

TRIBUNAL ADMINISTRATION

Definition

Administrative tribunals are bodies established under a statute (Act of Parliament), outside the ordinary court system, to hear and settle disputes between government agencies and individuals or citizens, employers and employees, landlords and tenants, buyers and sellers or between other individuals. - Peter Johnson

Other definitions are:

"Administrative tribunals are bodies established to decide various quasi-judicial (separa kehakiman) issues in place of ordinary courts . ~ Takwani Thakker

"An Administrative tribunal may be referred to as a person or body of persons or an administrative agency not forming part of the judiciary with limited statutory powers to determine disputes and pass binding decisions between individuals or individuals and officials in a government department." ~ Jaba Shadrack

"Administrative Tribunals are adjudicative bodies constituted, manned and operated by the Executive." ~ L. B. Curzon

Administrative tribunals are often referred to as "Commission," "Authority," "Quasi-judicial Body," "Statutory Tribunal," or "Board."

Characteristics of Administrative Tribunals

- a. They are authorities outside the ordinary court system.
- b. They interpret and apply the laws when acts or decisions of public administration are challenged or questioned in formal suits or complaints.
- c. They are agencies created by specific Acts of Parliament to adjudicate (menghakimi) upon disputes that may arise in the course of implementation of the provisions (peruntukan).
- d. They are independent bodies and are only required to follow the procedure prescribed by the relevant law and observe (mematuhi) the principles of 'Natural Justice.'
- e. They hear evidence, make findings of fact and apply established policy.
- f. Their decisions are reviewable by a superior court in limited circumstances.
- g. They are not bound by the elaborate rules of evidence or procedures governing the ordinary courts.
- h. They are not a court nor are they an executive body. Rather they are a mixture of both. They are judicial in the sense that they have to decide facts and apply them impartially, without considering executive policy. They are administrative because the reasons for preferring them to the ordinary courts of law are administrative reasons.
- i. They are free from administrative (government) interference in the discharge of their functions.
- j. The composition, functions and powers of administrative tribunals are stated in the statute establishing them.

k. They deal with disputes relating to immigration, social security, taxation, land, rent, unfair dismissal, employment, etc.

Reasons for the Growth of Administrative Tribunals

Some of the most important reasons for the rapid development of administrative tribunals in the modern state may be stated as follows:

- (i) Vast expansion of governmental functions following the industrial revolution and the emergence of the welfare state concept (where the state plays a key role in the protection and promotion of the economic and social interests and well-being of its citizens) contributed to the growth of administrative tribunals in a country.
- (ii) With the development of collective control over the conditions of employment, manner of living and the basic necessities of the people, there has arisen a need for a technique of adjudication better suited to the social requirements of the time than the elaborate and costly system of decision-making provided by the ordinary courts of law.
- (iii) In view of the rapid growth and expansion of industry, trade and commerce, ordinary law courts are not in a position to cope with the heavy workload. As a result, inordinate delay in deciding cases either way, takes place. Therefore, a number of administrative tribunals have been established in several countries, which can do the work more quickly, more cheaply and more efficiently than the ordinary courts.
- (iv) The law courts, on account of their elaborate procedures, rules of evidence, legalistic forms and attitudes can hardly do justice to the parties concerned, in technical cases. Judges, brought up in the tradition of law and jurisprudence, are not capable enough to understand technical problems, which crop up in the wake of modern complex economic and social processes. Only administrators having expert knowledge can tackle such problems judiciously. To meet this requirement, a number of administrative tribunals have come into existence.

Differences between Administrative Tribunals and the Ordinary Courts

Administrative tribunals differ from the ordinary courts in many respects as follows:

- a. Administrative tribunals are part of the administrative machinery whereas the ordinary courts are part and parcel of judiciary and are quite independent of the Executive.
- b. Unlike the regular courts, the administrative tribunals are not bound to observe the usual rules of evidence and judicial precedents (duluhan kehakiman) in adjudicating disputes. They use much more simplified and informal procedures than the ordinary courts do.
- c. The ordinary courts have unlimited powers to adjudicate, but tribunals have limited adjudicative powers.
- d. An administrative tribunal may initiate most of its own cases, but the ordinary courts must wait for cases to come to them.
- e. Ordinary courts handle disputes objectively, while tribunals deal with disputes subjectively and they have wide discretion (budi bicara).
- f. Ordinary courts can decide the constitutionality/ legality/ fairness of a legislation/ law, but tribunals cannot do so.
- g. Ordinary courts are presided over by officers trained in law (judges) whereas most of the tribunals are chaired and composed of administrative officials and technical experts.

