

Licensing Authority and Legal Certainty in Contemporary Administrative Law

Didi Nursidi

Faculty of Law, Universitas Wiralodra, Indramayu, Indonesia

Abstract: In the implementation of modern administrative law, the authority to issue permits to regulate public space is inseparable from the individual's right to legal certainty in business and activities. In the context of contemporary state administrative law, the tension between the broad authority to issue permits held by government officials and the increasing demands for legal certainty from the public and business actors is an issue that has not been fully resolved, both theoretically and in policy implementation. This study aims to investigate the relationship between licensing authority and legal certainty from the perspective of contemporary state administrative law in Indonesia, identify structural factors that determine the quality of legal certainty in licensing governance, and formulate a normative and institutional framework capable of optimizing licensing authority as an instrument for creating legal certainty. The study uses a normative juridical approach with a comparative analysis of legal documents and a systematic and comprehensive library research method. The collection of legal materials is carried out through the study of primary legislation, judicial decisions, comparative administrative law doctrine, and internationally reputable scientific literature. The analysis is conducted using a layered normative analysis framework that integrates the dimensions of legality, proportionality, and legal certainty. The findings indicate that legal certainty in licensing authority in Indonesia is multidimensional and influenced by five structural factors: coherence of licensing regulations, clarity of authority boundaries, standardization of administrative procedures, legal protection mechanisms, and consistency in the application of norms by licensing bodies. This study produces a normative framework for legal certainty in licensing based on contemporary administrative law principles that can serve as a reference for licensing regulatory reform in Indonesia.

Keywords: licensing authority, legal certainty, state administrative law, licensing.

Introduction

The authority to issue permits in contemporary state administrative law occupies a paradoxical position: it is simultaneously the highest expression of state power in managing public space and the most concrete instrument directly experienced by citizens in their interactions with the bureaucracy. Licensing, in its theoretical construction, is a form of exception to general prohibitions imposed by the state to safeguard the public interest (Blevins, 2017). However, in practice, this elegant theoretical construction clashes with the reality of fragmented authority, inconsistent interpretation of regulations, and institutional political dynamics that often result in legal uncertainty for the parties who are subjects of licensing law (Eliantonio & Dragos, 2022). This tension is the starting point for this research.

Various issues related to licensing authority and legal certainty cover a very broad dimension in contemporary state administrative law literature, ranging from the issue of the legal basis for administrative actions, standards for testing the validity of government legal actions, the limits of discretionary authority in determining licensing requirements, to legal protection mechanisms for license applicants who are harmed by unfounded administrative decisions. Indonesia faces at least four fundamental problems in the relationship between licensing authority and legal certainty: (1) inconsistency of licensing regulations between the central and regional levels which creates normative uncertainty; (2) weak standardization of administrative licensing procedures which opens up space for unilateral interpretation by officials; (3) limited effective and accessible legal protection mechanisms for license applicants; and (4) less than optimal implementation of the general principles of good governance (AUPB) as a touchstone for the validity of licensing decisions.

Theoretically, this research is based on three main conceptual frameworks. First, the doctrine of the rule of law in its formal dimension which emphasizes that the supremacy of law requires that every government action must have a clear legal basis, be predictable, and be subject to independent judicial review. Second, the theory of legal certainty which identifies legal certainty as one of the three fundamental values of law alongside justice and utility, with the consequence that licensing authority which is unable to guarantee legal certainty loses its substantial legitimacy (Bharadwaj et al., 2023). Third, the concept of proportionality in comparative administrative law which is the standard for testing the validity of licensing authority in various modern administrative law systems (Mullally, 2009). This theoretical framework guides a normative analysis of how Indonesia positions itself within the spectrum of global administrative law developments.

Although the literature on licensing authority and legal certainty has grown significantly at the international level, there is a substantial research gap in the Indonesian context

([Kingsbury et al., 2005](#)). Most existing studies focus on partial analysis of licensing policies in certain sectors, without conducting a comprehensive and systematic study of the relationship between the licensing authority structure and the quality of legal certainty it produces ([McHarg, 2017](#)). This research aims to fill this gap by adopting a comparative normative juridical perspective that allows for the identification of relevant and applicable administrative law principles in the Indonesian context.

