia*, Yogyakarta: Liberty, p. 303.

administrative disputes often involve administrative decisions with broad implications for society or individuals. Judges can assess the compliance of administrative decisions with the general principles of good governance, even if the plaintiff has not raised such aspects in the dispute. Conversely, in civil cases, judges must maintain neutrality and merely assess the arguments and evidence presented by the parties. This fundamental difference highlights how procedural law in the Administrative Court tends to grant judges a more active role in balancing the parties' positions. In contrast, civil cases prioritize the parties' freedom in determining the course of proceedings.

In the realm of Administrative Justice, where the primary essence lies in uncovering material truth to resolve core issues in disputes, the principle of Active Judges (*dominus litis*) is implemented.¹³ This principle is explicitly and normatively enshrined in Article 107 of the Law on Administrative Court Procedure. As part of implementing the *dominus litis* principle in examining the dispute a quo, the Panel of Judges qualifies the core issues, which are then tested against statutory regulations and the general principles of good governance. There are two primary considerations underlying the active role of judges. First, when the decisions of administrative authorities are contested, these decisions form part of positive law and must align with the legal order (*rechtsorde*). This obligates judges to seek the material truth. Second, the active role of judges serves to balance the positions of plaintiffs and defendants, as defendants often hold a stronger position due to superior access to information, facilities, and resources compared to plaintiffs.¹⁴ The principle of active judges demonstrates that the judges' involvement lies entirely within the authority of the Panel of Judges and does not rely on initiatives from the parties in dispute. Judges determine and limit court examinations and related proceedings.¹⁵ Therefore, a strong understanding of procedural law is essential.

¹³ Muhammad Adiguna Bimasakti, "Examining the Evidentiary Weight of Party Admissions in the Evidence System of the State Administrative Court", *Jurnal Hukum Peratun*, Vol. 2 No. 1 Agustus 2019, p. 97.

¹⁴ Riawan Tjandra, W., *Op.Cit.*, p. 8.

¹⁵ Ni Komang Dewi Novita Indriyani Weda, et al., "Implementation of the Active Judge Principle (Dominus Litis) in Trials in Administrative Courts", *Jurnal Preferensi Hukum*, Vol. 2 No. 1, February 2021, p. 28.

Previous studies reveal that judges must adapt to societal developments. Developing the principle of active judges to deliver proportional substantive justice should focus on resolving issues using a progressive legal approach.¹⁶ Another study by Pranoto suggests that the active role of judges in dispute examinations provides legal protection to plaintiffs, as thorough examinations naturally position and safeguard the plaintiffs' rights, ensuring that they experience equal treatment under the law.¹⁷ Judges' active stance in seeking material truth is closely related to the principle of free proof, where judges are free to determine what must be proven, the burden of proof, and the assessment of evidence. However, this judicial freedom is also limited by the types and amounts of evidence specified by law in resolving cases in the Administrative Court.¹⁸ This principle is also known as *La Conviction Raisonnee* in French, meaning reasoned conviction. In Dutch, it is referred to as *Vrije bewijstheorie*, meaning free proof.¹⁹

In its application, the active judge principle carries the consequence of granting Administrative Court judges the authority to issue *ultra petita* rulings, i.e., deciding on matters directly related to the main issues being contested, even if not explicitly requested by the defendant. *Dominus litis*, derived from Latin, means "master of the case," signifying that judges act as the primary authority in a case or administrative dispute. They may direct parties to take specific actions related to dispute resolution. Unlike the active judge principle in Administrative Court disputes, civil procedural law strictly limits judges' authority to issue *ultra petita* decisions. In civil cases, judges are only authorized to decide based on what the plaintiff requests in their *petitum*. This means that judges cannot issue rulings beyond or outside what the parties have submitted, even if those rulings are closely related to the main issues of the case. This principle is rooted in the

¹⁶ Aju Putrijanti, "The Principle of Active Judge (Domini Litis Principle) in Administrative Court", *Jurnal MMH*, Vol. 42, No. 3, 2013, pp. 320–328.

