

REINFORCING THE JURISDICTION OF THE ADMINISTRATIVE COURT: THE SHIFTING BURDEN OF PROOF MODEL IN OMISSION DISPUTES ON DISASTER MANAGEMENT

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Abstract

This article aims to analyze and propose the application of the shifting burden of proof model in resolving omission disputes within the Indonesian Administrative Court (PTUN), particularly in the context of disaster management. Omission disputes frequently arise from governmental negligence in fulfilling legal obligations that are clearly stipulated by statutory regulations. The heavy burden of proof imposed on the claimant, combined with the unequal access to administrative documents, poses significant challenges in proving such negligence. This article adopts a normative-qualitative approach, using the case study of Decision No. 10/G/TF/2022/PTUN.PLG to illustrate the practical issues encountered by the public. The proposed model of shifting the burden of proof provides a pathway for the Administrative Court to reinforce its jurisdiction as a guardian of governmental accountability, while also serving as a corrective mechanism against state negligence in the administration of disaster management.

Keywords: *Omission Disputes, Shifting Burden of Proof, Disaster Management, Administrative Court.*

INTRODUCTION

In recent decades, the escalation of natural disasters has become an inevitable reality across the globe, including in Indonesia. The increasing frequency and severity of events such as earthquakes, floods, and volcanic eruptions suggest that disasters are no longer isolated incidents but rather cyclical and systemic phenomena. This development presents a critical challenge for disaster-prone countries like Indonesia in fulfilling their duty to ensure comprehensive protection for their citizens. (IFRC, 2017).

Addressing such a challenge requires more than just technical and managerial preparedness; it must also be framed within a legal system that upholds state accountability. Any act or omission by the government in responding to disasters may have direct consequences on public safety. For this reason, disaster management must be subject to the principles of accountable governance. Negligence by the government—be it before, during, or after a disaster—can cause significant harm, for which the state should be held legally accountable. (M. Januar Rizki, 2025).

The enactment of Law Number 30 of 2014 on Government Administration (UU AP) marked a pivotal moment in the evolution of Indonesian administrative law, particularly with respect to the expansion of the absolute jurisdiction of the Administrative Court (PTUN). Previously, the jurisdiction of PTUN was limited to disputes over administrative decisions (*beschikking*), but it now extends to include factual acts, as explicitly provided in Article 87 of the UU AP. This development is further reinforced by Supreme Court Regulation (PERMA) No. 2 of 2019, which affirms that governmental actions—including inaction or negligence—may be subjected to judicial review before the Administrative Court. (Dewi Asimah et al., 2020)

Under the procedural law of the PTUN, the evidentiary process is governed by the principle of *vrij bewijs*, which grants the judge discretion to determine what must be proven, how it shall be proven, and by whom the burden of proof is to be borne (Enrico Simanjuntak, 2018). Nevertheless, in practice, the principle of *actori incumbit probatio* (the burden of proof lies with the claimant) continues to dominate (Kumala, 2021). This creates particular challenges in cases involving governmental omissions in disaster management, where claimants often face a structural disadvantage in accessing the administrative information required to substantiate their claims—especially in contrast to the defendant, who is typically the government agency responsible for disaster management.

Unlike active (commission) conduct, which typically leaves concrete and traceable evidence, omission often results in the absence of directly accessible proof. In such cases, judges are in a position to exercise their active role—based on the principle of *active rechter* (active judge)—to request evidence held under the control of the defendant. This is intended as a corrective measure to address the asymmetry in access to information during the evidentiary process. (Sudarsono et al., 2021). However, in practice, the use of this judicial authority has not always functioned effectively to strengthen the claimant's position. Obstacles frequently arise when the defendant refuses or objects to producing the requested evidence, thereby impeding the verification process and undermining the effectiveness of legal protection in omission-based disputes involving governmental inaction.

To address these challenges, this article proposes for the adoption of a shifting burden of proof model in omission disputes before the PTUN, particularly in the context of disaster management. While this model is more commonly found in criminal law (Lilik Mulyadi, 2007), its adaptation to administrative adjudication offers a corrective framework against structural imbalance. Under this model, the burden of proof shifts to the defendant, who must demonstrate that their legal obligations were duly fulfilled. If implemented, the Administrative Court would not only review the formal legality of administrative conduct but also serve as a corrective forum against governmental negligence that directly endangers public safety—thereby expanding substantive legal protection for citizens' rights. (Paulus Effendi L, 1986).

