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| RESEARCH ARTICLE

Comparative Study on the Method of Dealing with Administrative Litigation in Cambodia and Japan

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| ABSTRACT

The Cambodian Constitution states that the court system is responsible for administrative litigation settlement and compensation claims. When the complaint mechanism requires plaintiffs to file the complaint to the territorial authority, the interest parties or plaintiffs will proceed to the responsible ministries if they cannot resolve the complaint. Plaintiffs then can file a complaint to the court. Judicial review of administrative litigation is still challenging. The problem happens when a judicial system in Cambodia might need to provide complete judicial remedies in dealing with administrative cases in court. Cambodia still needs to consider the issue of the limitation of laws in administrative litigation for fairness and impartial procedure when dealing with administrative litigation. A comparative study of Japanese administration and legal development can be helpful as it justifies the Japanese administrative litigation process, especially regarding remedies. Examining the Japanese system in comparison can provide insights into the effectiveness and fairness of the administrative litigation process and broaden solutions. This comparative approach allows for a better understanding and evaluation of the Japanese model, which can lead to potential improvement or lessons learned for Cambodia. From a comparative perspective, this research explores how Cambodia deals with administrative law remedies, as an incomplete reform could eventually be problematic and delay judicial access. This thesis argues legal reforms incorporating the Japanese approach would benefit Cambodia by enhancing the efficiency of procedure resolution.

| KEYWORDS

Anti-Corruption Unit, General Headquarters, Administrative Case Litigation Act.

| ARTICLE INFORMATION

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1. Introduction

Administrative or agency action broadly comprises any action of one or more persons discharging a public body, whether government officials or private persons.[1] Agency action refers to the whole or part of an agency rule, order, license, penalty, redress, or similarity measures by agency, denial thereof, or failure to act.[2] An individual who has experienced legal wrongs due to the agency can initiate a complaint for judicial review. Judicial review offers a set of legal requirements enforced through the possibility of lawsuits by allowing people to challenge the legality of public bodies' decisions and others exercising public functions.[3]

[1] Pieter Van Dijk, *Judicial Review of Governmental Action and the Requirement of an Interest to Sue* (The Netherlands: T.M.C Asser Institute, The Hague, 1980), 4.
[2] Robert L. Glicksman and Richard E. Levy, *Administrative Law: Agency Action in Legal Context* (United States of America: Thomson Reuters, 2010), 1044.
[3] Rt Hon Lord Woolf et al., *De Smith's Judicial Review*, 8th Edition (London: Sweet & Maxwell, 2018), 3.

Judicial review of agency action can bring an essential set of controls over administrative behavior. Such control of the legality of governmental action serves the public interest in maintaining a system based on the rule of law and protects the individual against the government.[4] Contrary to political oversight, which influences entire procedures or basic policies, judicial review regularly uses to provide relief to an individual from a particular agency decision. Judicial review also differs from political control as it attempts to foster reasoned decision-making by requiring agencies to provide additional facts and rational explanations to justify their actions.[5]

In principle, citizens have the right to complain about government action, including abuse of authority, corruption, decisions, public service provision, and illegal regulation by various government administrative agencies. The current *Cambodian Constitution* guarantees the right to citizens to denounce, make complaints, or claim compensation for damages caused by the state. The settlement of complaints resides under the court's jurisdiction. However, Cambodia still needs to develop remedies for judicial review of administrative actions. Currently, the existing administrative laws in Cambodia are organic laws and other sector laws. Organic laws establish the institutional and territorial structure of the government or organization's body. This law provides the right of citizens to file complaints against maladministration. Sector law also gives citizens or interested people the right to complain against government action. Specific sector laws even create institutions to address citizen complaints.[6]

The Cambodian judiciary decides all legal cases, including administrative matters. Conversely, whether judges can review government actions still needs clarification in the Cambodian context. Article 89 of the *2014 Law on the Organization of the Courts* stipulates that hearings and trials for administrative matters adhere to the civil procedure code and other related law.[7] The civil procedure code did not provide any specific remedy for illegal administrative dispositions. Cambodian court still lacks remedial power and is limited to declaring as illegal or nullifying their effects. With the lack of provision in reviewing government action, it might also be difficult for private persons to obtain a remedy for the abuse of public power. Individuals might be reluctant to bring a lawsuit against illegal agency action.