¹⁷ Edi Pranoto, "The Principle of Active Judge (Litis Domini) in the Examination of State Administrative Disputes", *Jurnal Spektrum Hukum*, Vol. 16, No. 2, 2019, pp. 90–101.

¹⁸ Rizky Pratama, "Legal Principles in the Procedural Law of State Administrative Courts", *Jurnal Penelitian Multidisiplin*, Vol. 2 No. 1, February 2023, p. 19.

¹⁹ S. B. Blegur, "Main Legal Principles of Administrative Court Procedural Law", *Jurnal Hukum Peratun*, Vol. 5 No. 1, February 2022, pp. 39–56.

dominus litis context in civil law, where the parties—not the judges—are the primary controllers of the proceedings. The plaintiff is responsible for formulating the *petitum*, while the defendant has the right to respond to the plaintiff's claims. The role of the judge in civil cases is to maintain procedural balance and ensure that decisions are based on the evidence and arguments presented. Meanwhile, in Administrative Court cases, the active judge principle allows judges greater flexibility in determining the scope of their rulings. Administrative Court judges are authorized to issue *ultra petita* decisions if necessary to resolve the core issues comprehensively. For instance, judges may order the annulment of legally flawed administrative decisions, even if not explicitly requested by the plaintiff, as long as it is relevant to the main dispute.

The active role of judges is often referred to as *dominus litis*, meaning that judges hold control over the proceedings, including during the preparatory examination stage. This stage in the Administrative Court aims to examine the completeness and clarity of the lawsuit while attempting to mediate the parties. At this stage, judges have the authority to actively provide directions, request further explanations from the disputing parties, and even encourage reconciliation efforts. However, the active role of judges at this stage often sparks debate over the extent to which judicial involvement is justifiable without breaching the principles of justice and neutrality.

As *dominus litis*, judges must remain neutral and impartial, and ensure that proceedings are conducted fairly. Nonetheless, it cannot be denied that there is a potential for abuse or excesses in the active role of judges, which could influence the outcome of the proceedings. Unlike the procedural law of the Administrative Court, which recognizes the preparatory examination stage, civil procedure does not include such a stage. Civil procedural law does not allow judges to actively examine the completeness or clarity of the lawsuit before the main trial begins. In the civil system, lawsuits filed by plaintiffs are directly registered with the court, and judges only begin examining the substance of the case once the trial is underway.

A key contemporary concern regarding the active role of judges is the potential for bias and substantive injustice. Excessive judicial intervention, particularly when providing guidance or interpretations during proceedings, can create perceptions of partiality and restrict the

parties' freedom to present their arguments. Recent empirical research from Türkiye further demonstrates that unchecked judicial activism, even when pursued under the guise of modernization, may erode judicial independence—highlighting the necessity of establishing clear boundaries for the active judicial role.²⁰

Recognizing the importance of the judge's role in the Administrative Court and the potential challenges arising from active judicial involvement in proceedings, this study aims to identify and analyze the limitations of the active judge's role (*dominus litis*) during the preparatory examination stage in the Administrative Court. This research also examines how existing legal provisions regulate the active role and explores their implications for neutrality and justice in the Administrative Court's judicial process. Thus, it is hoped that this study will contribute to the development of understanding about the judge's role in the Administrative Court and assist in formulating recommendations to maintain a balance between the active role of judges and the principles of justice.

Based on the above, several problem formulations can be determined, including: 1) What is the conceptual framework of an active judicial role in civil cases involving State Administrative Disputes? 2) What are the implications of an active judicial role for realizing substantive justice in civil cases and Administrative Disputes?

