

INTERPRETING THE CONCEPT OF DOMINUS LITIS: THE ACTIVE ROLE OF JUDGES IN STATE ADMINISTRATIVE COURT

Siti Faridah^{1*}, Shinta Hadiyantina², Sudarsono³

Faculty of Law, Magister of Law, Universitas Brawijaya, Malang

Faculty of Law, Universitas Brawijaya, Malang

Faculty of Law, Universitas Brawijaya, Malang

Corresponding E-mail: sfaridah99@student.ub.ac.id^{1*}, shinta_fh@ub.ac.id², sudarsono@ub.ac.id³

Received : 22 May 2025

Published : 25 July 2025

Revised : 30 May 2025

DOI : <https://doi.org/10.54443/ijerlas.v5i4.3358>

Accepted : 17 June 2025

Link Publish : <https://radjapublika.com/index.php/IJERLAS>

Abstract

This article explores the interpretation and application of the concept of dominus litis—the active role of judges—in the context of the Indonesian State Administrative Court. Unlike the passive adjudicatory model commonly found in civil law systems, the principle of dominus litis in administrative adjudication positions the judge not merely as an arbiter but as a central figure in uncovering the material truth and guiding the resolution of state administrative disputes. Through normative approaches, this study analyzes the legal foundations, limitations, and judicial practices that shape the active role of judges in administrative proceedings. The research further examines how this role aligns with the principles of procedural fairness, legal certainty, and the protection of citizens' rights against unlawful government actions. Ultimately, the article argues that the appropriate implementation of dominus litis is essential for achieving substantive justice in state administrative adjudication while ensuring that judicial activism remains within constitutional and statutory boundaries.

Keywords: *Dominus Litis, State Administrative Court, and State Administrative Dispute.*

INTRODUCTION

The procedural law governing State Administrative Courts in Indonesia expressly adopts the principle of active judgeship, known as dominus litis, which grants judges the authority to take an active role in balancing the legal positions of the disputing parties. Judges are not merely passive recipients of the claims and evidence submitted by the parties; rather, they are empowered to examine relevant issues beyond the formal scope of the dispute. In this capacity, administrative judges do not function solely as neutral arbiters but as fact-finders and process leaders who shape the direction of the trial to uncover material truth (Negara, 2013). The concept of dominus litis is embedded normatively in Article 107 of Law Number 5 of 1986 on State Administrative Courts, which stipulates:

“Judges shall determine what must be proven, the burden of proof, the assessment of evidence, and that a minimum of two legal means of evidence are required for valid proof based on the judge’s conviction.”

This provision reflects the free-but-limited evidentiary principle (*vrij bewijsstelsel*), empowering judges to pursue the substantive truth without being confined to the evidence presented by the parties alone (Soeharto, 2021). Accordingly, PTUN judges can determine (a) the points to be proven, (b) which party bears the burden of proof, (c) which evidentiary tools shall be prioritized, and (d) the weight of the submitted evidence. The application of dominus litis enables the judicial panel to frame the legal issues and test them against statutory provisions and the General Principles of Good Governance (AUPB) (Marbun, 1997). This role is further emphasized in Article 80 of Law Number 5 of 1986, which mandates judges to actively lead and guide the trial, implying broader implications for various procedural stages. However, ambiguity in Article 63(2) and Article 63(3) of the same law reflects ongoing challenges in the normative clarity of the judge’s role in examination preparation. Two principal reasons justify the necessity of an active judicial role in administrative disputes. First, administrative decisions (KTUN) form part of public governance and must adhere to legal norms to avoid regulatory inconsistencies. A passive stance by judges risks legitimizing unlawful or unjust decisions. Therefore, judges are expected to probe beyond formal allegations and substantiate the legal and factual basis of the contested decision. Second, active judicial involvement seeks to level the procedural playing field, considering the structural power imbalance between the state (as defendant) and

citizens or civil legal entity (as claimants), where the former typically has greater access to information and legal resources. Past studies have emphasized the importance of judicial responsiveness to societal developments. Strengthening the principle of active judgeship aligns with the ideals of progressive legal thinking aimed at achieving substantive justice. Scholars such as Pranoto argue that a comprehensive and impartial examination by active judges can significantly enhance legal protection for claimants and safeguard the right to equality before the law (Pranoto, 2019). This is particularly important in the context of free proof, where judges exercise discretion in determining what must be proven and how.

