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A Comparative Approach To Administrative Law Sanctions Based On Juridical Characteristics

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Abstract

Current enforcement of state administrative law needs to prioritize the application of administrative sanctions first. Administrative sanctions are a doctrinal concept that does not have a normative definition. The inclusion of sanctions in administrative law legislation aims to prevent the emergence of a sense of impunity for certain violations of public administration law. This research uses a doctrinal methodology with a conceptual and legislative approach. The findings show that the juridical characteristics of administrative law sanctions show the following differences: there are sanctions that are restorative/reparatory in nature (for example bestuursdwang and dwangsom), there are also those that are punitive/punitive in nature (for example administrative fines), and there are also those that are punitive in nature./punishment (e.g. administrative fines). mixed in nature (for example, revocation of a favorable decision).

Keywords: Comparative approach, administrative law, administrative sanctions, juridical characteristics.

Introduction

Sanctions are a critical component of legislative regulations. The enforcement of sanctions for administrative law violations consistently works in parallel with the exercise of governmental authority executed by administrative bodies. Consequently, administrative sanctions and their enforcement become pivotal in the implementation conducted by administrative bodies, often creating specific legal relationships with citizens and private legal entities.

Generally, including obligations or prohibitions for citizens within administrative law regulations is ineffective. Administrative bodies cannot enforce these behavioral norms where necessary (Hadjon, 1994). Conversely, the principle of legality within administrative law has established that all government actions must be grounded in authority derived from legislation.

When administrative bodies exercise public authority in alignment with legislation, they can significantly affect citizens and/or private legal entities to comply with administrative legal norms. This is a concrete expression of fulfilling the normative function *(normatieve functie/legitimerende functie),* instrumental

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function *(instrumentele functie)*, and guarantee function *(waarborg functie)* of administrative law.

The normative function suggests that administrative law offers a legal foundation for administrative bodies to act and/or make decisions. This is based on the regulations establishing the administrative bodies and their authority. The instrumental function views administrative law primarily as a tool for achieving specific objectives. Exercising this function entails using administrative legal norms as a special tool. The policy goals to be achieved are approached by formulating governmental decisions with a normative character, marked by a certain degree of enforcement and adherence to legal and equitable standards. Administrative law can never serve as a neutral means, if it is independent of its objectives. Meanwhile, the guarantee function signifies that, through their actions, administrative bodies secure the legal status of citizens when engaging with the government. This plays a crucial role in realizing the substantive and procedural facets of general administrative law. The primary guarantee for citizens is the set of general and specific rights and procedures afforded by administrative law, including specific legal rules complemented by general material and formal safeguards from statutory law and unwritten principles of good governance.Administrative law, on the one hand, provides administrative bodies with juridical tools to fulfill desired objectives and, on the other hand, offers protection for society against improper or unlawful governmental actions. Therefore, the state administrative law approach can be in the form of (1) Law for the Implementation of Government which consists of the Right to Administer by the Government *(het recht voor het besturen door de overdheid)*; and Laws for the Government in the form of Standardization/Normalization of Government Actions *(recht voor het bestuur: normering van het bestuursoptreden)* (2) Laws by the government; and (3) laws against the government. This is related to legal protection for state residents

The purpose of the inclusion (regulation) of sanctions in administrative law legislation is to prevent a sense of impunity (neglect) by deterring specific violations and certain serious behaviors (considered as disturbances), which are no longer addressed through criminal sanctions but through administrative sanctions.

The application of administrative sanctions within a legal relationship between administrative bodies (government) and the public represents a form of governmental action aimed at enforcing administrative law. Consequently, a conceptual approach to administrative sanctions cannot be separated from the analysis of governmental actions. Governmental actions encompass all activities performed by administrative organs in carrying out governmental duties, which include all state activities outside of legislative formation and judiciary functions.

