

**COURSE MATERIIL  
(BAHAN AJAR)**



**ADMINISTRATIVE LAW**

Prepared by:  
Nasrullah, S.H.,S.Ag.,MCL.

PROGRAM STUDI ILMU HUKUM  
FAKULTAS HUKUM  
UNIVERSITAS MUHAMMADIYAH YOGYAKARTA  
2019

**LEMBAR PENGESAHAN  
BAHAN AJAR NON ISBN**

1.	Judul	:	<b>ADMINISTRATIVE LAW (HUKUM ADMINISTRASI NEGARA)</b>
2.	Penyusun	:	NASRULLAH, S.H.,S.AG.,MCL.
3.	NIK	:	19700617200004 153 045
4.	Unit Kerja	:	PRODI ILMU HUKUM, FAKULTAS HUKUM UMY

Yogyakarta, 1 Februari 2019

Ketua Program Studi Ilmu Hukum



DR. LELI JOKO SURYONO, S.H., M.Hum.  
NIK: 19681023199303153015.

**CHAPTERS**

**ADMINISTRATIVE  
LAW**

**Lecturer: Nasrullah, SH., S.Ag., MCL.  
[udanasrul2010@gmail.com](mailto:udanasrul2010@gmail.com) ; 0821-3550-5656**

## LEARNINGS MATRIX & CHAPTERS

Meeting	Topics	Sub-Topics	Note
1	a. Learning contract b. Explanation of Course outlines		
2 & 3	<b>INTRODUCTION TO ADMINISTRATIVE LAW (HAN)</b>	§ The concept of Legal State & Administrative Law § The Importance of HAN § Naming and Understanding of Administrative Law § The Scope of HAN § Position of HAN within the Law Sciences § Relationships between HAN & HTN § Nature of Administrative Law § Codification of Administrative Law	

4 & 5	<b>THE SOURCES OF ADMINISTRATIVE LAW</b>	§ <b>Meaning of Sources of Law</b> § <b>Classification of Sources of Law</b> § <b>Material Sources or Administrative Law</b> § <b>Formal Sources of Administrative Law</b>	<b>Summary (10%)</b>
6	<b>Competence Based Test – 1</b>	<ul style="list-style-type: none"> <li>• Introduction to Administrative Law</li> <li>• The Sources of Administrative Law</li> </ul>	25%
7 & 8	<b>GOVERNMENT ORGANIZATION</b>	<ul style="list-style-type: none"> <li>• Government in Narrow and Broad Meaning</li> <li>• State power in 1945</li> <li>• Central Gov., Regional Gov., Village Gov.</li> <li>• Status of Government in Public Law</li> <li>• Various Government Position</li> <li>• Status of Government in Private Law</li> </ul>	Summary (10%)

9 & 10	<b>GOVERNMENT AUTHORITY &amp; GOVERNMENT LEGAL ACTION</b>	<ul style="list-style-type: none"> <li>• <b>Principle of Legality</b></li> <li>• <b>Government Authority</b></li> <li>• <b>Sources of Government Authority</b></li> <li>• <b>How does the Government Get the Authority</b></li> </ul>	<b>Summary (10%)</b>
11	GOVERNMENT TASKS	<p>A. Regulatory Task B. Servicing Task</p>	
12	<b>Competence Based Exam 2</b>	<p>A. Government Organization B. Government Authority C. Government Tasks</p>	25%

13 & 14	<b>GOVERNANCE LEGAL INSTRUMENTS</b>	<ul style="list-style-type: none"> <li>• <b>Legislation</b></li> <li>• <b>Administrative Determination</b></li> <li>• <b>Discretionary Rules</b></li> <li>• <b>Plans</b></li> <li>• <b>Licensing</b></li> <li>• <b>Civil Law Instruments</b></li> </ul>	<b>Summary (10%)</b>
15	SANCTIONS IN ADMINISTRATIVE LAW	<ol style="list-style-type: none"> <li>1. Type of sanctions</li> <li>2. The nature of the sanctions</li> </ol>	Group Assignment (Ppt) & Presentation è 4/8 groups (30%)
16	GENERAL PRINCIPLES OF GOOD GOVERNANCE	<ul style="list-style-type: none"> <li>• History of GPGG</li> <li>• Functions and Importance of GPGG</li> <li>• Types of GPGG</li> <li>• GPGG in Indonesia</li> </ul>	Group Assignment (Ppt) & Presentation è 4/8 groups (30%)