Cambodia and Japan have a common approach to enabling individuals to bring public law disputes to the courts by using ordinary courts to review administrative actions. In this sense, public law deals with the relationships between individuals and the governments, structure, powers, and duties of government entities. In Japan, ordinary courts deal with administrative litigation as a part of a civil case. The postwar Japanese Constitution changed the review of all administrative cases under ordinary courts. Japan developed provisions such as *the 1962 Administrative Case Litigation Act*, *the* 1993 *Administrative Procedure Act*, and *the 2014 Administrative Complaint Review Act*. The *1962 Administrative Case Litigation Act* (ACLA) deals with actions for judicial review of administrative dispositions [8], public law-related actions, civil actions, and interagency actions. The *1993 Administrative Procedure Act* (APA) aims to provide standard rules on procedures for dispositions, administrative guidance, notifications, and methods for establishing administrative orders to improve transparency and fairness.[9] The *2014 Administrative Complaint Review Act* (ACRA) directs to provide citizens with a system that enables them to file complaints against administrative agencies in a simple, quick, and fair procedure. It aims to relieve the citizens' rights and interests and guarantee

[4] Dijk, *Judicial Review of Governmental Action and the Requirement of an Interest to Sue*, 2.
[5] Gellhorn Ernest and M. Levin Ronald, *Administrative Law and Process in a Nutshell*, fifth edition (United States of America: West Publishing Co., 2006), 72.
[6] Dara Khlok, "Administrative Complaint Mechanisms in Cambodia: The Current Situation and Its Challenges," *Konrad Adenauer Stifftung*, January 1, 2014, 147,
https://www.academia.edu/8016640/Administrative_Complaint_Mechanisms_in_Cambodia_The_Current_Situation_and_its_Challenges.
[7] "Law on the Organization of the Courts" (Ministry of Justice of Cambodia, 2014), art. 89.
[8] Article 2 (ii) of the APA states as "Disposition: disposition and other acts involving the exercise of public authority by administrative agency". APA [Administrative Procedure Act], (1993); Defined by Professor Tanaka Jiro, administrative disposition is "an action performed by an administrative agency, as an exercise of its power of control or superior intention, in order to regulate a given concrete legal relationship." Robert W. Dziubla, "The Impotent Sword of Japanese Justice: The Doctrine of Shobunsei as a Barrier to Administrative Litigation," *Cornell Int'l LJ* 18 (1985): 38, footnote 5.
[9] "Administrative Procedure Act - English - Japanese Law Translation," art. 1, accessed January 24, 2023, https://www.japaneselawtranslation.go.jp/en/laws/view/2874/en.

proper administration operation.[10]These laws establish mechanisms for administrative law remedies available through systems and dispute resolution processes under an administrative agency's direct or indirect jurisdiction.

1.1. Problem Statement and Research Questions

Dealing with administrative litigation in Cambodia remains an issue when the public bodies' acts infringe on the rights and interests of citizens. The problem is that Cambodia still needs a proper appeal review system where the internal administrative bodies review the citizens' complaints, and judicial review on the validity and legality of administrative actions needs to provide more remedies. Although the Constitution allows citizens to file complaints against administrative actions, it is difficult to claim that judges possess the extensive authority to review administrative activities thoroughly or have the power to correct administrative decisions on the grounds of illegality within the jurisdiction of administrative litigation in court. The limited specific provisions in administrative law and the absence of clear guidelines for reviewing administrative activities may explain why the judiciary has not thoroughly examined administrative actions or decisions.

In the current situation, for instance, citizens can file administrative complaints to internal administrative agencies (sector ministries or territorial administrative levels), the Ministry of National Assembly-Senate Relations and Inspection (MoNASRI), external complaints monitoring groups like the Anti-Corruption Unit (ACU), Cambodian Human Rights Committee (CHRC), Civil Society and NGOs, and a lawsuit to the courts.[11] Affected citizens by an administrative decision may be required to file a complaint to territorial administrative levels or relevant ministries before initiating legal action in court. This step is often a prerequisite or part of the administrative remedy process before seeking judicial review. In some situations, citizens may not get specific responses regarding the authorities' acceptance or rejection of their complaints. The deficiency of clarity or response can create difficulties for individuals seeking resolution or clarification concerning their grievances. The weakness of set criteria or standard procedures for assessing appeals against government actions or decisions in some line ministries may be one factor in the lack of specific response.

Cambodia still needs to develop a code of administration and procedures. The current method is under the separation of each territorial administration or ministry. Moreover, Cambodia has not provided any remedies for judicial review of government actions. Inefficient remedies arose from the fact that the court is not almighty in its authorized control of the exercise of executive power; for example, judges may need more knowledge and experience in public administration theories and practice. This practice differs from Japan in that *the Law on Administrative Case Litigation Act* provides judicial remedies for administrative cases, allowing judges to revoke or review administrative decisions or actions.

This research aims to explore how Cambodia deals with judicial review of administrative matters. This study argues that legal reform in dealing with administration in court and providing administrative law remedies will enhance the efficiency of the resolution procedure. The thesis sets out the following research questions:

- What can be done to improve the method of dealing with administrative litigation in the Cambodia court system?
- What can judges do when dealing with administrative litigation?
- What can Cambodia learn from the Japanese experience to improve the method of dealing with administrative litigation resolution procedures?

[10] "Administrative Complaint Review Act - Japanese/English - Japanese Law Translation," art. 1, accessed May 30, 2022, https://www.japaneselawtranslation.go.jp/en/laws/view/2984.

[11] Khlok, "Administrative Complaint Mechanisms in Cambodia," 150–51.