Sanctions imposed by administrative bodies function as decisions that impose obligations (*belastende beschikking*) and inherently carry the nature of sanctions. Each action taken by an administrative body, including the application of sanctions, must incorporate the principle of due care (*zorgvuldigheidsbeginsel*) about the general principles of proper governance, meaning it must be determined at what points a citizen is deemed to have been negligent (Hadjon, 1994). Furthermore, citizens subject to sanctions must always be allowed to appeal before an administrative judge.

Sanctions, as a central issue within administrative law, lack a standardized reference that defines their meaning. Although various perspectives on sanctions are presented in administrative law references, these viewpoints have yet to converge on a universally accepted definition. This study addresses the issue of the concept of sanctions and administrative sanctions in administrative law legislation (noting the absence of a standardized reference) and seeks to identify the juridical characteristics of administrative law sanctions.

Methods

Research is a method of study conducted by individuals through thorough investigation of a particular issue.(Karsadi, 2018) This study was qualitative legal research. Qualitative research emphasizes the social construction of reality, the close relationship between the research object and the researcher, and the situations that shape the research (Ispriyarso & Wibawa, 2023).

This study employed a normative (doctrinal) methodology, specifically a literature-based study with a conceptual approach. The conceptual approach originates from the perspectives and doctrines prevalent in legal science (Marzuki, 2011), particularly administrative law. This approach is intended to analyze legal materials to recognize the meanings inherent in legal terminology. The legal materials included primary, secondary, and tertiary sources. Research stages involved primary literature review (statutory regulations) and secondary sources (seeking additional materials and expert analyses), and a review of legal theories related to administrative law sanctions. This process aims to uncover new meanings within the studied terms or examine these legal terms in theory and practice (Hajar, 2017). Data analysis was conducted qualitatively and descriptely, while presented through non-statistical linguistic arguments.

Results and Discussion

Concept of Sanctions and Administrative Sanctions

Sanctions are described as "rules that determine the consequences of noncompliance or are associated with norm violations" *(de sanctie wordt gedefinieerd als: "regels die voorschrijven welke gevolgen aan de niet naleving of de overtreding van de normen verbonden worden"*) - (Dupont & Verstraeten, 1990). Such sanctions serve as tools of authority that are aimed at fulfilling and ensuring compliance with norms. This effort seeks to minimize harm resulting from norm violations.

Romanian legal literature defines sanctions as "*a consequence of not observing a rule of conduct prescribed or sanctioned by the state* (Fodor, 2007). *Black's Law Dictionary* (Black, 1979) defines sanctions as "*part of a law which is designed to secure enforcement by imposing a penalty for its violation or offering a reward for its observance*". Additionally, (Garner, 1999) describes sanctions as "*a penalty or coercive measure that results from failure to comply with a law, rule, or order (a sanction for discovery abuse)."*

(International, 2007) describes sanctions as "*sancties zijn alle maatregelen, zoals juridische straffen en disciplinaire straffen, waarmee negatief wordt*

gereageerd op ongewenst gedrag". (Sanctions are all actions, such as legal and disciplinary sanctions, that respond negatively to undesirable behavior).

The description above, when closely examined, suggests a framework for understanding sanctions, indicating that a sanction is a legal instrument of authority designed to secure law enforcement. It encompasses all actions as a reaction or negative response resulting from non-compliance or violations of norms.

Administrative sanctions are doctrinal and lack a normative definition within the legislation. Doctrines in administrative law offer varied definitions of this term. A common feature highlighted by most scholars is that administrative sanctions constitute a negative consequence arising from violations of administrative and legal obligations and duties. Administrative sanctions are a type of legal sanction established to ensure respect for legal provisions.

Administrative sanctions are inherently tied to broader policy goals aimed at establishing order, providing legal certainty, and protecting individuals' rights against disruption. Enforcing administrative legal norms is within the authority of the state administration, which addresses violations by imposing administrative sanctions as corrective measures.