17	Competence Based Exam 3	A. Governance Instruments B. General Principles of Good Governance	25%
16	GOVERNMENT DISGRACEFUL DEEDS	1. <i>onrechtmatige</i> 2. <i>onwetmatige</i> 3. <i>ondoelmatige</i> 4. <i>onjuist</i> 5. <i>detournement de pouvoir</i> 6. Breaking the oath & promise	
19	SUPERVISION ON THE GOVERNMENT PERSONNEL ACTIONS	<ul style="list-style-type: none"> <li>• Significance of Control on Government</li> <li>• Types &amp; Forms of Supervision</li> </ul>	Group Assignment (Ppt) & Presentation è 3/9 groups (30%)



20	<b>PUBLIC SERVICES</b>	<ul style="list-style-type: none"> <li>• Terminology</li> <li>• Legal Basis of Public Services</li> <li>• Purpose, Objectives, Principles and Scope of Public Service</li> <li>• Public Service Operator</li> <li>• Public Service Standards</li> </ul>	<b>Group Assignment (Ppt) &amp; Presentation</b> è 3/9 groups <b>(30%)</b>
21	LEGAL PROTECTION AGAINST GOVERNMENT ACTION	<ul style="list-style-type: none"> <li>• Legal protection in civil field</li> <li>• Legal protection in public field</li> </ul>	Group Assignment (Ppt) & Presentation è 3/9 groups <b>(30%)</b>
22	<b>Competence Based Exam 4</b>	Making a directed academic paper	25%

CHAPTER ONE  
INTRODUCTION TO ADMINISTRATIVE LAW:  
***RECHTSTAATS &***  
**ADMINISTRATIVE LAW**

Nasrullah, S.H., S.Ag., MCL.

## **LEGAL STATE (*NEGARA HUKUM*)**

- a. Meaning: The legal state requires all government's acts/deeds must be based on the prevailing laws and regulations.
  
- a. The concept of the legal state began in the late 18th and the beginning of the 19th century, in Continental Europe developed by Immanuel Kant and Frederich Julius Stahl known as *RECHTSSTAATS*, while in the Anglo -Saxon countries developed AV Dicey known as *RULE OF LAW* of State.

## **Elements of *Rechtsstaats* (Europe) & *Rule of Law* (Anglo Saxon)**

### *Rechtsstaat:*

1. Protection of human rights.
2. Separation /distribution of state power to guarantee human rights.
3. Government by law.
4. The existence of Administrative Court.

### *Rule of Law:*

1. supremacy of the rule of law
2. Equality before the law
3. The guarantee of human rights .

## Teachings of Legal State

*Welfare State (modern):*

- n *Staatsbemoediging* , requires the state or the government is actively involved in economic and social life for the public welfare, besides maintaining order and security

n *Freies ermessen*

*Legal State (classic) :*

- n *Staatsonthouding*, which limits the role of state and government in economic and social life of the community.
- n Government becomes passive so -called night watchman state

## **INDONESIA as a LEGAL STATE**

1. Annotations to The 1945 Constitution on Government System:
  - ✓ Indonesia shall be a state based on law (*rechtsstaat*, a legal state), it is not founded on power alone (*machtsstaat*).
  - ✓ The government is based on the constitution (basic law), not on absolutism (unlimited power)
2. Article 1 paragraph (3) of the 3<sup>rd</sup> Amendment of the 1945 Constitution: The State of Indonesia shall be a state based on the rule of law.

## **PRINCIPLE OF LEGAL STATE**

State based on law should be based on good and fair law. Good law is a law that is based on the democratic will of the people , while the fair law is the law that is suitable and meets the intent and purpose of any law , namely justice.