Advantages of Administrative Tribunals

The advantages of administrative tribunals may be stated as follows:

- (i) Administrative tribunals settle disputes/cases more quickly, more cheaply and more efficiently than ordinary courts.**
- (ii) They possess greater technical knowledge/ expertise (in fields such as law, medicine, taxation, business, industry, health, engineering, land, etc) than the courts of law and hence they can effectively deal with technical and socio-economic problems arising out of administrative action.**
- (iii) They could decide cases according to the requirements of different circumstances. In other words, they possess flexibility. Unlike the regular courts, the tribunals are not bound by precedents (dulu an kehakiman) in deciding cases; they can even go against the existing precedents if the circumstances warrant so.**
- (iv) Administrative tribunals ensure inexpensive (cheap) and speedy justice. The procedure in the law courts is long and cumbersome and litigation is costly. It involves payment of huge court fees, engagement of lawyers, but most administrative tribunals do not require huge fees. Their procedures are simple and informal and can be easily understood by a layman (orang biasa). Moreover, the aggrieved party (pihak yang bertikai) need not employ a lawyer to fight a case; a complainant (pengadu) can represent himself at the tribunal.**
- (v) They help to relieve the heavy workload of the ordinary courts of law which are already overburdened with legal suits and a backlog of cases (lantukan kes).**
- (vi) Tribunals help in the efficient conduct of public administration and promote a policy of social development.**
- (vii) Tribunals are usually local by nature, and can therefore acquaint themselves with local conditions and carry out inspections of property and sites (particularly in the case of lands tribunal, rent tribunal, consumer and housing tribunals) where this would assist them in their decisions.**

Disadvantages of Administrative Tribunals

- (a) They violate (mencabuli) the principles of the rule of law and natural justice. Administrative tribunals, with their separate laws and procedures often made by themselves, put a serious limitation on the concept of equality before law for everybody and the supremacy of ordinary law.**
- (b) They also violate the theory of the separation of powers because they sometimes exercise administrative as well as quasi-judicial or judicial functions.**
- (c) They cannot act in a judicial spirit as they are staffed by administrators and not by trained judges.**
- (d) In the case of some tribunals, appeals to the courts against their decisions are not provided. This is regarded as quite unfair.**
- (e) They do not follow uniform procedures and precedents. This would lead to arbitrary (sembarangan) and inconsistent decisions by the tribunals.**
- (f) Some tribunals are not obliged to give reasons for their decisions. This could cause some problems for the aggrieved party (pihak yang terkilan).**
- (g) No legal aid is available for persons appearing before tribunals, and they may therefore not be properly represented at the hearing.**

- (h) Some tribunals meet in private. Holding a tribunal in private and the lack of openness and transparency (ketelusan) can lead to suspicion about the fairness of the decisions.**
- (i) They are not always independent of the Government. There is a possibility of political interference by the government, preventing the tribunal from giving an impartial decision.**
- (j) The investigation of facts of a case are of poor quality as strict rules of evidence are not observed by the tribunals.**
- (j) Administrative tribunals are manned by administrators and technical personnel who may not have the background of law or training in judicial work. Some of them may not possess the independent outlook of a judge.**

ADMINISTRATIVE TRIBUNALS IN MALAYSIA

Here is a brief description on four selected tribunals in our country:

The Tribunal for Consumer Claims

The Tribunal for Consumer Claims is an independent body established under Section 85, Part XII of the Consumer Protection Act 1999. The Tribunal operates under the Ministry of Domestic Trade, Co-operatives and Consumerism. Its primary function is to hear and determine claims filed by consumers under the said Act. The Tribunal provides an alternative forum for consumers to file claims in an easy, simple, inexpensive and speedy manner. Moreover, it provides an avenue for dissatisfied customers to seek some form of compensation (ganti rugi) from suppliers, importers, retailers and manufacturers.