Nonetheless, the expansive role of judges as *dominus litis* must be carefully bounded. While judges possess broad discretion—especially in preliminary proceedings, such as assessing the clarity of claims and facilitating settlement—such discretion must not jeopardize the fundamental principles of impartiality and procedural fairness. Excessive intervention may risk the perception of judicial bias or disrupt the balance of adversarial justice, especially if judges are perceived as favoring one side or overly guiding the legal strategy of parties. Recent legal discourse reveals concerns about the potential for judicial overreach in administrative litigation. Over-assertive involvement by judges in guiding or interpreting the parties' arguments can blur the boundary between active adjudication and partial advocacy. The disparities in legal knowledge between judges and parties may exacerbate this imbalance, leading to disproportionate influence over case outcomes and eroding public trust in judicial neutrality.

Given these challenges and the pivotal role of judges in State Administrative Courts, this study seeks to critically examine the normative and conceptual boundaries of judicial activism in administrative dispute resolution. The research focuses on identifying to what extent the active role of judges—as *dominus litis*—can be exercised within the legal framework, without compromising impartiality, and how such involvement contributes to achieving material truth and substantive justice. Furthermore, this study aims to explore the legal limits of judicial intervention across all stages of administrative litigation, from pre-trial to evidentiary determination and beyond. The ultimate goal is to ensure that judicial activism in PTUN remains proportional, legally sound, and aligned with the principles of fairness, neutrality, and justice.

LITERATURE REVIEW

The establishment of the State Administrative Court in Indonesia reflects the core tenets of the *Rechtsstaat* (rule of law) theory, which views administrative justice as essential for protecting citizens against unlawful state actions. State Administrative Court, as regulated under Law No. 51 of 2009, is authorized to resolve disputes arising from state administrative decisions. As a first-instance court, it serves to ensure that administrative acts comply with the law and uphold public accountability. Through this mechanism, the court functions not only to settle individual disputes but also to guarantee broader legal protection for the public through fair and credible judicial processes. Judges in State Administrative Court are granted a distinctive role under the principle of *dominus litis*, allowing them to take an active part in uncovering material truth and ensuring procedural fairness, particularly in situations where there is a power imbalance between citizens and the state. This active role is supported by legal doctrines such as *erga omnes* and *presumptio iustae causa*, and is grounded in theories of legal protection (Hadjon, 2011), authority (Philipus & Struycken), and substantive justice (Radbruch theory). These theoretical foundations emphasize that the judge's task is not limited to formal adjudication but extends to ensuring that public administration operates within the bounds of law and justice. The active judicial function, therefore, serves as a vital tool for achieving substantive fairness and safeguarding democratic governance.

METHOD

This research employs a normative juridical method, focusing on the analysis of legal norms, statutes, and doctrines to examine the limits of judges' active roles (*dominus litis*) in administrative court proceedings. Using statutory and conceptual approaches, the study reviews laws governing administrative justice—primarily Law No. 5 of 1986 and its amendments—alongside relevant legal theories to assess the scope of judicial authority. Data sources include primary legal materials (legislation and case law), secondary materials (legal literature and expert commentary), and tertiary sources (legal dictionaries and seminar outcomes). Data collection was supported by library research, field observations, and interviews with judges, with all findings analyzed qualitatively to evaluate how legal frameworks and judicial practices define and constrain active judicial involvement in resolving state administrative disputes.