RESEARCH METHOD

This research employs normative legal methods with statutory and conceptual approaches. These approaches are used to analyze legal concepts related to the role of judges as *dominus litis* in court. The statutory approach examines laws and regulations governing judicial authority and procedures in both civil and administrative disputes. In contrast, the conceptual approach explores relevant theories and legal doctrines to clarify the boundaries of judicial activeness. Legislative analysis was carried out to identify how existing legal provisions regulate the active role of judges and to interpret their implications for

²⁰ Nuno Garoupa, Rok Spruk, "Populist Constitutional Backsliding and Judicial Independence: Evidence from Türkiye", Arxiv Cornell University, October 2024, available at <https://arxiv.org/abs/2410.02439>.

judicial neutrality and the realization of substantive justice. Furthermore, legal doctrines and expert opinions were utilized to strengthen the theoretical foundation of this analysis. To enhance the depth of the findings, future studies could adopt a case study approach to provide empirical insights into how the principle of active judges (*dominus litis*) is implemented in judicial practice. Such an approach would complement the normative analysis and contribute a more comprehensive understanding of the issue.

DISCUSSION

The Concept of the Active Role of Judges in Civil Cases with Administrative Court Disputes

Indonesia is expressly stated as a state of law listed in the constitution.²¹ The implementation of law as a commander consists of rules that emphasize the limitation of powers in order to prevent absolutism that leads to *onreghmatigedaad*, even the act of *ongroundwetting* (contrary to the constitution).²² Related to the State of law, F.J. Stahl formulated *rechtsstaat* (state of law) elements, namely the protection of human rights, separation or division of state power to guarantee human rights, the Government based on regulations, and the existence of Administrative Courts.²³ State administrative disputes arise if a person or civil legal entity feels disadvantaged due to the issuance of a decree.²⁴ In the process of examining state administrative disputes, there are similarities and differences with the examination of civil cases. There are differences in the examination of state administrative disputes called preparatory examinations. The preparatory examination process is carried out before an examination in a closed hearing (not

²¹ Constitution of the Republic of Indonesia 1945, Article 1, paragraph (3)

²² Aswanto, 2012, *Law and Power: The Relationship Between Law, Politics, and Elections*, Yogyakarta: Rangkang Education, p. 3.

²³ S. F. Marbun, 2011, *State Administrative Judiciary and Administrative Remedies in Indonesia*, Yogyakarta: Penerbit FH UII Press, p. 11.

²⁴ Fadli Zaini Dalimunthe, "Comparison of Evidence Between State Administrative Court Indonesia With South Korea", *Jurnal Hukum dan Peradilan*, Vol. 9, No. 2, 2020, p. 234.

open to the public). This examination will be led directly by the Chair of the State Administrative Court.²⁵

In proceedings at the Administrative Court, there is a unique process known as the Preparation Examination, as outlined in Article 63 of Law Number 5 of 1986 on the Administrative Court. This article states that before the main examination of the dispute begins, the judge must conduct a preparation examination to clarify any ambiguous parts of the claim. In this case, the judge must advise the Plaintiff to improve the lawsuit and complete it with the necessary data within 30 (thirty) calendar days. The judge may also request an explanation from the relevant Administrative Body or Official. This process serves as the gateway or initial stage in resolving disputes in the Administrative Court.

The preparation examination is conducted before the trial examination, providing the Plaintiff with the opportunity to perfect the incomplete claim and allowing the Defendant to be questioned regarding the contested Administrative Decision.²⁶ This preparation examination is crucial as it ensures the completeness and clarity of the lawsuit and offers the Plaintiff a chance to make necessary corrections. The judge provides guidance on what needs to be amended, such as adding documents or correcting the wording of the claim. This phase is essential to ensure that all relevant aspects of the claim are considered before proceeding to the main examination of the case.

In contrast to the mechanism in the Administrative Court, the civil procedure does not recognize a preparation examination process as outlined in Article 63 of Law Number 5 of 1986 on the Administrative Court. In civil procedural law, the judicial process begins directly with filing a lawsuit by the Plaintiff, without any stage to complete or perfect the claim before the main hearing begins. In civil cases, the completeness and clarity of the claim are entirely the responsibility of the Plaintiff from the outset. If the claim is deemed to fail to meet formal requirements or contains substantial deficiencies, the Defendant may raise exceptions at the initial stage of the trial.

²⁵ *Ibid.*

²⁶ Elisabeth Ayustina Putri Korassa Sonbai and Ni Made Sukaryati Karma and Luh Putu Suryani, "Preparation Examination in the Process of Proceedings in the Administrative Court of Denpasar (Decision No. 4/G/2017/Ptun.Dps)", *Jurnal Analogi Hukum*, Vol. 1, No. 1, 2019, p. 58.