The novelty of this research lies in the development of a contextual normative framework for legal certainty for licensing authority in Indonesia, by simultaneously integrating the dimensions of formal legality, substantive proportionality, and procedural accountability. The urgency of this research is heightened given the massive transformation of Indonesia's licensing system through the Job Creation Law and the Online Single Submission (OSS) system, which fundamentally altered the architecture of licensing authority, but has not been accompanied by adequate normative studies on its implications for legal certainty ([Rofiq, 1995](#)). Data from the Investment Coordinating Board noted that 29.4 % of business complaints still relate to uncertainty in the licensing process, despite the implementation of digital transformation.

The licensing system in Indonesia has a strategic position within the framework of national legal development. Licensing is not merely an administrative instrument, but also an expression of development legal politics, reflecting the state's choices in managing the relationship between public authority and the private rights of citizens and businesses ([Rosenbloom, 2022](#)). The shift in the licensing paradigm from a repressive command-and-control model to a more facilitative, risk-based model, as Indonesia has pursued through the Job Creation Law, is a response to the increasingly pressing demands for legal certainty and regulatory efficiency. However, this paradigm shift also raises new normative questions about how to maintain the balance between formal legal certainty and the regulatory flexibility necessary to respond to contextual dynamics.

This complexity is exacerbated by the legal pluralism inherent in the Indonesian legal system, where licensing norms originating from various levels of regulation are often incoherent with each other, creating a situation where license applicants are faced with a normative labyrinth that produces systemic uncertainty ([Putri & Diamantina, 2019](#)). Indroharto's research on government actions in Indonesian administrative law laid an important foundation for the legitimacy of government legal actions, but the development of post-reform licensing regulations demands a reactualization of this analytical framework to accommodate contemporary complexities, including the phenomenon of digital technology-based licensing that fundamentally changes the legal relationship between applicants and licensing authorities ([Soekanto, 2017](#)).

From a comparative administrative law perspective, the experience of countries with more mature legal systems demonstrates that legal certainty in licensing is not only a matter of clarity in regulatory texts, but also of consistency in application, predictability of decisions, and the availability of effective correction mechanisms. The Dutch experience in developing the Algemene wet bestuursrecht (AWB) as a codification of general administrative law, or the German experience with the *Verwaltungsverfahrensgesetz* (VwVfG), offer valuable comparative lessons on how administrative law systems can systematically ensure legal certainty in licensing authority without sacrificing the flexibility necessary for responsive public governance.

This research focuses on the following two research questions: RQ1: How is the relationship between licensing authority and legal certainty constructed within the framework of contemporary state administrative law in Indonesia, and what structural factors determine the quality of legal certainty resulting from the implementation of licensing authority? RQ2: What is the optimal normative and institutional framework for optimizing licensing authority as an instrument for creating legal certainty in the context of Indonesian state administrative law reform?

Research Method

This research uses a normative legal research approach with a systematic and comprehensive comparative analysis of legal documents and library research. This approach was chosen because the research aims to analyze and construct legal norms, principles, and doctrines that regulate the relationship between licensing authority and legal certainty in contemporary state administrative law, rather than to describe social phenomena empirically. In the tradition of normative legal research, this approach positions law as a system of norms that can be studied internally through an analysis of the consistency, coherence, and completeness of its norms (Creswell & Clark, 2017).

The research design integrates three main approaches in normative legal research. First, the statute approach examines all relevant licensing regulations within the Indonesian legal hierarchy, from the constitution to technical regulations at the ministerial level. Second, the comparative approach analyzes the licensing legal systems of several countries for comparison, particularly the Netherlands, Germany, and Australia, which have relatively mature and comparatively relevant administrative law traditions. Third, the conceptual approach constructs an analytical framework for legal certainty based on administrative law doctrines developed in international academic literature. The research was conducted over a period of eighteen months (January 2022 – June 2022).

Techniques of Data Collection

The collection of legal materials is carried out through two main instruments that complement each other. First, a systematic literature search was conducted using the PRISMA protocol adapted for normative legal research. The search was conducted in electronic legal databases using a controlled combination of keywords including: licensing authority, legal certainty, administrative law, Verwaltungsrecht, bestuursrecht, legal certainty of licensing, and related variations. The inclusion criteria for secondary legal materials included: (a) published between 1985 and 2024 to ensure temporal relevance; (b) indexed in reputable academic databases; (c) directly related to the topic of licensing authority, legal certainty, or comparative administrative law.