RESULTS AND DISCUSSION

The Meaning of the Active Role of Judges

A State Administrative Dispute, as defined in Article 1 point 10 of Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 on the State Administrative Court, refers to a dispute arising in the field of state administration between a person or a private legal entity and a state administrative body or official—whether at the central or regional level—as a result of the issuance of a State Administrative Decree (KTUN) (Ni Komang Dewi Novita Indriyani Weda, 2021). Pursuant to this provision, a clear imbalance of standing between the litigating parties is evident, namely between the Plaintiff and the Defendant. The Plaintiff, in this context, is an individual or private legal entity who inherently lacks authority, whereas the Defendant is a state administrative body or official endowed with the power or authority to issue binding decisions or actions. This disparity creates a vulnerability for the Plaintiff, often resulting in harm or suffering caused by the issuance of such KTUN or administrative actions. Within this context, the active role of the judge (*dominus litis*) becomes crucial—not merely to uncover facts and ascertain material truth, but also to serve as an instrument for equalizing the procedural positions of the parties involved. Accordingly, the application of the principle of an active judicial role constitutes an essential mechanism to ensure fair and proportional legal protection for those structurally situated in a weaker position.

The principle of *dominus litis* holds a pivotal role in administrative adjudication, particularly within the jurisdiction of the Indonesian State Administrative Court. Derived from Latin, *dominus litis* refers to the figure who controls the litigation process—in this context, the judge who plays an active role in guiding and directing proceedings. In Indonesian administrative law, this principle emerges as a necessary judicial response to the structural imbalance between the parties to an administrative dispute. These disputes inherently reflect a disparity in power and access to legal resources, placing the claimant (the citizen) in a substantively weaker position compared to the respondent (the state authority) (Tjandra, 2009). This structural imbalance necessitates the intervention of the judiciary not only as a neutral arbiter but also as an instrument of substantive justice. The application of *dominus litis* is not merely a procedural ideal but a judicial imperative aimed at ensuring that the litigation process upholds the principles of fairness, equality before the law, and due process. In practice, this principle requires judges to engage in an active role during the stages of evidence gathering, legal reasoning, and decision-making. Rather than adopting a passive posture, judges must pursue material truth through critical inquiry, contextual analysis, and sensitivity to the socio-legal realities faced by litigants—particularly when administrative decisions affect public interests such as the environment, housing rights, or social welfare.

The development of the *dominus litis* principle in Indonesian administrative justice reflects the evolution of the judicial role from one rooted in legal formalism to a more responsive, dynamic, and justice-oriented function. The enactment of Law No. 30 of 2014 on Government Administration expanded the scope of KTUN and indirectly broadened the substantive role of judges. This legislative development signaled a shift in the judicial paradigm—highlighting the necessity for judges to understand public policy objectives, administrative discretion, and the broader implications of government decisions on citizens' rights. As such, administrative judges must now possess not only legal competence but also contextual awareness, ethical conviction, and interpretive courage to render decisions that align with substantive justice. Moreover, the implementation of the *dominus litis* principle is intricately linked to the objective of achieving balanced procedural justice. In examining administrative disputes, judges are required to assess not only the legality of state actions but also the proportionality and fairness of those actions. This requires a multi-dimensional analysis—one that integrates statutory interpretation, doctrinal reasoning, and moral judgment. In disputes involving delay or suspension of KTUN implementation under Article 67(2) of Law No. 5 of 1986, judges must carefully weigh public interest, individual harm, and urgency. This process demands judicial activism in the form of reasoned discretion, aimed at avoiding irreversible harm to the claimant without unnecessarily obstructing governmental functions.