## The Terms Used

1. Hukum Tata Pemerintahan (*Governance Administrative Law*)
2. Hukum Tata Usaha Pemerintahan (*Governance Administration Law*)
3. Hukum Tata Usaha (*Administration Law*)
4. Hukum Tata Usaha Negara Indonesia (*Indonesian State Administrative Law*)
5. Hukum Administrasi Negara (*State Administrative Law*) = HAN
6. Hukum Administrasi Indonesia (*Indonesian Administrative Law*)

**Other terms:** *administrative law, administratief recht/bestuursrecht, droit administratif*



The term used for Indonesian Administrative Law vary due to variety translations of the origin term:

1. *Administratief Recht* (Dutch) è "*administratief*" adopted as administrative, governance, and administration è 1. HAN; 2. Hk. Tata Pemerintahan; 3. Hk Tata Usaha Negara.
2. *Bestuursrecht*, *Bestuurkunde*, and *Bestuurwetenschappen*. *Bestuur* = *pemerintahan* (governance)

- n Administration in a narrow sense (= tata usaha) is = an activity of writing (*tulis menulis*), or taking note (*catat-mencatat*), or correspondence (*surat-menyurat*), or typing (*ketik-mengetik*), or filing (*penyimpanan*) or administration of any technical administrative thing.
- n Administration in a wide sense derived from the word "*to administer*" = "*to serve*" = *melayani* è (a) State Administration as state apparatus /government = all state administration organs; (b) as a function/ activity = administration of state affairs; (c) as a technical process of law enforcement.

n Government in a narrow meaning = organ/state apparatus deals with governance function or law enforcement = **executive body** (*bestuur*).

n Government in a wide meaning = all organs deal with state power (executive, legislative, judiciary = *Trias Politika*).

In a wider meaning a government has functions of law making, law enforcement (*bestuur*), police, justice (Van Vollenhoven)

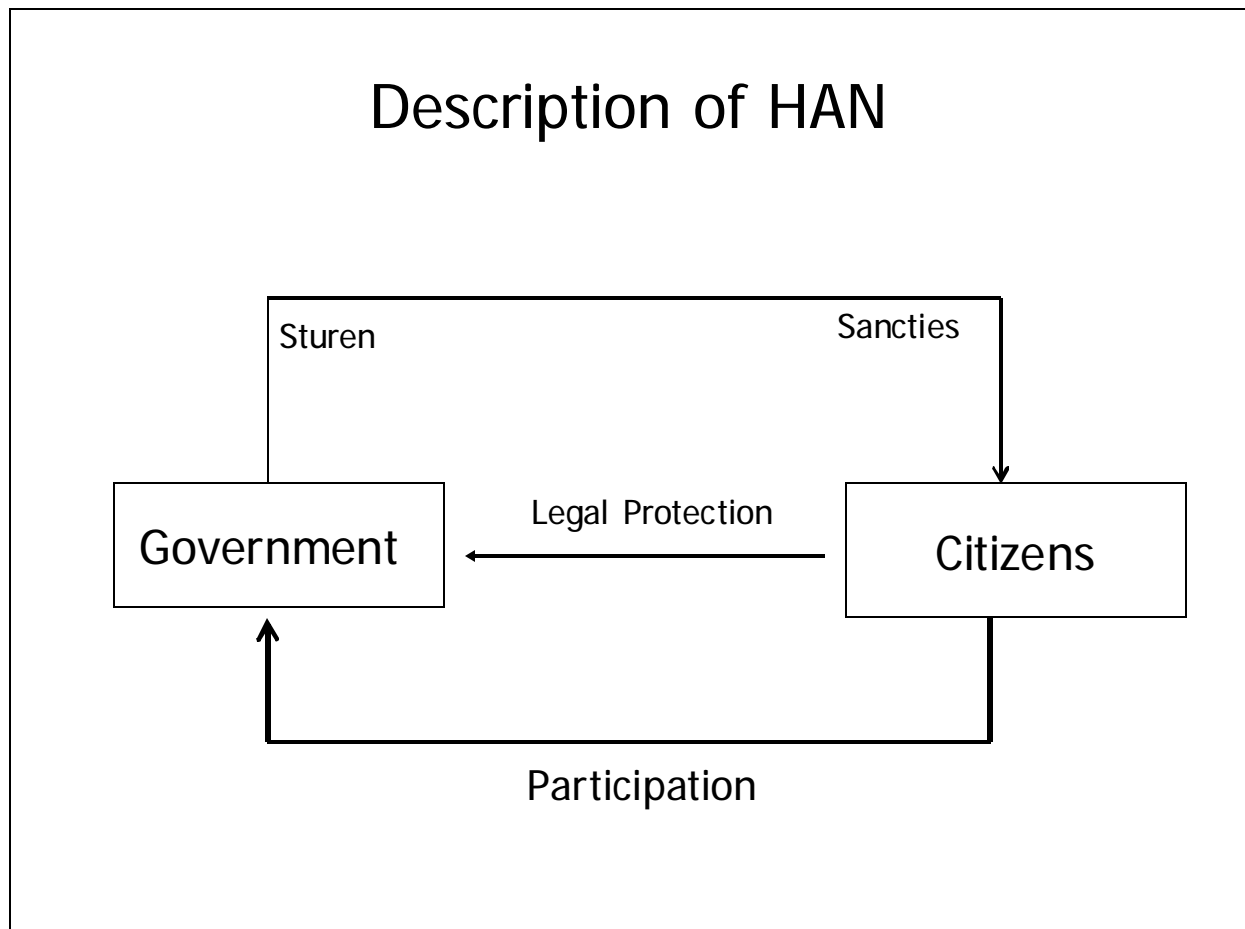
Rochmat Soemitro states HTP similar to HAN