With limited access to specific cases in the Cambodian court system, this study focuses more on the current legal frameworks related to administrative law remedies. Hence, the thesis examines the practice by analyzing the legal provisions of judicial review in Cambodia and Japan. The results of this study can make recommendations for the Cambodian government to develop legal requirements for administrative law remedies.

1.2. Research Methods and Structure

This study compares and analyzes the legal development of administrative acts and the administrative litigation process in Cambodia's courts and administrative bodies with Japanese practices. The study covers all the legal frameworks for administrative litigation and the current practice in handling administrative issues. The research examines how Cambodia deals with administrative solutions and the court's ability to manage administrative matters. By comparing with Japan system, the study shed light on the potential challenges and shortcomings that may arise from how an incomplete review system could impact the efficiency and timeliness of resolution procedures.

Japan reformed its administrative law to strengthen the rule of law in society. Japan had developed primary regulations on judicial review of public administration through, *The Administrative Case Litigation Act*. This research looks at Japan because it implements adjudication of administrative cases at ordinary court, aligning with the Cambodian system. Japan gave examples of separating the administrative court system and introducing the judicial review system, which is significant for Cambodia to study from Japan's experience.

1.3. Research Map

This thesis comprises five chapters. Chapter I begins with the contextual background and problem of administrative litigation. This chapter also introduces the methodology and the structure of the thesis. Chapter II provides an overview of Cambodia's administrative litigation jurisdiction and the current weaknesses that require legal and judicial development. Chapter III presents Japan's legal framework and practices through legal developments in administrative litigation. The chapter further discusses the critical issue of the action for judicial review in Japan. Chapter IV examines the strengths of the Japanese system and the lessons learned from Japan. This chapter ends with suggestions for the Cambodian system. Finally, Chapter V concludes the thesis by suggesting Cambodia should develop a general rule for reviewing government actions or decisions to increase fairness and transparency. The government of Cambodia can improve the current Code of Civil Procedure by addressing special provisions for dealing with administrative litigation. Cambodia should develop judicial remedies for administrative litigation based on Japan's experience.

2. Overview of Cambodia's Jurisdiction over Administrative Litigation

This chapter describes the current legal framework concerning administrative litigation in Cambodia. This chapter reveals difficulties in handling administrative litigation in Cambodia within the existing legal framework and administration processes. The law regarding complaints against administrative measures, compensation, and judicial review of government action is still underdeveloped or missing in the Cambodian context. Finally, it investigates the weakness of current practices that cause limitations in dealing with administrative litigation. Therefore, the chapter argues that it is necessary to develop legal provisions for courts to improve the method of dealing with the administration in Cambodia.

2.1 The Current Legal Framework and Judicial System in Cambodia

The current Cambodian legal frameworks for judicial review of administrative litigation fall under three provisions: the *1993 Cambodian Constitution*, the *2007 Civil Procedure of Cambodia, and* the *2014 Law on Organization of the Courts*. Under the *1993 Cambodian constitution*, citizens can seek relief or claim from the state at the court. Cambodia's *2007 Civil Procedure Code* had no articles stipulating how to deal with administrative litigation. Without a specific administrative law provision, the *2014 Law on Organization of the Courts* allows the judge to use the *Code of Civil Procedure* as a civil lawsuit and other related laws to solve administrative cases.

2.1.1 The Constitution of Cambodia

The *1993 Constitution* was part of the *Paris Agreement of 1991* as Cambodia attempted to overcome internal conflicts and maintain international relations. Part of the *Paris Agreement of 1991* was the United Nations Transitional Authority installation in Cambodia (UNTAC). The *Paris Agreement* required the adoption of the Constitution within three months after the election of the constitutional Assembly in Cambodia. The Paris Agreement guided the Cambodian Constitution's main direction, prescribing the Constitution's supremacy, a concept of liberal human rights, and a rule of law-based democracy.[12] Therefore, the *1993 Constitution* recognized the existence of both private and public lawsuits.

The *1993 Constitution* establishes three principles: the judiciary is independent and protected from other branches of government, individuals have the right to access a fair and impartial judiciary, and guarantee judicial procedural rights.[13] Article 128 of the current Cambodian Constitution states that the judiciary is independent and has the power to decide all legal cases, including administrative cases, and this power vests in the Supreme Court and all court levels.[14] This provision provides a single court system to adjudicate both private and public lawsuits, and it was a necessary result of the circumstances in Cambodia after the *Paris Peace Agreement of 1991*. The general jurisdiction of courts in Cambodia falls into three categories: the supreme court, appeal courts, and court of first instances. A court of the first instance has jurisdiction in hearing all cases when they first go to court. However, Cambodia still has incomplete and imprecise administrative law procedures and practices.[15]

2.1.2 Civil Code and Civil Procedure Code

The *Cambodian Civil Code* has only one relevant article related to the state liability or the liability of public agency in article 749 (1), "if a public official, while performing their official duties, intentionally or negligently cause harm to another person in violation of the law, the national government is responsible for compensating the damage."[16] This article does not explicitly include the object of government action's illegality. Moreover, this article does not specify the procedure and court jurisdiction to adjudicate such matters. The *Cambodian Civil Code* recognized the general ground for the state liability of administrative agencies for their misconduct; though, this code has not elaborated more on procedures to follow that can apply to holding the state accountable for its actions.[17]

Cambodia developed civil procedures into a *Code of Civil Procedures* to regulate the processes related to civil actions. The *2007 Cambodian Civil Procedure Code* has a minimal role in resolving administrative litigation since there are no specific or relevant provisions about remedies for administrative cases.[18] Under private procedure law, judicial review over government action may limit the available remedies for judges whether the judge could thoroughly review or revoke an illegal administrative disposition.