Judicial power in Indonesia is constitutionally enshrined in Article 24(1) of the 1945 Constitution, which mandates the judiciary to uphold law and justice independently. This independence is not only institutional but functional—it empowers judges to act as guardians of constitutional rights and arbiters of fairness in disputes involving the state. In this context, the active role of judges is both a constitutional mandate and a practical necessity. The judge, far from being a mere "mouthpiece of the law" (*la bouche de la loi*), is expected to apply law as a living instrument capable of responding to contemporary challenges and delivering justice that resonates with societal

values. The philosophical foundation of dominus litis is grounded in the belief that judicial reasoning must be rooted not only in positive law but also in a broader legal consciousness that embraces evolving notions of justice. Indonesian jurisprudence has demonstrated this orientation in landmark decisions such as Case No. 03/G.TUN/2000/PTUN Yogyakarta and Case No. 4/G/2009/PTUN Semarang, where judges factored in environmental, social, and ethical considerations in assessing the legality of government action. These decisions exemplify how the dominus litis principle can guide judges to uncover the normative depth of legal disputes and uphold public interest without departing from procedural boundaries.

The Role of Active Judges in the State Administrative Court System

In the context of administrative judicial proceedings as regulated by the Law on State Administrative Courts, the resolution of state administrative disputes is generally divided into three procedural stages: the examination preparation, the trial hearing, and the post-trial phase. The preparatory examination stage, which is a distinctive feature of the administrative judicial procedure, is governed by Article 63 of Law No. 5 of 1986 and Supreme Court Circular Letter No. 2 of 1991. At this stage, judges are vested with an active role aimed at compensating for the informational asymmetry faced by plaintiffs, particularly regarding access to documents and data under the authority of administrative bodies. As part of this mechanism, the judge must assist the plaintiff in refining and supplementing their claim, and may also request official explanations or documents from the state administrative agency in question. This role serves as a second filter following the dismissal process, ensuring that only meritorious claims proceed to the substantive trial.

The judge's obligations during this stage include two primary functions: (1) to advise the plaintiff to amend or supplement their claim within thirty days, and (2) to request necessary documents or explanations related to the disputed administrative decision. The purpose of this judicial intervention is not to alter the substance of the claim but to ensure that formal requirements—such as party identity, legal standing, and time limits for filing—are satisfied. The judge must guide the plaintiff in formulating their claim in accordance with procedural norms, including articulating the harm caused by the challenged decision, the legal interest being violated, and the specific legal norms or general principles of good governance that are alleged to have been breached. Notwithstanding the active nature of the judge's role at this stage, such activity is circumscribed by the procedural principle of dominus litis, whereby the parties determine the object and scope of the dispute. This means that the judge is prohibited from unilaterally modifying the object of the dispute, which is the contested administrative decision, as defined in Article 1(9) of Law No. 5 of 1986 and expanded under Article 87 of Law No. 30 of 2014 on Government Administration. Any judicial overreach in this regard would violate the principle of ultra petita and compromise judicial impartiality. Thus, although the judge may actively guide the proceedings, such guidance must not infringe upon the parties' autonomy or exceed the bounds of procedural law.

Importantly, the judge's active engagement during the preparatory phase often leads to strategic decisions by the plaintiff, including the voluntary withdrawal of the claim. This may occur for two primary reasons: either due to recognition of substantive flaws in the lawsuit or because both parties realize the dispute can be resolved extrajudicially. The judge, however, lacks the authority to compel reconciliation in administrative disputes, and any resolution outside court must be initiated by the parties themselves. Once the plaintiff submits a motion to withdraw, the panel will formally acknowledge it by judgment. Overall, the judge's active role during the preparatory examination is instrumental in balancing the structural disparity between individuals and the state apparatus in administrative adjudication. This role enhances procedural efficiency and ensures that only procedurally sound cases proceed to trial. By helping clarify the legal position and supporting data, judges enable plaintiffs to construct legally tenable arguments. The preparatory examination thus serves as both a procedural safeguard and a means of promoting substantive justice, ensuring the fair evaluation of administrative decisions within the boundaries of constitutional adjudication.