LITERATURE REVIEW

Similar research has been conducted by Dewi Asimah, Zainal Muttaqim, and D.S. Sugiharti in their article titled "Implementation of the Expansion of PTUN's Jurisdiction in Adjudicating Factual Acts (*Onrechtmatige Overheidsdaad*/OOD)," published in *Jurnal Acta Diurnia*, Vol. 4 No. 1, 2020 (Asimah et al., 2020). The study highlights the jurisdictional shift introduced by Law No. 30 of 2014 on Government Administration, which grants the PTUN the authority to adjudicate factual acts (*feitelijke handelingen*) by government officials that harm citizens—an authority that was previously under the domain of the general courts based on the doctrine of *onrechtmatige overheidsdaad*. Although this authority has been reinforced by Supreme Court Regulation (PERMA) No. 2 of 2019, the study finds that its implementation remains inconsistent, as general courts continue to hear cases that should fall within the jurisdiction of PTUN. Using a normative legal approach based on literature review, the study concludes that institutional resistance and differing interpretations among judicial bodies remain key barriers to fully realizing the jurisdictional shift.

However, the study does not specifically address the issue of omission in the context of disaster management, which in practice may cause substantial harm to the public. From an administrative law perspective, such governmental negligence may constitute a form of *onrechtmatige overheidsdaad* and therefore provide grounds for state liability through the administrative judicial mechanism (Agus Budi Susilo, 2013).

On the other hand, existing literature has yet to explore the structural evidentiary imbalance between citizens and the state in omission-based disputes. In practice, citizens often face significant difficulties in accessing crucial evidence that is under the control of the government. This evidentiary disparity bears resemblance to challenges encountered in criminal law, particularly in cases such as corruption and money laundering, where a limited form of the shifting burden of proof has been adopted. While differing in legal norms and foundational principles, this approach offers theoretical insights that can be adapted to the field of administrative law—especially as a means to rebalance the position of citizens in disputes involving governmental negligence with direct implications for public safety.

Accordingly, this article contributes in two significant ways: first, by filling a gap in the literature on the jurisdiction of the PTUN to adjudicate government omission in the context of disaster management; and second, by proposing the shifting burden of proof model as a corrective approach to the inequality in access to evidence in administrative disputes. This approach aims to reinforce PTUN's function as an effective institution of judicial control (Paulus E. Lotulung, 1986), realized through the establishment of a corrective forum mechanism addressing governmental negligence that endangers public safety, while also affirming the role of PTUN as a protector of citizens' legal rights (Philipus M. Hadjon, 1993).

METHOD

This study employs normative legal research grounded in doctrinal and interpretative analysis, focusing on statutory norms, legal doctrines, and court decisions concerning the jurisdiction of the PTUN in omission-related disputes within the context of disaster management.

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The research utilizes statutory, conceptual, and analytical approaches to examine statutory provisions, legal reasoning, and doctrinal theories of state liability. Legal materials are collected through library research and document analysis, encompassing primary sources (statutes and court rulings), secondary sources (academic literature), and tertiary sources (legal reference materials). The data is analyzed using normative-interpretative methods to critically assess the legal framework and its judicial application in cases reviewed by PTUN.

RESULTS AND DISCUSSION

A. Challenges of Evidence in Administrative Disputes Concerning Governmental Omissions in Disaster Management

The transformation of administrative law in Indonesia has undergone significant development with the enactment of the Law on Government Administration (UU AP), which expanded the scope of State Administrative Decisions (*Keputusan Tata Usaha Negara/KTUN*). Prior to the enactment of UU AP, the jurisdiction of the Administrative Court was limited to KTUN's that were concrete, individual, and final in nature. However, Article 87 letter a of the transitional provisions of the UU AP broadened the definition of KTUN to also include factual acts (*feitelijke handelingen*) carried out by government officials. (Ridwan, 2022).