2.1.3 Law on the Organization of the Courts

The Cambodian government introduced the *law on the Organization of the Court* in 2014 to regulate the court system's functioning. This law aims to ensure the judiciary's independence, protect citizens' rights and freedom, guarantee the efficiency and quick proceedings of public services, and deliver justice in all cases to citizens.[19] This law allows a specialized court within a general court in other filed such as civil, criminal, commercial, labor, and

[12] Jörg Menzel, "Cambodia from Civil War to a Constitution to Constitutionalism?," in *Cambodian Constitution Law* (Cambodia: Konrad-Adenauer-Stiftung, 2016), 16.

[13] Kai Hauerstein, "The Constitutional Role of the Judiciary in Cambodia: International Comparison and Implication for Reform," in *Cambodian Constitutional Law* (Cambodia: Konrad-Adenauer-Stiftung, 2016), 221, https://www.kas.de/c/document_library/get_file?uuid=0ebfcf62-a727-dd61-3315-55af9a4f7c0d&groupId=252038.

[14] "The Constitution of the Kingdom of Cambodia," 1993, art. 128 (3) & (4).

[15] Chansangvar Theng, "Administrative: The Constitution as a Guiding Framework for Administrative Law," in *Cambodian Constitution Law*, ed. Peng Hor, Phallack Kong, and Jörg Menzel (Cambodia: Konrad-Adenauer-Stiftung, 2016), 254–55.

[16] "The Civil Code of Cambodia," 2007, art. 749.

[17] Vandeluxe Yan, "State Liability and Rights of Citizens to Claim Damages," in *The Development of Cambodian Administrative Law*, ed. Kai Hauerstein and Jörg Menzel (Cambodia: Konrad-Adenauer-Stiftung, 2014), 206.

[18] Phallack Kong, "Overview of Contemporary Civil Procedure of Cambodia," in *Introduction to Cambodian Law*, ed. Peng Hor and Jörg Menzel (Cambodia: Konrad-Adenauer-Stiftung, 2012), 153.

[19] Ministry of Justice, "Law on the Organization of the Courts" (Ministry of Justice of Cambodia, 2014), art. 1.

administrative.[20] There are only two specialized courts, civil and criminal, in the ordinary court. There is no other sign of other specialized courts or cases separation yet. The civil court of first instance and the civil chamber of a court of appeals or the supreme court has jurisdiction over administrative matters. To address the shortfall of the administrative procedure law, hearing and trials for the administrative matter will follow the provisions of the civil procedure code and other applicable laws.[21] Hence, in practice, an administrative lawsuit is a civil lawsuit under the 2014 law on the organization of the courts.

2.1.4 The Judicial Review System in Cambodia

In the Cambodian context, the constitutional council and the courts are the two legal and institutional areas that have the authority to conduct a judicial review under Cambodia's legal framework. The constitutional council has the authority to protect constitutional supremacy, review constitutional law, interpret constitutional provisions, and resolve election disputes.[22] All the decisions on those cases influence the constitutional council's decision on administering the legislative, administrative, and judicial powers. The constitutional council has the jurisdiction to interpret the Constitution and law within the framework. The Cambodian Constitution provides the constitutional council with solid influences of judicial review.[23] The constitutional council can nullify any law or regulation inconsistent with the national benefit. The council's interpretation in a particular case may not satisfy all concerned parties. The council's interpretation is final without recourse within the Cambodian constitutional framework.

The judicial system decides all legal cases involving civil, criminal, and administrative disputes. A judge will rely on civil procedure and try to find facts to resolve a particular issue. However, whether the court could have the power to annul government decisions or actions has not been clarified.[24] In this case, the court's position might compromise a review of the illegality of administration action. The lack of differentiation between administrative and private law cases might hinder citizens from bringing administrative lawsuits to court. As a result, civil courts do not have enough experience in dealing with administrative matters.

2.2 Current Administrative Complaint Mechanisms

In Cambodia, citizens can file complaints against administrative actions such as inappropriate government decisions, service provision, corruption and abuse of power, administrative behavior, and poor administrative management.[25] The aggrieved parties can file an administrative complaint through an intra-administrative or internal complaint mechanism of territorial administrative or ministries, external complaints monitoring groups, or the court.[26] This section illustrates the current administrative litigation process in resolving disputes in the administrative and court stages.