According to (Lynott, 2010), *administrative sanctions are broadly understood as being sanctions imposed by the regulator without intervention by a court or tribunal*.

Public Administration Act Europe Union formulates administrative sanctions as follows: "*By administrative sanction is meant a negative reaction that may be applied by an administrative agency in response to an actual breach of a statute, regulation or individual decision, and which is deemed to be a criminal sanction pursuant to the European Convention on Human Rights.*" Furthermore, (Ogurlu, 2004) States that "*administrative sanctions, as a sort of administrative acts, are a dimension of the unilateral decision-making power of the Administration. This is the power to decide, to apply and enforce sanctions against individuals who violates laws of public order."*

Dutch administrative law literature states administrative law sanctions as *"de sancties in het administratiefrecht zijn de publiekrechtelijke machtmiddelen die de overheid kan aanwenden als reactie op niet naleving van administratief-rechtelijke normen - The sanctions in administrative law are the public law instruments that the government can use in response to non-compliance with administrative law standards* (H.D. & Willem, 1984).

According to (Oostenbrink, 1967), administrative sanctions are as follows: "*Administratief sancties zijn dus sancties, die voortspruiten uit de relatie overheid – onderdaan en die zonder tussenkomst van derden en met name zonder rechtelijke machtiging rechtstreeks door de administratie zelf kunnen worden opgelegd"* (*Administrative sanctions are therefore sanctions that arise from the government-subject relationship and that can be imposed directly by the administration itself without the intervention of third parties and in particular without legal authorization)*. Then, (Stellinga, 1972) states that "*de administratieve sanctie een maatregel is, welke genomen wordt, wanneer de burger een publiekrechtelijke regel overtreedt. Daarbij komt dan, dat de sanctie wordt toegepast door een bestuursorgaan, en dat zij bestaat in het toebrengen van een nadeel aan de*

overtreder. Zulk een nadeel kan bestaan in een geldboete, in het intrekken van een eerder verleende vergunning e.d. (*The administrative sanction is a measure taken when the citizen violates a rule of public law. In addition, the sanction is applied by an administrative body and consists of inflicting a disadvantage on the offender. Such a disadvantage may consist of a fine, the revocation of a previously granted permit, etc.)*

Based on the above perspectives, administrative sanctions can be understood as responses issued by administrative bodies, reflecting the unilateral decision-making authority inherent in administrative power. This authority encompasses the power to decide, apply, and enforce sanctions on individuals who violate administrative legal norms (public order).

This aligns with the view expressed by Dupont & Verstraeten, as cited by Liesbet Deben (2004), who states, *"de sanctie wordt gedefinieerd als 'regels die voorschrijven welke gevolgen aan de niet naleving of de overtreding van de normen verbonden worden'* (the sanction is defined as "rules that prescribe the consequences of non-compliance or violation of the standards").

The purpose of applying administrative sanctions to violations is to enable administrative bodies to uphold administrative legal norms, which have been stipulated in the form of statutory regulations. Upholding administrative legal norms is essentially a logical consequence of the authority granted to government bodies by legislation to:

1. ensure the enforcement of administrative legal norms;
2. exercise governmental authority derived directly from administrative law; and
3. act without the mediation of third parties (such as the judiciary).

Viewed from its normative character, an administrative legal sanction is not a duty *(plicht)* but rather a discretionary authority *(vrijebevoegdheid)*, independent and not reliant on other organs (Tjandra, 2018). Therefore, administrative bodies and/or officials are given exclusive authority to enforce administrative legal norms without dependence on other institutions, such as the courts. Discretionary authority *(vrijebevoegdheid)* reflects a form of governmental freedom *(vrij bestuur)*. According to (Spelt & J.B.J.M, 1991), governmental freedom (vrij bestuur) is described as follows: *"de vrij die een wettelijke regeling aan een bestuursorgaan kan laten bij het geven van een beschikking wordt wel onderscheiden in 'beleidsvrijheid' en beoordelingsvrijheid"* ("the freedom that a legal regulation can leave to an administrative body when making a decision is distinguished into 'policy freedom' and 'freedom of assessment'").