Although the UU AP does not explicitly define the term "factual acts", Article 1 point 8 introduces the notion of "governmental administrative actions", which refers to acts or omissions by government officials or other state actors in the execution of governmental functions.

The conceptual understanding of factual acts can be traced back to administrative law doctrines, which distinguish between legal acts (*rechtshandelingen*) and factual acts (*feitelijke handelingen*) (Philipus M. Hadjon, 1993). Legal acts are conducted based on legal norms and are intended to produce legal consequences, whereas factual acts are not initially intended to result in legal consequences (Indroharto, 1993). However, in practice, factual acts may nonetheless have legal implications and, as such, can be challenged before the Administrative Court (Suanro & Mizan Malik, 2021).

The expansion of the jurisdiction of the PTUN through the enactment of the Law on Government Administration (UU AP) and Supreme Court Regulation (PERMA) No. 2 of 2019 not only redefined the scope of disputable government actions but also impacted the way administrative actions are identified as objects of dispute. In practice, government actions challenged before the Administrative Court can be classified based on their nature into acts of commission (active conduct) and acts of omission (passive conduct) (Ilmiyah, 2023).

Acts of commission involve concrete actions carried out by the government, such as the demolition of buildings, the sealing of business premises, or the closure of public roads or facilities that are alleged to be unlawful (Bimasakti, 2022). In the context of disaster management, such acts may include the forced relocation or demolition of residential buildings in disaster-prone zones without proper administrative procedures, or the arbitrary declaration of a disaster emergency status that restricts citizens' rights.

On the other hand, disputes concerning acts of omission in administrative law arise from the government's failure to fulfill legal obligations that are explicitly mandated by statutory provisions. Such omissions represent noncompliance with imperative legal duties—norms that are binding and non-negotiable (Bimasakti, 2022).

In the context of disaster management, Law No. 24 of 2007 on Disaster Management serves as the primary legal reference to assess whether the government has fulfilled its legal obligations. This law explicitly mandates that both central and regional governments are required to take necessary actions in each phase of disaster management—from pre-disaster, emergency response, to post-disaster recovery. Therefore, if the government fails to fulfill these obligations—for example, by not providing early warning system infrastructure during the pre-disaster phase—such negligence may be classified as unlawful conduct by authorities (*onrechtmatige overheidsdaad*) and can be contested before the Administrative Court.

However, despite the government's obligations being clearly defined in the law for each phase of disaster management, proving negligence or failure to perform these duties is not an easy task. Disputes concerning omissions often present unique challenges, both in terms of evidence and in establishing the causal relationship between the government's negligence and the legal consequences for the affected parties.

One way to better understand these challenges is by examining how the PTUN handles disputes regarding omissions in disaster management practice. In this regard, Decision No. 10/G/TF/2022/PTUN.PLG (hereinafter referred to as PTUN Palembang Decision) serves as a relevant example to illustrate the complexities of proof in omission cases within the field of disaster management.

In this case, the plaintiffs, consisting of several residents of Palembang and WALHI, filed a lawsuit against the Mayor of Palembang for the alleged failure to implement disaster mitigation measures as stipulated in Law No.

24 of 2007 on Disaster Management. The major flood that occurred on December 25-26, 2021, was considered a consequence of this negligence, as the government had failed to provide adequate drainage systems, restore the conservation swamp's functions, and build retention ponds to control water discharge.

In the trial process as outlined in the case details of the decision, the plaintiff faced various challenges in proving the government's negligence. These challenges reflect the complexity of proving cases involving government omission in disaster management, particularly in establishing the causal relationship between the government's failure and the legal consequences resulting from it. Below is an explanation of the challenges faced:

1. Burden of Proof and Obstacles in Accessing Evidence

In the procedural system of the PTUN, the burden of proof is governed by the principle of *vrij bewijs*, as stipulated in Article 107 of Law Number 5 of 1986 concerning the State Administrative Court, which grants judges the freedom to determine what needs to be proven, how evidence should be presented, and how it should be assessed. However, the principle of *actori incumbit probatio* still applies, meaning the plaintiff—i.e., the citizens—bears the initial burden of proof, while the defendant, the Administrative Agency and/or Officials, can rebut the claim with evidence they present.