2.2.1 Internal Complaint Mechanism

Citizens and any interested parties can file a complaint against the government action through the internal complaint administration system. Internal complaint mechanism includes the Ministry of National Assembly Senate Relations and Inspection (MoNASRI), sector ministry, sector law institution, and territorial administration.

The Ministry of National Assembly Senate Relations and Inspection (MoNASRI) is responsible for preventing and suppressing power abuse and the corruption of civil servants and the armed forces. This ministry inspects inactivity and the restoration of national development and good governance. The establishment of the MoNASRI is to lead and manage all coordination, communication, and inspection work in all areas to prevent, improve, and take

[20] Ibid., art. 14.
[21] Ibid., art. 89 (3).
[22] "Constitutional Council of Cambodia," accessed July 22, 2022, https://www.ccc.gov.kh/whatisccc_en.php.
[23] Ratana Taing, "The Influence of Constitutional Law on Administrative Law," in *The Development of Cambodian Administrative Law*, ed. Kai Hauerstein and Jörg Menzel (Cambodia: Konrad-Adenauer-Stiftung, 2014), 132.
[24] Hiroshi Kiyohara, "Structure and Development of Administrative Law in Japan," in *Cambodian Administrative Law*, ed. Kai Hauerstein and Jörg Menzel (Cambodia: Konrad-Adenauer-Stiftung, 2014), 280.
[25] Kai Hauerstein, "Aspects of Administrative Law and Its Reform in Cambodia," in *Cambodian Administrative Law* (Cambodia: Konrad-Adenauer-Stiftung, 2014), 41.
[26] Khlok, "Administrative Complaint Mechanisms in Cambodia," 150.

measures to combat corruption, abuse of power, and inactivity.[27] This ministry can temporarily suspend any practice that it considers causing unlawful acts to the national interest, public or private interest. The problem with MoNASRI is that there are some similarities with other organizations, such as the Anti-Corruption Unit (ACU), National Audit Authority, and another Secretary-General from other organizations. It also faces difficulty with ambiguous roles and responsibilities in conducting an inspection. Moreover, dispute settlement is often a complex and lengthy process.[28] Next, each ministry conducts its internal review, overseeing the complaint within the scope of its sector. Most sector laws provide the power to each ministry to handle administrative complaints within the scope of their sector. Each sector ministry has at least one section called the Inspectorate Department within the ministry to receive and address complaints from citizens. In addition, each ministry also has an internal audit, which has a power like an Inspectorate section to deal with complaints. There is a significant overlap in the complaint-handling functions inside and outside a sector ministry; for instance, the Legal Affairs Department, Cabinet of Ministers, and General Inspectorate Department often share common responsibilities in addressing complaints.[29] Furthermore, national-level ministries also have internal departments dedicated to handling complaints and conducting inspections.

These departments face limited transparency in sharing information, the absence of systematic processes for communicating their work, and the unavailability of comprehensive statistics on the types of complaints received and their resolution. Internal complaints management follows the same procedure: government officials of the inspection department first verify the complaint and then initiate a hearing between the parties. The department delivers a recommendation, and the final decision rests with the ministry minister. In some cases, establishing a working group for an investigation (ad hoc group) is required when issues are complex and hard to resolve.[30]

At the sub-national level, the Provincial Accountability Working Group (PAWG) exists to support administrative reform by increasing accountability of public investment. However, the process for collecting and scrutinizing complaints may involve certain delays. Initiating the investigation sometimes takes approximately three weeks due to various procedure requirements. Some provinces are large, and transport times can become a factor. Where citizens submit the complaints just after monthly collection, PAWG could take up to six weeks to investigate and up to three months to resolve a complaint. This slow adjudication procedure may cause citizens to lose confidence in the process.[31]

District ombudsperson is an impartial representative of the citizens who monitor local officials' performances and improve the administration's accountability, transparency, and responsiveness.[32] However, one of the challenges with the ombudsperson mechanism is that citizens often submit complaints to an incorrect sector, which can suggest there is still a lack of clarity among citizens about the functions and responsibilities of the ombudsperson. The 2020 "Report on In-Depth Study on the Ombudsperson" pointed out that most ombudspersons still do not clearly understand which administrative action at line offices is inside their authority; for example, ombudspersons hold the lengthy delays of decisions of land title under the line office or line department of Land management and construction to be outside of their authority.[33] On the other hand, there remains a lack of trust between citizens and the ombudsperson's mechanism. When they have problems with local administration actions, decisions, or procedures, some citizens still follow old patronizing ways of asking the old ways of asking patrons for help.[34]

[27] "Law on the Establishment of Ministry of National Assembly Senate Relations, and Inspection [ច្បាប់ ស្តីពី ការបង្កើតក្រសួងទំនាក់ទំនងជាមួយរដ្ឋសភា-ព្រឹទ្ធសភា និងអធិការកិច្ច]," 1999, http://monasri.gov.kh/archives/909.