The jurisdiction (bidang kuasa) of the Tribunal is limited to a claim that is based on a cause of action which accrues within three years of the claim. It has the powers to hear and determine a claim that does not exceed RM 10,000. A claim may be lodged for any loss suffered on any matter concerning a consumer's interests arising from: a false or misleading conduct, false representation or unfair practice; safety of goods and services; right against a supplier in connection with guarantee; right against a supplier in connection with any guarantee in relation to services; and right against a manufacturer in connection with any express guarantee given by the manufacturer.

The Tribunal for Homebuyer Claims

This Tribunal was set up by the Ministry of Housing and Local Government under Section 16B of the Housing Development (Control and Licensing) Act 1966 (Act 118). It was established on December 1, 2002 to hear and determine a claim for any loss incurred or any matter concerning a person's interests as a homebuyer (such as late delivery, shoddy workmanship like leakage, cracks, unsafe wiring and crumbled cement). Complainants must be purchasers or subsequent purchasers of housing accommodation built by developers and the complaints must refer to the terms of sale and purchase agreements entered into between the developers and purchasers. The homebuyer is required to bring his claim before the Tribunal not later than 12 months from (a) the date of issuance of the Certificate of Completion or Compliance (CCC) for the housing accommodation or the common facilities, whichever is later; (b) the expiry date of the defects liability period; or (c) the date of termination of the sale and purchase agreement by either party before the date of issuance of the CCC. Filing fees are kept to a nominal sum of RM 10 for each case or claim.

The Tribunal provides an informal and appropriate avenue for a dispute between the homebuyer and the housing developer to be heard and determined. There are no rigid rules on procedure and the Tribunal may adopt such procedure as it thinks it and proper. The Tribunal can hear cases involving a claim of RM 50,000. The Tribunal will not accept cases currently being contested in court. However, disputes decided by the Tribunal can be referred to the courts by the parties involved. Claims for loss suffered can only be made in

respect of completed projects. If the projects are abandoned, homebuyers cannot file claims with the Tribunal.

Special Commissioners of Income Tax

This is the most important tribunal in Malaysia. It was set up under Part VI, Chapter 2, Section 98 of the Income Tax Act 1967 (Act 53). According to Section 98 (1) of the said Act, "there shall be three or more Special Commissioners" appointed by the Yang di-Pertuan Agong. Some of them have to be persons with judicial or other legal experience and one of them may be appointed as the Chairman of the Special Commissioners. A taxpayer aggrieved (terkilan) by an assessment of the Inland Revenue Board may file an appeal, within 30 days of the notice of assessment, to the Special Commissioners of Income Tax. Every appeal is heard in camera (i.e. behind close doors- secara tertutup) by the three Special Commissioners one of whom shall be the Chairman. They give decision on the appeals in the form of a Deciding Order. On the determination of an appeal by the Special Commissioners, the taxpayer or the Director-General of the Inland Revenue Board (Income Tax) may appeal to the High Court on a question of law. The Special Commissioners shall then prepare a Case Stated to be forwarded to the High Court for its opinion.

The Industrial Court

It was established under the Industrial Relations Act 1967. The main objective of the Industrial Court is to act as the decision-maker in case of all industrial/trade disputes. "Trade disputes" mean any disagreement between the employer and workman or employee which is connected with the employment or non-employment or the terms of employment or the conditions of work of such workman or employee leading to industrial action (i.e. General strike, Occupation of factories, Slowdown (or Go-slow). The Court hears and hands down decisions or awards in trade disputes referred to it by the Minister of Human Resources or directly by the disputing parties. The Court also acknowledges the collective agreements which have been jointly deposited by the employers/trade union of employers and trade union employees.

The types of cases that are commonly referred to the Court are the following: dismissal; victimisation; non-compliance of Award/Collective Agreement; interpretation of Award/Collective Agreement; points of law; variation of Award/Collective Agreement or any other trade dispute. A decision, order or award of the Industrial Court is conclusive (muktamad) and final and cannot be challenged, appealed against, reviewed, quashed (dibatalkan) or called in question in any court. However, by way of certiorari on grounds of error of law or excess of jurisdiction, the decision or award made by the Industrial Court can be challenged in the High Court.

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