In commission cases, proof is generally simpler because the plaintiff only needs to demonstrate that a governmental action has taken place and is contrary to the law. However, in omission cases, the burden of proof becomes more difficult, as the plaintiff must prove two aspects simultaneously:

- a. That the government failed to carry out its obligation, rather than merely delaying or performing it imperfectly.
- b. That this omission caused a real legal consequence, negatively affecting the plaintiff's rights or interests.

The difficulty of proving a omission case is further exacerbated by the imbalance in access to evidence. In commission cases, the main evidence is usually available in the public domain. For instance, if a plaintiff is challenging a spatial planning policy that is deemed to violate local regulations, the policy document is typically accessible through official sources. However, in omission cases, documents that prove whether an action has been taken or not are often controlled by the government and are difficult for the plaintiff to access.

This issue is illustrated in the PTUN Palembang Decision, where the plaintiff faced challenges in proving the government's negligence in disaster mitigation for flooding. The absence of direct evidence regarding the lack of retention pond construction, drainage normalization, or conservation swamp restoration made proving the case even more difficult. Without direct evidence, the plaintiff had to rely on indirect evidence-based inferences, such as:

- Comparison with applicable regulations, such as Law No. 24 of 2007 on Disaster Management and the Spatial Planning Regulation of Palembang.
- Expert opinions confirming that mitigation actions should have been taken by the government.
- Empirical data showing the flood impacts caused by the failure to implement these actions.

However, proof based on inference faces its own challenges when considered by the judge, especially if not supported by written evidence that strengthens the argument regarding the government's negligence. The defendant in omission cases generally controls the administrative documents that are key to proving the case, making it difficult for the plaintiff to access such evidence without going through lengthy and limited administrative procedures.

As depicted in the Palembang Administrative Court Decision, the evidence submitted by the defendant includes several documents that logically fall under the defendant's control, such as a letter from the Palembang City Government to the Public Works and Housing Agency regarding retention pond data in Palembang in 2021, the budget for the procurement and maintenance of water resource infrastructure for 2021, and documentation from the Palembang City Government regarding efforts to restore the drainage function in Palembang. These documents are highly relevant in proving whether the government has fulfilled its obligations related to disaster mitigation, but they are not freely accessible to the plaintiff, leading to an imbalance in the proof process.

This inequality of access weakens the plaintiff's position in court, as they cannot effectively prove their claims without access to the administrative documents controlled by the government. Therefore, in omission cases, not only is the burden of proof heavier for the plaintiff, but there is also the challenge of accessing evidence controlled by the government, forcing the plaintiff to find alternative strategies to strengthen their case.

2. Possible Arguments from the Defendant

In omission cases related to disaster management, the government can generally use various arguments to avoid responsibility. Based on the author's analysis, some common argument patterns that often arise in court include:

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- a. Claiming that administrative actions were taken but not properly documented.
- b. Claiming that administrative actions were only partially completed and still in progress.
- c. Asserting that administrative actions were not necessary due to certain reasons known only to the government.
- d. Claiming that administrative actions could not be carried out due to budget limitations.

Such arguments further complicate the plaintiff's task of proving the case, because without access to internal government evidence, the plaintiff cannot easily refute these claims. In these situations, the court often faces a dilemma in determining whether the government has truly carried out the required administrative actions or has been negligent in fulfilling its duties.

One argument put forward by the defendant, as depicted in the Palembang Administrative Court Decision, was that external factors, such as the high rainfall at the end of 2021, allegedly affected the implementation of flood mitigation programs, including the construction of retention ponds and the normalization of drainage systems. The government claimed that several disaster mitigation programs were hindered by unpredictable weather conditions, causing some flood control efforts to be partially implemented.

B. The Concept of Shifting Burden of Proof in Omission Disputes

1. The Dynamics of Shifting Burden of Proof: From Criminal Corruption Offenses to Administrative Disputes

The principle of shifting burden of proof is not unfamiliar in Indonesia's legal system. This concept has been applied in several areas of law, particularly in criminal procedural law concerning corruption offenses.