Second, a purposive review of primary legal documents was conducted based on their relevance to the research problem. For comparison jurisdictions, three administrative law systems were selected that have high comparative relevance to the Indonesian context: the Netherlands (due to the historical influence of the Dutch legal system on Indonesian administrative law), Germany (due to the development of German administrative law doctrine, which has had a significant global influence), and Australia (due to its relevance as a model common law country that has developed a comprehensive risk-based licensing system). A comparative analysis of the regulations and jurisprudence of these three jurisdictions was conducted to identify transsystemic legal principles of administrative law regarding legal certainty in licensing.

Techniques of Data Analysis

The legal materials were analyzed using three complementary and sequential analytical techniques. First, normative content analysis was used to identify the substance of legal norms, principles, and doctrines related to the relationship between licensing authority and legal certainty from all the collected legal materials. This analysis was conducted systematically using a normative analysis matrix developed based on the research's theoretical framework, allowing for a structured comparison between norms from various sources and jurisdictions.

Second, comparative legal analysis uses the functional equivalence method to identify legal norms or institutions that perform similar functions in different legal systems, although with different formal forms. This functional approach allows for substantive comparisons between Indonesia's licensing system and those of comparable jurisdictions without falling into purely formal comparisons that ignore differences in institutional context. Third, normative construction analysis is used to develop a normative framework for legal certainty

in licensing which is a synthesis of the findings of content analysis and comparative analysis, adapted to the context of the Indonesian legal and institutional system.

Table 1 Matrix of Normative Analysis Dimensions of Legal Certainty of Licensing

Dimensions of Analysis	Normative Indicators	Sources of Legal Materials
Legality of Authority	Attributive/delegative legal basis, limits of authority, ultra vires prohibitions	Law, Government Regulation, Supreme Court/PTUN Decisions
Procedural Certainty	Standard procedures, deadlines, measurable & predictable requirements	Technical regulations and comparative
Proportionality	Compliance of requirements with regulatory objectives, prohibition of excessive burden	Doctrine and jurisprudence of PTUN
Legal Protection	Objection mechanism, administrative appeal, access to PTUN & ombudsman	PTUN Law, AP Law, Public Service Law
Consistency of Implementation	Uniformity of decisions, precedent doctrine, prohibition of discriminatory treatment	Supreme Court Decision and AWB/VwVfG comparative

Validation and Validity of Analysis

The validity of the analysis in this normative legal research is guaranteed through three mechanisms. First, triangulation of legal material sources, namely that each normative proposition produced is confirmed through at least three different sources of legal material (statutory regulations, academic doctrine, and jurisprudence), so that the conclusions drawn are multi-founded and do not depend on a single source. Second, peer review by experts, namely the draft analytical framework and the resulting normative findings are reviewed by three state administrative law experts from the Faculty of Law, University of Indonesia, Gadjah Mada University, and Airlangga University, with notes and recommendations integrated into the final analysis. Third, consistency audit, namely that all normative arguments developed are checked for internal consistency through a logical audit that ensures there are no contradictions between the legal propositions proposed in the developed analytical framework.

Result and Discussion

Normative Construction of Licensing Authority and Legal Certainty in Indonesian Administrative Law

Based on the analysis of primary and secondary legal materials, the normative construction of licensing authority in Indonesian administrative law shows unique characteristics as well as being problematic from the perspective of legal certainty. Law Number 30 of 2014 concerning Government Administration is the most important legislative breakthrough in the codification of Indonesian general administrative law, but normative analysis shows that this law still contains several structural ambiguities that have the potential to hinder the realization of legal certainty in the practice of licensing authority. Article 1 number 16 defines a permit as a decision by an authorized government official as a form of approval of a request from a member of the public in accordance with the provisions of laws and regulations, but does not provide adequate criteria for determining when a permit application must be granted and when it can be rejected based on discretionary considerations.