These exceptions include objections regarding the absolute or relative competence of the court, as well as objections to the vagueness or inaccuracies in the claim submitted. The judge in civil cases will decide on these exceptions before entering into the primary matter of the case, but does not have the authority to request the Plaintiff to improve or complete the claim actively. From a comparative perspective, the preparation examination mechanism in the Administrative Court provides greater flexibility for the judge to ensure that the claim meets both formal and substantive standards, thereby making the judicial process more effective. On the other hand, in civil cases, the principle of formalism is prioritized, requiring the parties to have a good understanding of the legal process from the beginning.

The judge directs the entire process of examining a case. An active judge means that the judge does not merely set the submission of the parties or the time frame for the preliminary examination, but instead takes the initiative in all actions related to the preliminary examination, such as determining the file, evidence, research, and ensuring the arguments presented by the Plaintiff are sufficient. This distinguishes administrative court proceedings from general court proceedings. The preparation examination is conducted to obtain initial data as preliminary evidence, provide an initial overview of the dispute, clarify the chronology of the disputed object's issuance, refine the lawsuit, minimize the possibility of incorrect object (*error in objecto*) or subject (*error in subject*) claims, unclear claims (*obscur libel*), and organize and set the court calendar. During the preparation examination, it is also possible to conduct on-site inspections to obtain a clear and definite understanding of the disputed object, reassure the judge, and avoid judgments that are non-executable or *error in objecto*. In contrast to Administrative Court cases, which have a preparation examination mechanism to minimize the occurrence of unclear claims (*obscur libel*), civil cases do not have a specific stage designed for this purpose. As a result, it is highly possible to find unclear claims (*obscur libel*) in civil cases, which are vague, imprecise, or difficult to understand due to failure to meet formal or substantive requirements.

Obscur libel claims in civil cases typically occur because the Plaintiff fails to accurately formulate the *posita* (facts) and *petitum* (claims), lacks clarity in the description of the legal events, or there is a

mismatch between the facts and the demands made. In such situations, the Defendant may raise exceptions at the early stages of the trial to reject the claim on the grounds of *obscuur libel*. If the judge accepts this exception, the claim may be declared inadmissible (*niet ontvankelijk verklaard*). However, in civil cases, the judge does not have the authority to actively assist the Plaintiff in improving or completing the claim, as is the case in the preparation examination mechanism in the Administrative Court. In contrast, the preparation examination in the Administrative Court aims to ensure that the claim meets both formal and substantive requirements before proceeding to the main examination phase. This examination reduces the likelihood of *obscuur libel* claims, as the judge actively advises the Plaintiff to refine unclear or incomplete claims. This process provides better legal protection for the parties, particularly the Plaintiff, who is often in a more vulnerable position than the administrative body or official.

Additionally, the preparation examination in the Administrative Court also allows the judge to conduct an on-site inspection or direct verification of the disputed object. This dramatically helps provide clarity and legal certainty regarding the dispute. Therefore, Administrative Court cases have a more structured mechanism to prevent issues like *obscuur libel* compared to civil cases, which place the full responsibility for drafting the claim on the parties involved. This difference highlights that the procedural system in the Administrative Court is designed to be more responsive to the potential for unclear claims. At the same time, in civil cases, the principle of formalism and party responsibility is prioritized. This is one of the reasons why judges in civil cases tend to be passive and only serve as adjudicators of what is presented by the parties, without actively participating in correcting vague claims.

The principle of an active judge is closely related to the principle of free evidence. An administrative judge is responsible for uncovering the material truth in administrative dispute cases. The active judge principle is applied starting from the preparation examination phase, trial examination, and the process of evidence presentation. In the Administrative Court, the judge determines what needs to be proven, the burden of proof, and the weight of the evidence. As stated in Article 58 of Law Number 5 of 1986 on the Administrative Court, the judge has the authority to summon both parties to attend the trial in

person due to matters that must be heard directly by the judge, even if legal counsel represents them. Article 80 of the Law on Administrative Court emphasizes that the panel of judges in a hearing has the right to provide guidance to the disputing parties regarding legal actions and the types of evidence that may be required.