J.R. Stellinga says:

1. HAN wider than HTP (= Van Vollenhoven)
2. HAN similar to HTP (Van der Grinten)
3. HAN narrower than HTP (HJ Roeijn & G.A. Van Poelje).

## Essence and Scope

- n The essence of HAN: regulate the legal relationship between the government and its citizens and provide legal protection to the people or citizens from arbitrary action of government officials.
- n Coverage of HAN ( Prajudi Atmosudirdjo ): is set of powers, duties, functions, and behavior of the officials of the State Administration .



## Administrative Law (HAN) Definition

*Baron de Gerando:*

"All regulations on the relation between the government and the governed"

*(Semua peraturan hukum yang mengatur hubungan antara pemerintah dan yang diperintah)*

*Belifante:*

All regulations concerning administration  
*(Peraturan-peraturan yang menyangkut administrasi)*

*E Utrecht:*

Norms deal with the relationship among government organs and between state organs with a person or a society.

*(Kaidah-kaidah yang mengatur hubungan antara sesama alat-alat pemerintahan dan antara alat kelengkapan negara dengan individu dan masyarakat)*

Rochmat Soemitro says HAN/HTP contains all about governance, i.e. government's activities excluding law making and judicature.

(sgl sesuatu mengenai pemerintahan, yakni seluruh aktivitas pemerintah yg tidak termasuk pengundangan dan peradilan)



- n Prof. Mr.J. Oppenheim: Administrative law is the overall legal rules that the state have to run its power. So in principle, HAN is governing the country in a state of motion (*staat in beweging*).
- n Dr.Mr.HJ Romijn : Administrative law is the overall of state legal rules governing the country in a state of motion .

- n G.Pringgodigdo, argues in Indonesia, since the executive power and administrative power run by a Presiden, hence HAN contains:
1. HTP, which includes all executive power (law enforcement).
  2. HAN in a narrow meaning which deals with state household administration/ all duties decided by law and regulation as state administration.
  3. Hk TUN, i.e. about correspondence, confidential matters (*kerahasiaan dinas*) & position (*jabatan*), documentation (*kearsipan*), statistic, proceedings (*berita acara*), catatan sipil, marriage & divorce, state publications.