[28] Ministry of National Assembly Senate Relation and Inspection, "Annual Report 2020 and Direction for 2021" (Cambodia: Ministry of National Assembly Senate Relation and Inspection, 2021), http://monasri.gov.kh/wp-content/uploads/2021/04/_final_edited.pdf.

[29] Khlok, "Administrative Complaint Mechanisms in Cambodia," 153.

[30] Alex Read and Malika Chea, "Sub-National Complaint Mechanisms in Cambodia and ASEAN," n.d.

[31] Alex Read, "Solving the Complaints of Citizens at Sub-National Levels," in *Cambodian Administrative Law*, ed. Kai Hauerstein and Jörg Menzel (Cambodia: Konrad-Adenauer-Stiftung, 2014), 180.

[32] Ibid., 175.

[33] Peter Koeppinger and Tepirum Chhin, "Report on In-Depth Study on the Ombudsperson" (Cambodia: Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), 2020), 8, https://ncdd.gov.kh/wp-content/uploads/2022/06/2.-200212_Final-Report-on-In-Depth-Study-on-DO_Current-Situation-OWSO_En.pdf.

[34] Ibid., 10.

A council represents the interest and concerns of the people in a specific territory. Their role is to monitor, control, and intervene in association with officials at the provincial/municipal, district/Khan territorial levels. A council in a capital city, province, municipality, district and khan do not have the power to decide on the complaints related to civil or criminal cases. Their role does not involve determining winners and losers of such issues but rather making a compromise by giving comments, advice, and guidelines to the parties contesting a case. If the communes or Sangkat (districts) cannot solve a problem, they can transfer the case to a higher level or the courts.[35]

2.2.2 External Complaint Monitoring

Citizens can seek external complaints outside the institution of sector ministry or sector law, such as the Anti-corruption Unit (ACU), the Cambodia Human Right Committee (CHRC), and civil society or NGOs. The ACU involves combatting corruption and misconduct among government agencies, including the judicial branch. The CHRC is also responsible for receiving and resolving complaints related to human rights violations, whether with civil society organizations or NGOs where citizens can discuss their matters and seek assistance.

The Anti-corruption Unit (ACU) is an institution that gathers broad participation from all sectors in fighting corruption. This unit also receives complaints from citizens regarding corruption and government activities.[36] ACU facilitates public involvement in the fight against corruption by creating an effective mechanism to encourage corruption-related complaint submission. Despite being competent in the fight against corruption, there are no clear guidelines or procedures. The anti-corruption laws also indicate that the procedure for addressing corruption can follow the process outlined in the *Criminal Procedure Code* of Cambodia. However, ACU does not offer a time frame for dealing with complaints or providing public information. The public cannot access all necessary information, such as how to file a complaint properly. The public can submit their complaints in person, put them in ACU boxes, submit complaints through electronic forms, post offices nearby free of charge, or send them to the ACU through other agencies. Whether ACU takes any action or not, there is no certainty.[37]

The Cambodia Human Rights Committee (CHRC) promotes and protects human rights as a government institutions. The role of CHRC is to investigate and address complaints concerning human rights violations, gather information, conduct training, promote awareness about human rights, and prepare reports for the United Nations.[38] The CHRC operates under the executive branch's authority; no clear rules or guidelines govern its functioning. As a result, it is not easy to evaluate whether it is effectively carrying out its responsibilities. This national human rights body lacks clear procedures and accessibility, and there is no established process for members of the public to follow when filing a complaint.[39]

Civil society organizations and NGOs can play a vital role in various areas and assist in resolving disputes related to land disputes, domestic violence, inheritance, and loan repayments. These organizations can guide and advise citizens and monitor the progress of complaints and cases under review. They can help inform commune councils and citizens about the relevant procedures to submit complaints, legislation, and ways to address different issues.[40]

2.2.3 Courts

The court system in Cambodia has yet to fully adapt to the needs of Cambodia's quickly evolving society. The Constitution provides a single court system to deal with private and public lawsuits. Though Cambodian provides the judiciary presiding over administrative cases to protect subjective rights, the court still has limited control over

[35] "Law on Administrative Management of Communes/Sangkats [ច្បាប់ស្តីពីការគ្រប់គ្រងរដ្ឋបាលឃុំ សង្កាត់]," 2001, art. 49.
[36] "Anti-Corruption Unit (A.C.U.)," February 19, 2023, http://www.acu.gov.kh/en_sub_index.php?4a8a08f09d37b73795649038408b5f33=1&03c7c0ace395d80182db07ae2c30f034=1.
[37] Khlok, "Administrative Complaint Mechanisms in Cambodia," 167.
[38] "Cambodian Human Rights Committee," Cambodian Human Rights Committee, accessed February 13, 2023, https://chrc.gov.kh/en/home/.
[39] Virak Ou, "National Human Rights Bodies in Cambodia," CCHR Institution Series (Cambodia, 2012), 1–2, https://chrc.gov.kh/wp-content/uploads/2022/03/2012_03_30_CCHR_Institutions_Series_Factsheet_National_Human_Rights_Bodies_ENG.pdf.
[40] Read, "Solving the Complaints of Citizens at Sub-National Levels," 185.

administration.[41] Under the current Constitution and law on *the 2014 Organization of the Courts*, courts can have jurisdiction to solve administrative cases under the civil and procedure codes. Whether the court divides between objective and subjective complaints is still being determined. Consequently, citizens can claim damages from unlawful or negligent state actions. Article 749 addresses the issue of liability, where the state and its administrative agents are liable for their wrongdoings.