Judicial Character of Administrative Legal Sanctions

If sanctions are beneficial in promoting compliance with behavioral norms, they are considered positive. Conversely, a negative sanction applies when behavior causes harm by violating norms (Put, 1998). The organic criteria of administrative sanctions' character are the only practical means to distinguish them from other types of sanctions, particularly criminal ones. Therefore, the scope of administrative sanctions excludes those imposed by judges (criminal, civil, or administrative judges). The organic criteria of administrative sanctions encompass the following aspects:

1. Administrative sanctions regard any action that disrupts the order of administrative legal norms as a violation;
2. Administrative bodies can take immediate action to address disruptions arising from violations of administrative legal norms;
3. The actions taken by an administrative body to resolve disruptions to the administrative legal order may include restorative actions *(reparatoir - herstel)* and/or punitive actions (*condemnatoir - straf*).

In discussing the function of legal sanctions, especially administrative sanctions, due to the lack of consensus in legal science regarding specific classifications of the functions of legal (administrative) sanctions, distinctions can only be made through the following: repressive function: aims to induce suffering as a response to deviant behavior; preventive function: aims to prevent legal violations from occurring; and restitutive/reparative function: aims to repair damage and restore conditions to their original state, as if no violation (disruption) had occurred. The differences between administrative sanctions and criminal sanctions can be summarized as follows (Hadjon, 1994).

Table 1
Difference between Administrative Sanctions and Criminal Sanctions

Differentiating Factors	Administrative Sanctions	Criminal Sanctions
TARGET/OBJECTIVES	Action	Perpetrator
CHARACTERISTICS	*Reparatoir*	*Condemnatoir*
PROCEDURES	No judicial procedure required	Through judicial process

Source: processed by the Author

The above explanation can be clarified as follows: administrative sanctions target the wrongful act, aiming to stop the offending behavior. The *"reparatoir"* characteristic of the sanction means it seeks to restore the original state. Conversely, criminal sanctions target the offender, imposing suffering as punishment. The sanction's *"condemnatoir"* characteristic (*straf* = punishment) signifies a punitive approach. In terms of enforcement procedure, administrative sanctions are applied without judicial proceedings (non-contentious), meaning the administrative body exercises enforcement through its public authority. Meanwhile, criminal sanctions are enforced through judicial proceedings (contentious).

Restorative Sanctions (Reparatoir) and Punitive Sanctions (Condemnatoir)

Legal literature in administrative law consistently outlines specific types of administrative sanctions, including: administrative enforcement *(bestuursdwang*); penalty payments or fines (*dwangsom*); administrative fines (*administratieve/bestuurslijke boete*); and withdrawal of favorable decisions (*het intrekken van een begunstigende beschikking/withdraw license*). In addition to these specific administrative sanctions, there are other forms of administrative sanctions, such as disciplinary sanctions.

Comparative studies with Dutch administrative law often refer to restorative *(reparatoir*) sanctions as '*herstelsancties*' and punitive sanctions (*condemnatoir*) as

"*bestraffendesancties*". *Herstelsancties* aim to stop violations and prevent new ones, while *bestraffende-sancties* aim to punish and deter. Articles 5:21 and 5:31d of the Awb (*Algemene wet bestuursrecht* – General Administrative Law Act, the codification of administrative law in the Netherlands) explain that orders of administrative enforcement (*bestuursdwang*) and penalty payments (*dwangsom*) essentially constitute restorative sanctions (*herstelsanties - reparatoir/restorasi*), lacking punitive character (*bestraffend*), though these sanctions should not be underestimated. Therefore, both *bestuursdwang* and *dwangsom* have '*herstelsancties'* characteristics (*reparatoir*/restorative sanctions).