## **The Development of HAN**

- n Administrative law has been developing since long time ago, parallel with the development of the tasks of government. Eg: Environmental law, tax law, labor law.
- n The development of the task of government makes the specific HAN becomes more complicated.
- n These conditions give rise to the need to study the common elements of the specific HAN è General Administrative Law
- n General administrative law is a set of common elements that are related to aspects of public law of government action

## **Nature of Administrative Law**

(General & Specific Administrative Law)

- n **General Administrative Law** (*Algemene deel*) deals with theories and principles which are relevant to all fields of administrative law.
- n **Specific Administrative Law** (*Bijzonder deel*) laws related to specific field of governance such as: environmental law, land law, taxation, state finance law, natural resources law, mining law, marine law, spatial law, civil service law, labour law, etc.

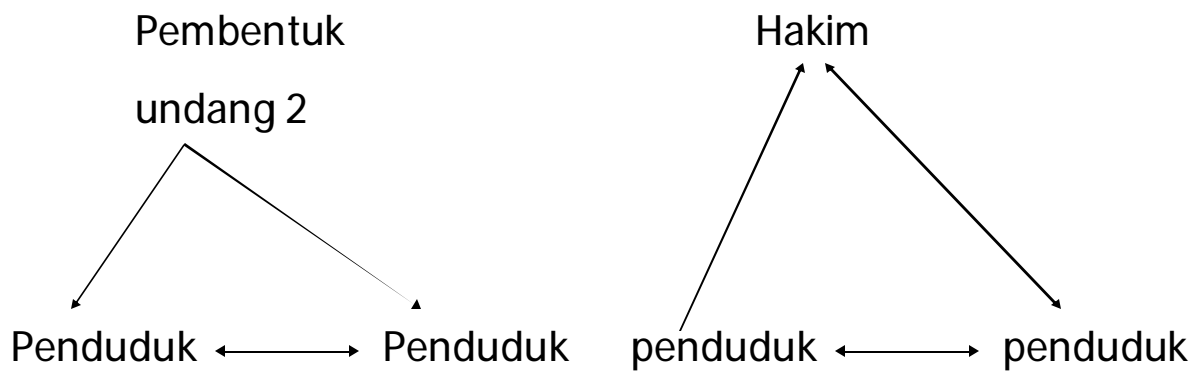
## Position of Administrative Law in the legal field

n The material Administrative law is located between private law and criminal law. Eg: wage issues, foreign workers

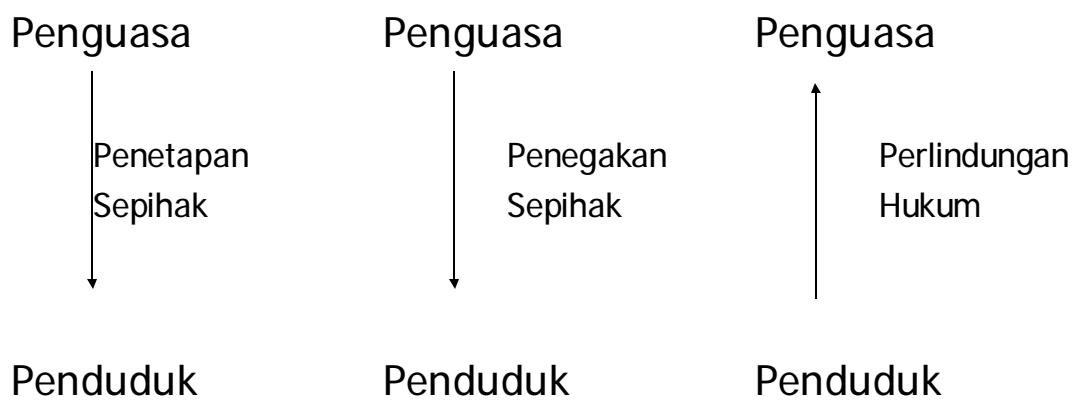
1. HTN		
2. Hk Perdata Formil	4. Hk Administrasi Formil	6. Hk Pidana Formil
3. Hk. Perdata Materil	5. Hk Administrasi Materil	7. Hk Pidana Materil