Complaints for state liability may fall under two categories: complaints for illegality and complaints for compensation. The first category of complaints, called objective complaints, aims to ask for the nullification of an administrative act or an administrative decision made by asserting that it breaches any principle of legality. In this case, a decision made by judges in favor of the complaint causes the nullification of an administrative act or an administrative decision that affects an entire situation or every individual. A subjective complaint is the second type of complaint. This type aims to ask for a contract's nullification or claim damage caused by acts. The judgment of the complaint only affects specific individuals.[42] Furthermore, the civil code has not elaborated on any procedure to claim damages.

2.3 The Weakness of Current Administrative Dispute Settlement of Administrative Matters

This section illustrates that Cambodia's current practice still needs general provisions on administrative procedure law and the deficiency of judicial remedies on administrative matters that could be insufficient in dealing with public law disputes. The absence of specific provisions to process and adjudicate administrative cases hinders citizens from seeking administrative law remedies, even in the courts. Furthermore, dealing with an administrative case under a civil lawsuit is not enough in the long run, as administrative matters under a branch of public law require further special rules.

Cambodia still lacks adequate compulsory legal provisions for dealing with administrative matters at the administrative level and in courts. In Cambodia, various mechanisms are available to address administrative disputes; however, it cannot be said that those mechanisms offer enough solutions to deal with them. A general administrative procedure law is still missing in the Cambodian context. An administrative procedure law could provide standard rules concerning administrative procedure guidance, notifications, and procedures for administrative orders to improve fairness and transparency. The current review system needs coordination, uniformity, and administrative procedure rules, making it challenging for citizens to acknowledge and be aware of their rights.

A Civil Procedure Code is not enough to handle administrative matters under the development of the *2014 Law on the Organization of the Courts*. This code does not provide enough provisions related to public law, especially dealing with administrative matters. The *Code of Civil Procedure* might need some development to address this issue. This absence also causes citizens to be reluctant to accept court remedies because they might find the court procedure inadequate. Moreover, Cambodia's judiciary guarantees private and public litigation, but the current mechanism and practice are still problematic. Ordinary courts still need a full development of specialized courts and legal provisions for expanding remedies for administrative cases' litigation.

2.4 Chapter Summary

In the current context, the Cambodian legal frameworks for judicial review of administrative litigation can fall into these provisions: the 1993 Cambodian Constitution, the 2007 Civil Procedure, the 2007 Civil Code, and the 2014 Law on Organization of the Courts. Cambodia provides three administrative complaint mechanisms: an internal complaint system, external complaints monitoring groups, and the courts. Internal complaint mechanism includes the Ministry of National Assembly Senate Relations and Inspection (MoNASRI), sector ministry, sector law institution, and territorial administration. External complaints monitoring groups consist of the Anti-corruption Unit (ACU), the Cambodia Human Right Committee (CHRC), civil society or NGOs, and finally, the courts are the

[41] Chansangvar Theng, "Administrative Law and Decentralization," in *Development of Cambodian Administrative Law*, ed. Kai Hauerstein and Jörg Menzel (Cambodia: Konrad-Adenauer-Stiftung, 2014), 235.
[42] Yan, "State Liability and Rights of Citizens to Claim Damages," 210.

mechanism. These mechanisms still face some challenges and need to be competent for dealing with administrative disputes and do not meet the citizens' expectations. In another sense, there are insufficient compulsory judicial review remedies. The absence of specific provisions to process and adjudicate administrative cases hinders citizens from seeking administrative law remedies, even in the courts. A proper legal provision for judicial review of administrative actions and decisions enhances and strengthens fairness and transparency in reviewing government actions. Furthermore, dealing with the administration case under a civil lawsuit is insufficient in the long run since the civil procedure has not provided any specific remedy in administrative case disposition is illegal and dealing with administrative matters requires specialized rules. The development of legal provisions would assist judges in effectively reviewing administrative actions.

3. Administrative Litigation in Japan

The previous chapter has illustrated the legal frameworks and the weaknesses of the current practice in dealing with administrative litigation remedies in Cambodia. This chapter examines the development of the legal framework concerning judicial remedies for administrative matters and its issues in practice and experience in Japan. Japan has gradually developed remedies for judicial review for administrative litigation under the *Administrative Case Litigation Act* within the ordinary courts. An aggrieved party can file a complaint directly to the court without going through the competent administrative authority, except in some cases where the law requires a plaintiff to deal with an administrative agency first.