The role of the administrative judge in Indonesia is characterized by an active involvement in the litigation process, particularly within the State Administrative Court system. This active judicial function, known as "actief rechterlijk optreden", is reflected throughout three procedural stages: the preliminary examination, the evidentiary hearing, and the post-trial execution of judgments. These phases, governed by Law No. 5 of 1986 and subsequent amendments, serve not only to resolve disputes involving state administrative decisions but also to ensure that material truth and procedural fairness are achieved within the adjudicative process. During the preliminary examination stage, the judge assumes a facilitative and corrective role to assist the plaintiff in formulating a viable claim. As stipulated in Article 63 of Law No. 5 of 1986 and reinforced by SEMA No. 2 of 1991, this phase functions as a filtering mechanism to test the admissibility and sufficiency of the claim. The judge is empowered to guide the

plaintiff in clarifying legal standing, identifying the appropriate object of dispute, and rectifying formal deficiencies within the claim. Moreover, the judge may request relevant official documents from the government body or official being sued. This active judicial assistance is crucial in addressing the informational asymmetry between the claimant and the administrative authority, thereby aligning with the principle of procedural equality (equality of arms). However, the judge's active role is confined by legal boundaries. Despite this procedural proactivity, the principle of dominus litis remains central in administrative litigation, meaning that the plaintiff determines the scope of the dispute, including the object of the lawsuit. The judge is thus prohibited from altering, replacing, or expanding the subject matter of the claim beyond what is explicitly stated by the plaintiff. Such judicial interference would violate the ultra petita principle, compromise judicial impartiality, and undermine the procedural legitimacy of the verdict. Therefore, while the judge may actively ensure the claim's clarity and completeness, they must refrain from substantively altering the claim's content.

In the evidentiary phase, the judge's active role intensifies, particularly concerning the burden and method of proof (Basah, 1989). Article 107 of Law No. 5 of 1986 grants the judge the authority to determine what must be proven, allocate the burden of proof, and evaluate the sufficiency of evidence, provided that at least two types of evidence are submitted and align with the judge's conviction (Wiyono, 2000). This reflects the adoption of a "limited free proof system," which balances judicial discretion with statutory evidentiary thresholds. The judge may reallocate the burden of proof to the defendant, especially where the legality of the KTUN is in question and the state possesses exclusive access to the relevant administrative data. Such discretion embodies the principle of materiële waarheid—the pursuit of material truth—as the guiding aim of administrative adjudication. The application of the dominus litis principle in evidentiary matters also enables the judge to evaluate the relevance of evidence, interrogate witnesses, and compel the production of documents necessary to substantiate or refute the claim. In doing so, the judge ensures that the evidentiary process is not hampered by structural inequalities or information barriers. Importantly, however, the judge must adhere to legal limits and not intervene in a manner that prejudices the right to be heard or undermines adversarial balance. Through this careful balance, the judge acts as a neutral yet proactive truth-seeker—an arbiter committed to both legal certainty and substantive justice.

The post-trial phase also demands active judicial oversight, particularly in monitoring the enforcement of judgments that have acquired legal finality (inkracht van gewijsde). Articles 116 and 119 of the Administrative Court Law assign the presiding judge the responsibility to oversee compliance with judicial decisions by state administrative officials. This necessity arises from the recurrent failure of government bodies to comply with court orders, thereby threatening the efficacy of judicial review and rendering the court system susceptible to perceptions of impotence. To mitigate this, the judge may issue formal warnings (aanmaning), authorize public disclosures of non-compliance, and even notify the President or Parliament to ensure administrative accountability. Despite normative provisions and regulatory mechanisms, such as Government Regulation No. 48 of 2016 and Judicial Circular No. 01/KM.TUN/HK2.7/JUKLAK/VII/2024—Implementation gaps persist (Bimasakti, 2024). These highlight the tension between legal norms and institutional practice. In this context, the active role of the judge is not limited to procedural conduct within the courtroom but extends to enforcing the legitimacy of the judiciary's authority. Judicial engagement in the enforcement phase ensures that court decisions are not merely declaratory but are instruments of effective legal redress. Ultimately, the doctrine of the active judge in administrative litigation represents a procedural innovation tailored to the unique nature of public law disputes. It reflects an understanding that judicial passivity may lead to substantive injustice, particularly where one party controls access to relevant information and legal instruments. Therefore, the actief rechterlijk optreden doctrine serves not only to facilitate procedural fairness, but also to operationalize the judiciary's constitutional duty to uphold the rule of law and safeguard the rights of individuals against unlawful administrative actions.