This procedural law essentially refers to the Criminal Procedure Code (KUHAP) with several special provisions regulated in Law No. 31 of 1999 as amended by Law No. 20 of 2001 on the Eradication of Corruption Crimes (UU Tipikor), one of which is the shifting burden of proof mechanism as outlined in Article 37 of the UU Tipikor. This article stipulates that the defendant has the obligation to prove the origin of their wealth if there are indications that the wealth comes from corruption. The shifting burden of proof is applied to overcome the challenges faced by prosecutors, as information regarding assets and financial sources is under the control of the defendant.

Shifting burden of proof in corruption cases is applied because these crimes often involve complex *modus operandi*, such as hidden transactions, the use of intermediary accounts, or the placement of assets abroad. These conditions make it difficult for prosecutors to prove the case, especially since many of the pieces of evidence related to assets and financial sources are controlled by the defendant and difficult for law enforcement authorities to access. Therefore, a limited shifting burden of proof mechanism is implemented to maintain the balance between effective corruption eradication and the protection of the defendant's rights, where the defendant is only required to explain the origin of their wealth if the prosecutor has shown indications of a discrepancy between the wealth held and the defendant's lawful income.

A similar principle could be adapted to omission disputes in the PTUN in the context of disaster management. When a law has established certain legal obligations that must be fulfilled by an official, in certain circumstances, the official should be required to prove that they have duly performed their duties as mandated. If, in corruption cases, the shifting burden of proof is used to address difficulties in proving the origin of assets allegedly acquired through corruption, then in omission disputes, this mechanism could be applied to overcome difficulties in proving government negligence, which may have widespread consequences for society.

As discussed in the previous section regarding the challenges of proving omission disputes, the shifting burden of proof mechanism is worth considering as a solution in certain situations. This would allow the burden of proof to shift to the defendant, namely the state agency and/or administrative official, as the party controlling the documents and information related to the fulfillment of disaster management obligations. Therefore, this principle could strengthen legal protection for the public affected by government negligence in fulfilling disaster management obligations.

2. Mechanism of Applying Shifting Burden of Proof in Administrative Court Procedure Law

In the theoretical framework, the implementation mechanism of the shifting of the burden of proof in omission disputes, especially in the context of disaster management, needs to be designed in line with the principles of PTUN procedural law. Therefore, technical regulations are required to clearly and systematically establish the application boundaries, criteria for cases that may use this mechanism, and the proof procedure in accordance with PTUN procedural law.

The author proposes that the shifting of the burden of proof in omission disputes can be implemented through three main stages, namely:

a) Preliminary Examination Stage

At the preliminary examination stage, the judge must assess the nature of the dispute submitted to determine the direction of proof in the case. In omission disputes in the field of disaster management, the context of the case has specific characteristics that differentiate it from ordinary administrative disputes.

Omission disputes in disaster management usually involve negligence in urgent legal obligations, concerning public safety, and relying on administrative actions where data or documents are controlled by the government. In such situations, the imbalance of positions between the plaintiff and the defendant regarding access to evidence is often inevitable. Therefore, the judge may consider directly applying the shifting of the burden of proof, without requiring the plaintiff to first demonstrate technical difficulties in proving the case.

- The application of the shifting of the burden of proof is not merely to ease the burden of proof on the plaintiff but also serves as a reflection of the proportionality and fair trial principles in cases involving essential public rights.
- Therefore, if the reasons for the lawsuit (the *posita*) already indicate that the dispute concerns the government's legal obligations in the context of disaster management, the judge may establish that the shifting of the burden of proof mechanism will apply in the main examination of the case.
- This determination is orally communicated in the preparation examination session and recorded in the minutes as the basis for proof in the subsequent stages.

b) The Evidentiary Stage

After the panel of judges establishes the application of the shifting burden of proof during the preliminary phase, in the proof stage, the defendant is required to present evidence first, showing that the relevant legal obligations have been fulfilled in accordance with the applicable regulations.