The active role of the judge is intended to lead the proceedings to ensure that the examination does not become convoluted. The speed or delay in resolving a dispute depends on the panel of judges, who must always consider the public interest. According to Article 85 of Law Number 5 of 1986 on the Administrative Court, if evidence in the form of documents that have been ordered to be presented at trial is not provided by the Defendant, the law grants the panel of judges the authority to actively intervene and request the Defendant to present the required evidence, such as documents, either at the Plaintiff's workplace or another location. The judge's active involvement in the trial is a fundamental aspect of the procedural law in the Administrative Court.²⁷ The General Explanation of Clause 5 of the Administrative Court Law also emphasizes that judges play a more active role in Administrative Court proceedings. The judge's proactivity is necessary to ensure that the freedom in the discretion of the administrative body does not violate the issues raised by the Plaintiff.

Regarding the expert opinion, the author has conducted an interview. Based on the results of the interview with Mr. Gayuh Rahantyo, S.H., a judge at the Administrative Court in Bandar Lampung, concerning the application of the principle of active judging (*dominus litis*) in resolving administrative disputes at the Administrative Court in Bandar Lampung, it shows that the application of the principle of active judging during the evidentiary phase is generally understood as follows:

- a. The judge applies the principle of active judging to uncover the legal facts;
- b. The application of the active judge principle to uncover legal facts is based on procedural law provisions according to Articles 58, 63 paragraph (1) and (2), 53, 80, 85, and 107 of Law Number 5 of 1986 on the Administrative Court;

²⁷ Philipus M.Hadjon, 2005, *Introduction to Administrative Law*, Yogyakarta: Gadjah Mada University Press, p. 29.

- c. The judge is active according to the provisions. The panel of judges cannot act outside the procedural law outlined in Law Number 5 of 1986 on the Administrative Court. What the judge decides cannot differ from what has been requested in the lawsuit. The request can only be in the form of annulment or invalidity, along with other demands. What is annulled is limited to the object of the dispute and cannot exceed what has been claimed by the Plaintiff (*objectum litis*);
- d. The judge has the right to request evidence actively, but only for the evidence specified and directed according to the provisions of Article 100 of Law Number 5 of 1986 on the Administrative Court;
- e. The burden of proof is more meaningfully placed on the Plaintiff, who controls the outcome regarding the invalidity of the administrative decision, with the judge following the principle of free evaluation of evidence; and
- f. The burden of proof is never placed on the Defendant. However, according to Article 107 of Law Number 5 of 1986, the judge is granted the authority to assign the burden of proof to the Plaintiff, the Defendant, or the judge himself.

The steps to effectively implement the principle of an active judge are as follows:

- 1. The panel of judges must understand the context of an active judge in relation to procedural law. This is necessary to prevent any actions by the judge that may not align with what is stipulated in the procedural law.
- 2. The panel of judges should adjust their active role to the case at hand, ensuring that the judge's activity remains within the context of the procedural law as regulated in Law Number 5 of 1986 on the Administrative Court.

In implementing the preparation examination, the judge as *dominus litis* is expected to guide the process wisely, maintain neutrality, and ensure that the rights of both parties are adequately accommodated. This becomes a challenge, considering that the judge's active role must be balanced with the principles of neutrality and fairness in the trial. In contrast, in civil cases, the judge does not have the authority to provide guidance to the Plaintiff regarding the improvement of the claim or to ensure the completeness of the claim

from the outset. The responsibility lies entirely with the parties, where the Plaintiff must formulate the *posita* and *petitum* clearly, and the Defendant may raise objections (exceptions) if there are deficiencies in the claim. Another difference is that, in the context of *dominus litis*, a civil judge is more limited to ensuring that the judicial process follows legal procedures, without intervening in the substance of the claim.