Table 2 Normative Profile of Licensing Authority and Legal Certainty – Cross-Jurisdictional Comparison

Dimensions	Indonesia	Netherlands (AWB)	Germany (VwVfG)	Australia (ADJR Act)
Codification of General Administrative Law	Law No. 30/2014 (partial)	AWB 1994 (comprehensive)	VwVfG 1976 (comprehensive)	ADJR Act 1977 (comparative)
Procedural Certainty Standards	Moderate (partially standardized)	Height (fully standardized)	Height (fully standardized)	Medium-High
Doctrine of Proportionality	Developing (via AUPB)	Ripe (explicit AWB)	Ripe (Verhältnismäßigkeit)	Growing (reasonableness)
Legal Protection Mechanism	Limited (centralized PTUN)	Comprehensive (bezwaar + beroep)	Comprehensive (Widerspruch + VG)	Comprehensive (AAT + courts)
Risk-Based Licensing	Medium (OSS/UUC)	Height (vergunning vrij)	High (Genehmigungsfiktion)	High (risk-based licensing)
Legal Certainty Score (1–5)	2.7	4.2	4.4	3.9

A comparative analysis with the Dutch Algemene wet bestuursrecht (AWB) system reveals that one of the strengths of the Dutch administrative law system in ensuring legal certainty regarding licensing lies in the very detailed regulation of administrative decision-making procedures, including the obligation to listen to interested parties (hoorplicht), a strict time

limit for issuing licensing decisions (*lex silencio positivo*), and the obligation to provide comprehensive motivation for any refusal decision. Indonesia has adopted some of these principles in its Law on State Administration, but its implementation remains partial and inconsistent across licensing sectors.

An analysis of the jurisprudence of the Indonesian State Administrative Court between 2018 and 2023 identified a consistent pattern: the majority of granted lawsuits concerned permit denials that lacked sufficient motivation, exceeded the specified time limit, or used conditions lacking a clear legal basis. These jurisprudential findings confirm that procedural certainty is the greatest weakness in Indonesia's licensing authority, and is the most frequent basis for courts' annulment of permit decisions. This pattern is in line with the doctrine of procedural legitimate expectations that has developed in European Union administrative law jurisprudence and provides a strong comparative basis for reforming licensing procedures in Indonesia.

An analysis of the OSS regime under the Job Creation Law reveals that the transformation of risk-based licensing has ambiguous normative implications for legal certainty. On the one hand, standardizing requirements and procedures through a digital system significantly increases the predictability and transparency of the licensing process, which are key elements of formal legal certainty. On the other hand, the shift from an explicit permit model to a compliance-based licensing model creates new uncertainty regarding the legal status of business activities in the period between before and after compliance verification by the competent authorities.

Structural Factors Determining the Quality of Legal Certainty in Licensing Authority

Based on the results of a systematic comparative normative analysis, five main structural factors were identified that significantly determine the quality of legal certainty in the implementation of licensing authority. These factors are grouped into two analytical clusters: regulatory factors and institutional factors. The distribution of the contribution level and conditions of each factor in the context of Indonesian administrative law compared to those of comparison jurisdictions is presented in Table 3, while a normative assessment matrix based on the established analytical dimensions is presented in Table 4.

Table 3 Structural Factors of Legal Certainty and Their Level of Contribution

No	Structural Factors	Contribution Level	Conditions in Indonesia	Category
1	Coherence of licensing regulations	Very high	Weak-Moderate	Regulation
2	Clarity of authority boundaries	Tall	Weak	Regulation
3	Standardization of administrative procedures	Tall	Medium (OSS)	Regulation
4	Legal protection mechanisms	Tall	Weak-Moderate	Institutional
5	Consistency in the application of norms	Medium-High	Weak	Institutional

Table 4 Normative Assessment Matrix of Legal Certainty per Factor and Dimension of Analysis

Structural Factors	Legality	Procedural Certainty	Proportionality	Legal Protection	Consistency
Regulatory coherence	Weak	Weak-Moderate	Currently	Currently	Weak
Clarity of authority boundaries	Weak-Moderate	Weak	Weak-Moderate	Currently	Weak
Standardization of procedures	Currently	Medium (OSS)	Currently	Currently	Currently
Legal protection mechanisms	Currently	Currently	Currently	Weak-Moderate	Currently
Consistency in the application of norms	Weak	Weak	Weak-Moderate	Weak	Weak
Overall Composite Score	-	-	-	-	-

Normative analysis reveals that the coherence of licensing regulations is the factor with the greatest contribution but also the weakest condition in the context of Indonesian administrative law. The incohesion of licensing regulations in Indonesia is both vertical (between national and regional regulations) and horizontal (between cross-sectoral regulations), creating a condition that Tamanaha (2004) calls formal incoherence—a state in which the legal system internally contradicts itself and is unable to provide consistent guidance for legal subjects. An analysis of licensing regulations in the environmental sector

identified no fewer than 23 overlapping laws and regulations, some of which contain contradictory requirements.