Other typical administrative sanctions, such as administrative fines (*bestuurslijke boete*), as outlined in Article 5:40 of the Awb, are described as "a punitive sanction, involving an unconditional obligation to pay a sum of money." Therefore, according to the Awb, administrative fines (*bestuurslijke boete*) are punitive sanctions (*bestraffendesancties*) and are not intended to restore the original lawful state. Before an administrative body may impose this sanction, it must meet substantial guarantees. The administrative fine (*bestuurslijke boete*) must have a legal basis in specific legislation, as mandated by Article 5:4 of the Awb, establishing the principle of legality. The underlying law must also be clear and precise, and the law must be predictable, enabling citizens to anticipate the consequences of their violations.

Dutch Administrative Law states that administrative fines are the most severe punishment. Therefore, before imposing this penalty, the administrative body must fulfill a number of large guarantees (Breien, 2013). The withdrawal of a favorable decision (*het intrekken van een beguns-tigende beschikking / withdraw license*), represents a mixed sanction type between *herstel sancties* (reparatory sanctions/*reparatoir*) and *bestraffende sancties* (punishment/*condemnatoir*). Withdrawal of favorable decisions may occur through two methods: cancellation (*de opzegging*) and revocation (*de terugneming*). A withdrawal of a decision in the sense of cancellation can occur, because the administrative body when issuing the decision (permit) was under pressure/coercion *(dwang*), fraud (*bedrog*), or error (*dwaling*), resulting in a legally flawed decision. The cancellation of such a permit is a form of punishment. Another form of permit revocation can be caused by the permit holder violating the prohibitions required in the permit. Legal norms are violated when the permit is implemented and the withdrawal is intended to increase the suffering of the perpetrator. Therefore, there must be a legal basis for the violated legal norms and a reproach to the perpetrator for this basis. Conversely, revocation occurs if the administrative body discovers that the applicant provided false information (data). Such decisions are considered void, and revoking the unlawfully granted license restores the illegal situation (*reparatoir/herstel*).

The unique legal characteristics of administrative sanctions (administrative enforcement, penalty payments, administrative fines, and the withdrawal of favorable decisions), when analyzed through a comparative normative study with Dutch administrative law, especially with the Awb (*Algemene wet Bestuursrecht*), can be illustrated as follows:

Table 2
Legal Character of Administrative Sanctions

Types of Sanctions	Legal Characteristic		
	Recovery Sanctions (*Herstel Sancties / Reparatoir*	**Penalty Sanctions** (*Bestraffende Sancties / Condemnatoir*	**Mixed Sanctions** (*Herstel & Bestraf-fende Sancties*)
Administrative Enforcement	√	-	-
Penalty/Fine	√	-	-
Administrative Fine	-	√	-
Withdrawal of Favorable Decision	-	-	√

Source: processed by the Author

The comparison above, when viewed in light of Philipus M. Hadjon's perspective on the distinct nature (character) of administrative legal sanctions, suggests that administrative legal sanctions possess not only a restorative (*reparatoir/herstel*), character but also punitive (*condemnatoir/bestraffende)*, and mixed characteristics, combining both restorative (*reparatoir / herstel*) and punitive (*condemnatoir / bestraffende*) elements.

Conclusion

Based on the foregoing discussion, the following key conclusions can be drawn: administrative sanctions serve as coercive instruments aimed at upholding administrative legal norms and responding to all forms of violations and/or non-compliance by citizens and private entities, compelling adherence to established administrative legal norms. The distinct legal character of administrative sanctions can be classified into restorative (*reparatoir/herstel*), punitive (*condemnatoir/ bestraffende*), and mixed (*reparatoir* and *condemnatoir/herstel* and *bestraffende*) categories. Further in-depth studies need to be carried out regarding administrative legal sanctions and not only limited to specific types of administrative legal sanctions but also to other types of administrative legal sanctions.

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