The principle of active judges (*Principle Dominus Litis*) is applied in South Korean Administrative Court procedural law. This relates to the hearing. In commencing a hearing, the presiding official shall first explain the contents of the scheduled disposition in question, its factual background, legal basis, etc. Concerned parties, etc., may state their opinions, submit documentary evidence, and address questions to relevant witnesses, expert witnesses, etc.²⁸ The Indonesian Administrative Court and the South Korean Administrative Court apply the principle of active judges in settling cases. This is reflected in the provisions related to the mechanism and procedures for evidence in the court. The chief judge takes the steps necessary to ensure rapid and orderly proceedings. The judge conducts the necessary examinations and checks facts that the relevant parties do not recognize. In practice, the judge determines which evidence is used, who has to prove it, and the evidence's relevance to the parties' statements.

The role of active judges is to balance the position of the plaintiff and the defendant. It also needs to be stated that with the application of the principle of active judges, this has the consequence of the authority of state administration judges to give *ultra petita* decisions, namely to decide on matters directly related to the main problem being sued, even though the defendant did not request it. The judge determines what must be proven, the burden of evidence, along with the assessment of evidence, and for the validity of the evidence, requires at least two pieces of evidence based on the judge's conviction.²⁹ This means that judges must try to find the material truth. Judges must pay attention to everything that happens in the examination without relying on facts and matters submitted by the

²⁸ Act No. 12347 of 2014 on Administrative Procedures, Article 31, paragraph (4).

²⁹ Law No. 5 of 1986 on the State Administrative Court, State Gazette No. 77 of 1986, Article 107.

parties. The Judge of the State Administrative Court can determine for himself:

- a. what must be proven;
- b. who must be burdened with evidence, what matters must be proven by the litigant, and what must be proven by the Judge himself;
- c. which evidence is preferred to be used in evidence;
- d. the strength of the evidence that has been submitted.

Implications of the Application of the Active Role of Judges on the Achievement of Substantive Justice in Civil Cases and Administrative Disputes

In the judicial system, the role of judges is not limited to being enforcers of the law but also as guardians of justice. Judges have a significant responsibility to ensure that the judicial process results in decisions that align with legal provisions and reflect a sense of substantive justice for the parties involved in the dispute. One form of this responsibility is the application of the active role of judges, which is an essential part of procedural law in Indonesia, both in civil cases and administrative disputes. The active role of judges is highly relevant in a judicial system that is often confronted with imbalances between the parties. In administrative disputes, for example, the active judge is tasked with balancing the position between individuals or legal entities and administrative bodies or officials, who typically have greater access to resources and legal knowledge. On the other hand, in civil cases, judges tend to be passive, but in certain situations, the active involvement of judges can make a significant contribution to achieving substantive justice.

Dominus litis is a Latin legal maxim meaning "master of the suit." This maxim refers to the principle that the party initiating legal action has control over the legal process and the right to make decisions about how the case is conducted. In other words, the party that files the lawsuit is the one primarily responsible for managing the case. The principle of *dominus litis* is an important aspect of the legal system and is closely related to the concept of party autonomy. This principle acknowledges that parties in a legal dispute have the right to advocate for their interests and make decisions about how they want to resolve the dispute. This includes decisions on whether to settle the case, how to present evidence, and what legal arguments to make.

The principle of *dominus litis* also has practical implications for the legal process. For example, it means that the plaintiff who initiates a lawsuit has the authority to decide whether to proceed with the case, settle it, or entirely withdraw the case. Similarly, the defendant who is sued has the right to defend themselves in court, to present arguments in their defense, and to seek legal remedies if they feel they have been wronged. Overall, the principle of *dominus litis* is a crucial aspect of the legal system and reflects the importance of party autonomy in the legal process. This principle acknowledges the right of the parties in a legal dispute to make decisions about how they want to resolve the dispute and emphasizes the significant role they play in managing the case.³⁰