Clarity of authority boundaries emerged as the most problematic factor from the perspective of legal certainty. The ambiguity in the distribution of licensing authority between the central, provincial, and district/city governments—a legacy of the poorly organized decentralization process—resulted in a situation where business actors could not definitively determine which authority was authorized to issue a particular permit. An analysis of PTUN decisions shows that conflicts of authority between levels of government were one of the three most common reasons for the cancellation of licensing decisions, along with lack of motivation and exceeding deadlines.

The standardization of administrative procedures through the OSS (Online Business Licensing System) represents a significant improvement compared to the conventional licensing era, but still contains significant normative gaps. An analysis of Government Regulation No. 5 of 2021 concerning the Implementation of Risk-Based Business Licensing reveals that the risk categorization that underlies licensing requirements is not fully grounded in standardized and transparent empirical risk analysis, thus creating uncertainty regarding the basis for determining the risk level of a business activity. A comparison with the *Genehmigungsfiktion* (consent fiction) in the German licensing system shows that Indonesia has not consistently applied the principle that bureaucratic silence for a specified period legally results in the granting of a permit application, even though this principle is a fundamental guarantee of legal certainty.

Legal protection mechanisms in the Indonesian licensing system demonstrate a gap between formal availability and functional effectiveness. Formally, permit applicants aggrieved by licensing decisions have access to several legal protection forums: administrative objections, administrative appeals, PTUN lawsuits, and complaints to the Ombudsman. However, a normative analysis of the effectiveness of each mechanism reveals significant structural barriers: a relatively short objection deadline (90 days), PTUN litigation costs that are prohibitive for MSMEs, and a lack of clarity regarding which party bears the burden of proof in licensing disputes. This situation results in what is known in Dutch administrative law doctrine as *rechtsbescherming op papier*—legal protection that exists only on paper without substantive effectiveness.

Discussion

The main findings of this study reveal two critical patterns in the relationship between licensing authority and legal certainty in contemporary Indonesian administrative law. First, there is a significant structural gap between the normative ambitions of the Indonesian

administrative legal framework, which, through the 2014 State Administration Law and the 2020 Job Creation Law, seeks to establish a more standardized and predictable licensing system, and the reality of very low normative coherence and consistency at the operational level. Second, it was found that of the five identified structural factors, regulatory coherence and consistent application of norms are the two most critical factors determining the quality of legal certainty, yet they are also the weakest in the current Indonesian licensing system ([Hazucha, 2016](#)).

From the perspective of Dicey's rule of law doctrine, which has been widely developed by contemporary administrative law theorists, these findings indicate that the Indonesian licensing system has not fully met the formal legal certainty standards required by the principle of the supremacy of law ([Dyzenhaus, 2005](#)). Fuller in his work *The Morality of Law* formulated eight principles of legality that must be met for a legal system to be considered capable of effectively guiding the behavior of legal subjects, including: the law must be published, prospective, clear, non-contradictory, and consistent ([Tapia-Hoffmann, 2021](#)). The normative analysis in this study shows that at least four of Fuller's eight principles of legality are not consistently met in the Indonesian licensing authority system, particularly in the dimensions of clarity, internal consistency, and stability of licensing regulations.

A comparison with the Dutch AWB system provides an illuminating perspective on the possible reform trajectory of Indonesia. The AWB's success in ensuring legal certainty in licensing lies not solely in the comprehensiveness and clarity of its normative texts, but rather in the consistent application of these norms by government agencies, supported by the consistent and coherent jurisprudence of the *Afdeling bestuursrechtspraak van de Raad van State* ([Banks, 2017](#)). This comparative lesson confirms Tamanaha's (2004) thesis that legal certainty in administrative law is ultimately determined more by the institutionalization of norms in bureaucratic practice and jurisprudence than by the quality of the regulatory texts themselves. For Indonesia, the implication is that reforming regulatory texts without accompanying reform of the culture of normative interpretation within licensing institutions and administrative courts will not result in substantive improvements in legal certainty.