CONCLUSION

In conclusion, the dominus litis principle, when applied appropriately and within procedural bounds, stands as a vital foundation of administrative justice in Indonesia, embodying the judiciary's ethical and constitutional commitment to uphold the rule of law and protect citizens against arbitrary state actions. In the Indonesian State Administrative Court system, this principle transcends mere procedural formality by empowering judges to take an active role (actief rechterlijk optreden) throughout the entire judicial process, ranging from the preliminary examination, evidentiary hearings, to post-trial enforcement. Judges are entrusted not only to guide and advise plaintiffs but also to allocate the burden of proof, assess the legality of disputed KTUNs, and ensure that proceedings are conducted fairly and effectively. This proactive judicial involvement helps to bridge the gap between legal formalism and substantive justice. Furthermore, the judge's responsibility extends beyond adjudication to

supervising the execution of final decisions, a critical safeguard in a legal culture where state compliance may be lacking. Ultimately, while the plaintiff retains the formal control over the subject matter of the dispute, it is the active function of the judge that secures procedural balance, transforms rulings into enforceable realities, and ensures that justice is upheld.

REFERENCES

- Basah, Syahran. (1989). *Hukum Acara Pengadilan Dalam Lingkungan Peradilan Administrasi*. Jakarta: Rajawali Press.
- Bimasakti, Muhammad Adiguna. (2024, February 5). *Isu-Isu Hukum Acara untuk Perubahan Undang-Undang tentang Peradilan Tata Usaha Negara*. Retrieved from PTUN Mataram: <https://www.ptun-mataram.go.id/berita/artikel/554-isu-isu-hukum-acara-untuk-perubahan-undang-undang-tentang-peradilan-tata-usaha-negara.html>
- Hadjon, Philipus M. (2011). *Pengantar Hukum Administrasi Indonesia*. Yogyakarta: Gajah Mada University Press.
- Marbun, S. F. (1997). *Peradilan Administrasi Negara dan Upaya Administratif di Indonesia*. Yogyakarta: Liberty.
- Negara, P. S. (2013). *Jurnal Hukum IUS QUIA IUSTUM*, 20(3), 423–439.
- Ni Komang Dewi Novita Indriyani Weda, d. (2021, February). Penerapan Asas Hakim Aktif (Dominus Litis) dalam Persidangan di Pengadilan Tata Usaha (Studi Kasus Putusan No. 1/G/2017/PTUN.DPS). *Jurnal Preferensi Hukum*, 2(1), 28.
- Pranoto, E. (2019). Asas Keaktifan Hakim (Litis Domini) dalam Pemeriksaan Sengketa Tata Usaha Negara. *Jurnal Spektrum Hukum*, 16(2), 90-101.
- Soeharto, dkk. (2021). The Establishing Paradigm of Dominus Litis Principle in Indonesian Administrative Justice. *Sriwijaya Law Review*, 5(1), 43.
- Tjandra, W. Riawan. (2009). *Peradilan Tata Usaha Negara. Mendorong Terwujudnya Pemerintahan yang Bersih dan Berwibawa*. Yogyakarta: Universitas Atma Jaya.
- Wiyono, R. (2000). *Hukum Acara Peradilan Tata Usaha Negara*. Jakarta: Sinar Grafika.