- In general, under the PTUN procedural law, the plaintiff begins the proof process and must prove their allegations. However, in the framework of the shifting burden of proof specifically applied in omission disputes related to disaster management, the proof process is initiated by the defendant, who has the most access to the documents and information required.
- The defendant must show that the administrative actions which are the government's obligation have been carried out in a concrete manner and in accordance with the applicable procedural standards. If the obligation has not been fulfilled, the defendant must prove the existence of valid legal reasons for the delay or neglect.
- Afterward, the plaintiff is given the opportunity to present rebuttal evidence, either direct or indirect, to show that the action required by the regulations has not been performed or has been performed incorrectly. Indirect evidence that can be presented includes empirical data, expert opinions, reports from independent bodies, or discrepancies between the actual conditions and the normative provisions in the laws.
- In evaluating the evidence, the judge must pay special attention to the shifted burden of proof. If the defendant is unable to present sufficient and credible evidence to refute the claim of negligence, the absence of such evidence can serve as a basis for the judge to conclude that negligence indeed occurred.
- In the context of disaster management disputes, the government cannot use the force majeure argument to justify the failure to fulfill legal obligations. A disaster itself is a situation that activates the state's obligations, rather than canceling it, meaning it does not erase the legal responsibility of the state to act.
- Therefore, any justification for the government's negligence must be strictly tested against the standards of administrative law, which prioritize the safety of citizens. In this regard, the principle of *Salus Populi Suprema Lex Esto*, which means the safety of the people is the highest law, must be used as the primary basis for assessing the proportionality and legality of the government's actions or negligence.

c) The Decision Stage

At this stage, the judge will decide based on the evidence presented, whether the plaintiff's or defendant's claims are more legally acceptable.

- If the defendant cannot convincingly prove that their legal obligations during a specific phase of disaster management have been carried out—particularly obligations that the plaintiff claims have been neglected—the court may grant the plaintiff's claim. In this case, the PTUN may order the government to carry out certain actions that had previously been neglected. For example, in the pre-disaster phase, such actions could include the provision of an early warning system, disaster education programs, or the

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construction of evacuation routes, in accordance with the provisions of Law No. 24 of 2007 on Disaster Management.

- In certain circumstances, if it is proven that the government's negligence in fulfilling disaster management obligations has caused legal consequences that are detrimental—both materially and immaterially, such as the loss of lives—the court may order corrective actions, such as the provision of compensation, as regulated in PERMA No. 2 of 2019 on the Guidelines for Resolving Administrative Disputes and Judicial Authority to Adjudicate Illicit Government Actions (*Onrechtmatige Overheidsdaad*).
- Conversely, if the defendant can prove that their obligations in disaster management have been fulfilled in accordance with applicable norms, the lawsuit may be rejected. However, the court may still consider whether the execution of those obligations was done timely, effectively, and proportionally, and did not cause detrimental or discriminatory effects on the communities affected by the disaster.

CONCLUSION

This article proposes the shifting burden of proof model as a response to the evidentiary challenges faced in omission disputes related to disaster management, while simultaneously reinforcing the jurisdiction of the State Administrative Court (PTUN) in handling cases of government inaction that directly impact public safety. Omission disputes in this context are distinct from ordinary administrative disputes because they involve urgent legal obligations concerning disaster prevention and response, where the relevant data and administrative documents are often entirely controlled by the government. As a result, the burden of proof becomes disproportionately placed on the plaintiff, despite PTUN's adherence to the *vrij bewijs* (free but limited proof) principle.

The shifting burden of proof model proposed here aims to restore procedural balance by allowing judges to transfer the evidentiary burden to the defendant (the government), particularly when the plaintiff has presented preliminary evidence indicating failure to fulfill legal obligations—whether during the pre-disaster, emergency response, or post-disaster phases. In doing so, this model provides a mechanism to ensure that omission-based claims receive substantive examination, rather than being dismissed due to technical proof limitations.

Moreover, this model enhances PTUN's role in ensuring state accountability and preventing systemic government negligence in disaster management. In the future, this concept can be developed further through the issuance of procedural guidelines, either by the Supreme Court or the judiciary itself, to institutionalize the application of the shifting burden of proof in specific types of omission disputes. Such development would not only provide legal certainty for both plaintiffs and state actors but also strengthen the court's function in upholding the principle of *salus populi suprema lex esto*—the safety of the people is the highest law—as a guiding standard in administrative oversight of disaster-related obligations.

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