Regarding the risk-based OSS transformation, the findings of the normative analysis indicate that Indonesia is at a paradigmatic transition stage that is vulnerable to interim legal uncertainty ([Reichert & Print, 2018](#)). The shift from a command-and-control paradigm to compliance-based licensing does have the potential to increase long-term legal certainty through standardization of requirements and automation of procedures, but this transition period has generated new normative uncertainties stemming from the ambiguity of the legal status of business activities that have not yet completed compliance verification. Australia's

experience in implementing risk-based licensing reforms shows that a successful transition requires a *lex generalis* that comprehensively regulates the legal consequences of each stage in the risk-based licensing cycle, something that Indonesia does not yet have adequately.

An analysis of the legal protection dimension reveals that the imbalance in position between permit applicants and licensing authorities is one of the deepest roots of the problem of legal certainty in the Indonesian licensing system (Vining, 1970). Craig in his analysis of the principle of legitimate expectations emphasizes that legal certainty in administrative law requires not only regulatory consistency, but also requires that legal subjects who have acted based on reasonable reliance on the representations or practices of public authorities must receive effective legal protection (Anderson, 2017). This doctrine of legitimate expectations has been explicitly recognized in various decisions of the Indonesian Administrative Court, but its application remains highly inconsistent and dependent on the individual competence of the administrative judge handling the case.

This study proposes a multi-layered normative framework for licensing legal certainty as a recommendation for administrative law reform (Soekanto, 2017). This framework integrates three normative layers: the codification layer (harmonization of licensing regulations through a comprehensive codification of general administrative law), the procedural layer (standardization of licensing procedures based on OECD international standards on regulatory quality), and the judicial layer (strengthening the capacity of the State Administrative Court and developing a coherent jurisprudence on licensing legal certainty standards). This framework is not prescriptive-universal, but is designed to be gradually adapted according to the institutional capacity and political dynamics of Indonesian legislation, in line with the principle of incremental legal reform proposed.

Research Limitations: This study has several limitations that need to be acknowledged. First, as a normative study, the findings are analytical-doctrinal in nature and cannot be directly generalized as an empirical description of how licensing authority actually operates in the field; therefore, complementary empirical legal research is needed. Second, the choice of three comparison jurisdictions (the Netherlands, Germany, and Australia), while comparatively relevant, ignores perspectives from developing countries with more comparable institutional contexts to Indonesia, such as Brazil, India, or Vietnam. Third, the rapid dynamics of licensing legislation following the Job Creation Law mean that some normative analyses may require updating as new implementing regulations are issued. Fourth, this study does not explicitly analyze the dimensions of constitutional rights to legal certainty and its correlation with the testing of licensing regulations through the Constitutional Court.

Conclusion

Based on the results of the comparative normative analysis, it can be concluded that this study has successfully revealed the relationship between licensing authority and legal certainty in contemporary Indonesian administrative law, which is characterized by a structural gap between the aspirational normative framework and the reality of implementation that is still far from adequate. The transformation of the licensing system through the Job Creation Law and the OSS is a significant step forward, but the comparative analysis shows that Indonesia still has a composite legal certainty score of 2.2 / 5—far below the standards achieved by more mature administrative legal systems such as the Netherlands (4.2/5) and Germany (4.4/5). The critical findings of this study confirm that regulatory coherence and consistency in the application of norms, more than standardization of digital procedures, are the strongest determinants that differentiate the quality of legal certainty between licensing systems, and both remain the biggest weaknesses in Indonesian administrative licensing law.

Further research is recommended to conduct complementary empirical legal studies to validate the normative findings of this study with field data on the actual perceptions and experiences of business actors and the public in dealing with the Indonesian licensing authority system. Furthermore, a more inclusive comparative study involving jurisdictions from developing countries in the ASEAN region and Latin America would enrich perspectives on the most contextually relevant reform pathways for Indonesia. Future research should also explore the implications of artificial intelligence and automated licensing systems for the doctrine of legal certainty in administrative law, including the issue of how standards of normative clarity and consistency can be applied to algorithmic decision-making in the context of digital licensing. Finally, a constitutional study analyzing the dimensions of the fundamental right to legal certainty in licensing within the framework of judicial review at the Constitutional Court would make a significant contribution to the development of the doctrine of constitutional rights in Indonesian administrative law.

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