The principle of *dominus litis*, which means that judges are free to be active, is reflected in the system of evidence presentation in trials, as stated: "For the smooth examination of the dispute, the presiding judge has the right to give guidance to the parties in dispute regarding legal efforts and the evidence they may use in the dispute." Additionally, Article 107 states: "The judge determines what must be proven, the burden of proof, along with the evaluation of the evidence, and for the validity of the evidence, at least two pieces of evidence are required based on the judge's conviction." This means that the presiding judge has the authority to assign the burden of proof to the plaintiff and the defendant, with at least two pieces of evidence to be presented in the trial. However, the application of the active role of the judge is not without challenges. In civil cases, the active role of the judge is often seen as a potential threat to the principle of judicial neutrality. Meanwhile, in administrative disputes, although the active role of the judge is more explicitly regulated, the potential for abuse or excess of this role is also a concern. This raises a fundamental question about the extent to which the active role of the judge can aid or hinder the achievement of substantive justice in both types of cases.

Table 1. Comparative Analysis of the Role of Active Judges in Civil Cases and Administrative Disputes

Aspect	Civil Cases	Administrative
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³⁰ Shubham Mandal, "Dominus Litis – Legal Maxim", accessed via <https://www.centurylawfirm.in/blog/dominus-litis-legal-maxim/> on November 12, 2024.

		Disputes
Legal Basis	Civil Code	Administrative Court Law & related regulations
Judicial Role	Passive (judges act as arbiters between parties)	Active (judges investigate facts beyond arguments)
Principle Applied	Legality Principle	Dominus Litis Principle
Truth Sought	Formal Truth	Material Truth
Fact-Finding	Based on the evidence presented by the parties	Judges can seek additional evidence ex officio
Burden of Proof	Lies with the parties	Vrije Bewijs
Standard of Review	Focuses on private rights and obligations	Evaluates government actions against legal norms
Outcome Consideration	Focuses on contractual or personal liability	Considers public interest and the rule of law
Judge's Initiative	Limited; judges only decide based on the presented claims	The judge determines what must be proven, the burden of proof, and the assessment of evidence in the pursuit of discovering the material truth
Examples of Cases	Contract disputes, tort, family law, etc.	Government Administrative Actions, administrative disputes, permits, etc.

Source: processed from various sources

Judges in the Administrative Court have the authority to act as *dominus litis*, but some limitations must be adhered to in order to maintain the principles of justice and neutrality. These limitations are

regulated in various laws and regulations and through judicial practices. Some of the relevant limitations are as follows:

a. Principle of Neutrality

Judges are expected to remain neutral and not favor one party in the dispute. Although judges play an active role in gathering facts, actions that could indicate bias may raise doubts about the integrity of the judicial process.

b. Limitation of Authority

The principle of *dominus litis* does not mean that judges can intervene without limits. Judges must avoid actions that may alter the lawsuit's substance or place themselves in the position of one of the parties. In this context, judges must ensure that their role does not diminish the rights of the parties to present their arguments and evidence.

c. Legal Guidelines and Policies

The enforcement of these limitations is also guided by legal frameworks established by laws and judicial policies. For example, the Administrative Court Law provides guidance on procedures and limitations in preparation hearings, including the rights and obligations of both judges and the parties involved.

d. Supervision and Accountability

In performing their role, judges are also subject to oversight by other judicial bodies and can be held accountable for actions taken during the trial. This is crucial to prevent abuse of power and to ensure that decisions are based on law and justice.

e. Proof and Evidence

Some principles limit the judge's activity or freedom in the evidentiary system as outlined in Article 100, Paragraph 1 of the Administrative Court Law, which specifies the following types of evidence: 1) Written documents; 2) Expert testimony; 3) Witness testimony; 4) Admission of the parties; 5) Judicial knowledge. Furthermore, Paragraph 2 states, "Facts known to the public do not need to be proven." Based on this law, it can be understood that while judges are free to search for evidence during the trial, they must adhere strictly to these five types of evidence. If evidence beyond these five types is used, the judge would violate the established legal framework.

By understanding these limitations, judges are expected to carry out their active role responsibly while maintaining the integrity of the Administrative Court system. Applying these limitations is not only to protect the parties' rights but also to ensure that the judicial process is fair and transparent.