## Skema Pembentukan dan Penegakan Hukum Materil

### 1. Hukum Privat



## 2. Hk. Administrasi



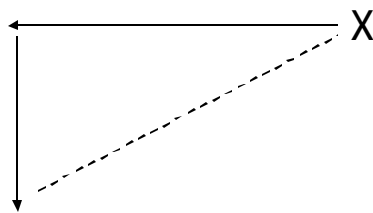
### 3. Hukum Pidana

Pembentuk UU



Penduduk

Hakim Pidana



Penduduk



## DEFINITIONS OF CONSTITUTIONAL LAW

- n **Prof. Mr.J. Oppenheim:** Constitutional Law is the overall legal rules that hold state organs and regulate power supplies.
- n **Fritz Flener:** Constitutional Law governs the country in a passive state, while HAN set it in an active state.
- n **Dr.Mr.H.J.Romijn:** the Constitutional Law is the overall legal rules governing state in a static state while the Administrative Law is the legal rules governing state in a dynamic state .

- n **Van Vollenhoven:** Constitutional Law is a set of legal rules that define the state agencies and authorized bodies from the highest to the lowest rank.
  
- n **Djokosutono:** Constitutional Law is a law on the organization of positions in the "State as an organization".

## **The Objectives of HAN**

- n Imposes limits and authority to officials of the State Administration.
- n Provides protection for the people or civil legal entity from arbitrary actions of the State Administration officials.

## **The Role of HAN in a Legal State**

1. HAN imposes limits and authority to officials of the State Administration.
2. HAN Provides protection for the people or civil legal entity from arbitrary actions of the State Administration officials.
3. HAN Serves two sides: a. HAN maintain the authority, duties and functions of the State Administration; b. HAN limits the power of the State Administration.
4. HAN results the attitude of the State Administration suits *recht-matige* and *wetmatige* ;

## **The Relationship Between Constitutional Law & Administrative Law (HTN & HAN)**

- n HTN & HAN were one in origin = *“Staats en Administratief Recht”*
- n Prins: No principal different between HTN & HAN. HTN deals with fundamental matters/state constitutional matters & on citizen direct interest; HAN more focus on technical matters only.

n Oppenheim, there is main distinction between HTN & HAN:

HTN is a set of laws/regulations for construction of state organs, their authorities, distribution of modern state duties at a high and low level è state in static condition

*(sekumpulan hk yg membentuk alat2 kelengkapan negara, wewenang2nya, membagikan tugas pekerjaan pemerintah modern di tingkat tinggi & rendah è negara dlm keadaan "diam (berhenti)".*

HAN is a set of regulations to tie the high and the low level of state organs in applying their decided authorities è state in dynamic condition

*(sekumpulan peraturan hk yg mengikat alat2 kelengkapan yg tinggi dan rendah dlm menjalankan wewenang yg telah ditetapkan = negara dlm keadaan "bergerak").*

n Van Vollenhoven introduces “residual theory” è HAN is a remaining part of reduced national laws & regulations by material/substantive constitutional law, substantive civil law, and substantive criminal law.

*(HAN adalah sisa dr semua peraturan hkm nasional sesudah dikurangi HTN materiil, Hk Perdata materiil, dan Hk Pidana materiil).*



## Codification of HAN

**HAN is not codified yet, because:**

1. HAN's regulations are transformable faster and even accidentally compared to private and criminal law which are transformable slowly dan gradually.

*(Peraturan HAN berubah lebih cepat & sering mendadak, berbeda dg Hk privat & pidana yg terjadi sec pelan dan berangsur-angsur);*

2. Law makers in HAN are numerous.

*(Pembuatan perat HAN tidak terletak pd 1 tangan, di luar pembuat uu pusat, hampir semua departemen dan Pemda membuat jg perat HAN)*