The principle of an active judge grants broad authority to Administrative Court judges in the examination process of administrative disputes, particularly regarding the burden of proof and the determination of what needs to be proven. The consequence of the existence of the principle of an active judge is the possibility of applying the *ultra petita* principle, which was first introduced in the Supreme Court Decision Number: 5K/KTUN/1992 dated May 23, 1991. This principle involves the judge's action to complete or supplement the object of dispute submitted by the parties.³¹

Two main considerations support the active judge's position: *first*, if a decision made by the administrative body is contested, it must comply with the positive law that applies in the legal system (Resorde), meaning the judge is burdened with finding the material truth. *Second*, the active role of the judge helps balance the position of the plaintiff and the defendant, as the defendant is generally in a stronger position compared to the plaintiff. This is because the defendant typically has more complete information, resources, and infrastructure than the plaintiff.³²

The role of an active judge in administrative disputes is crucial, given the imbalance of power between the plaintiff, who is typically an individual or a legal entity with limited access to information and legal resources, and the defendant, usually a government body or official with greater capacity. In this context, the judge acting as *dominus litis* has the authority to delve deeper into relevant facts, provide guidance to the plaintiff, and ensure that all aspects of the lawsuit are correctly addressed. The implications of the active role of the judge in administrative disputes can be seen from two perspectives, namely:

a) Positive

³¹ S.F. Marbun, 1997, *State Administrative Court and Administrative Efforts in Indonesia*, Yogyakarta: Liberty, p. 303.

³² Tjandra, 2009, *State Administrative Court Promoting the Realization of a Clean and Authoritative Government*, Yogyakarta: Universitas Atma Jaya, p. 53.

The application of an active role by the judge helps realize substantive justice by ensuring that the decisions made truly reflect the actual circumstances, not just the facts presented by the parties. This is crucial in avoiding unjust or even erroneous decisions, especially regarding policies issued by government officials that may harm the public. A more thorough examination, including on-site inspections and clarification of the legal basis for government decisions, helps ensure that these decisions align with the principles of good governance.

b) Negative

However, the active role of the judge in this context also has potential negative implications, such as leading to an abuse of power. A judge who becomes too involved in digging into the facts may be seen as violating the principle of neutrality, as they could encroach on areas that should be the domain of the parties in presenting evidence and arguments. Furthermore, excessive intervention by the judge in the examination process can lead to legal uncertainty and prolong the duration of the case, as it may neglect the defendant's rights to be heard and protected.

In both types of cases, the application of an active role by the judge can contribute to the achievement of substantive justice, which truly considers the material rights of the parties, not just formal justice that focuses solely on compliance with procedures.

Conclusion

From this research, it can be concluded that the active role of the judge in resolving civil cases and administrative disputes has clear boundaries regulated by law, yet in practice, there are still differing interpretations. Therefore, strengthening regulations and enhancing judges' understanding of the importance of maintaining a balance between active roles and neutrality is essential to ensure justice for all parties. This research reveals that the active role of the judge (*dominus litis*) is crucial in ensuring the completeness of the claim and providing an opportunity for mediation; however, it must remain within the limits set by law. Judges have the authority to guide the examination process. However, their active involvement must not disrupt the principles of neutrality and justice, nor should it alter the substance of

the claim or favor one party. These limitations, including the principle of neutrality, limitations of authority, and applicable legal guidelines, aim to prevent abuse of power and ensure that the judicial process runs fairly and transparently. Additionally, further clarification in regulations or court policies concerning the active role of judges in dispute resolution is deemed important to preserve the integrity of the judicial process and ensure that the parties are given an equal and fair opportunity in the dispute resolution process. In conclusion, balancing the active role of the judge and applying the principle of justice is crucial in maintaining public trust in the administrative judiciary system.

Suggestion

If the judge's role becomes too dominant, this can threaten the principle of justice itself. The judge must be cautious to ensure that their active role does not disrupt the balance in the trial and that they maintain neutrality and independence in performing their duties. The application of a wise, active role by the judge, while still observing the principles of justice, is crucial to ensure that the rights of both parties can be accommodated without any abuse of power. In this regard, substantive justice can be realized if the judge is able to guide the legal process without excessively intervening in the substance of the case.

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