3.1 Overview of Japan's Legal and Judicial System in Dealing with Administrative Litigation

This section outlines the continuous development of administrative justice or administrative law remedies to protect individual rights and interests against administrative action as an adaptation of judicial review. In the prewar period, Japan established the administrative court to adjudicate administrative matters by adopting the continental European legal system "administrative state" principle. Hence, the judicial court had no jurisdiction over public law acts dealing with administration. The postwar Constitution changed the system from an "administrative state" to a "judicial state," giving the courts the jurisdiction to review all cases.

Meiji Constitution took after the Prussian Constitution model.[43] Therefore, ordinary courts could not thoroughly examine significant cases related to administrative matters. Article 60 of the *Meiji Constitution* provides that an ad hoc court with jurisdiction would be set up within statutory law to handle certain subject matters.[44] Article 61 of the prewar Constitution banned ordinary courts from hearing lawsuits related to the infringement of rights by the action of administrative bodies.[45] The *Meiji Constitution* determined that disputes concerning administrative law were to fall under the provision of a special administrative court, and an administrative court was under specifically authorized statutory law, which limited the court in practice. Before that, Japan adopted the "*Decree on judicial matters (1872)*," strongly influenced by French law. This Decree was not to organize an autonomous and independent judiciary but to take the adjudication to function away from the regional powers of great lords (Daimyos). Later, French influence disappeared, and the German-inspired law gained more impact on Japanese society. Japan enacted the "*Court Organization Act*" in 1890 to surpass the Decree of 1872. This statute established the basic three-tiered structure of the Japanese judiciary under the *Meiji Constitution*.[46]

The administrative court was limited in its jurisdiction to cases outlined in separate laws. Although administrative adjudication developed under the executive bureaucratic administrative power, the claims under this administrative court could only refer to specific laws or ordinances. Under an individual act, the court could only adjudicate over taxes and tariffs, denying or cancelling business licenses, water use, public works, and restricting public and private lands.[47] The scope of subject matters to review by the administrative court was relatively narrow, limited to those

[43] Hideo Wada, "The Administrative Court under the Meiji Constitution," *Law in Japan* 10 (1977): 3.
[44] "The Constitution of the Empire of Japan | Birth of the Constitution of Japan," art. 60, accessed February 2, 2023, https://www.ndl.go.jp/constitution/e/etc/c02.html#s5.
[45] Ibid., art. 61.
[46] Luis Pedriza, *Lectures on Japanese Law from a Comparative Perspective* (Japan: Osaka University Press, 2017), 72.
[47] Colin PA Jones and Frank S. Ravitch, *The Japanese Legal System* (West Academic, 2018), 98.

specific statutes or in list form. Furthermore, an administrative court prevented hearing any cases unless based on a particular statutory provision permitting an appeal to this court. The administrative court decided in a first and final instance without any possibility of appeal.[48]

Moreover, the prewar Constitution supported a system in which the emperor, who possessed sovereign authority, had the right to govern the state. The emperor also exercised judicial power.[49] In light of the judiciary's initial mission to resolve conflict involving the rights or the legal relations between parties, the administration of justice in the judicial system needed to address all such matters sufficiently. Regarding other disputes on the relation of rights, for instance, the disputes between the cabinet and the public when the cabinet exercises executive power, ordinary courts may have no authority. These disputes had to rely upon the function of voluntary correction of the supervising government offices, except for some disputes in which citizens can bring litigation in the administrative court.[50] As a result, during the prewar period, it could be expected that administrative oversight was insufficient and restricted, and neither of the existing courts could give a resolve between citizens and the government a thorough examination. The prewar administrative court was only a court in name; it had no remedial power or other powers aside from declaring illegal government actions invalid or nullifying their effect.[51]

After WWII, the Japanese government and *General Headquarters* (GHQ) discussed amending the Meiji Constitution with GHQ instruction. The current Constitution, based on the concept of justice, guarantees the dignity of humans and the people's sovereignty.[52] Instead of having an administrative court, the postwar Constitution changed the situation fundamentally by placing a review of all cases within the jurisdiction of ordinary courts. The *Judiciary Act was enacted in 1947 to abolish* the former *Court Organization Act*.[53] The new judicial system allows the courts to determine the legality of government administrative action. Judicial power resolves all legal disputes and other powers provided explicitly by law. The new Constitution explicitly prohibits establishing a special tribunal and granting final decisions in adjudication to any executive body or agency.[54] The current Constitution of Japan denies the system of the maintenance of the administrative court. As a result, the jurisdiction of administrative case litigation falls under the ordinary court.

As a short-term measure, Japan enacted a law on the *Temporary Amendment of the Civil Procedure Code* in 1947.[55] Consequently, ordinary courts were responsible for addressing all challenges of administrative disposition based on the *Civil Procedure Code*. However, the civil procedure code did not provide a clear remedy for illegal administrative disputes, resulting in a lack of proper mechanisms to address such cases.[56] During the initial years, judges in ordinary courts faced challenges in handling administrative disputes. The courts did not have specific guidelines in both the *Civil Procedure Code* and the *Temporary Amendment of the Civil Procedure Code*, which resulted in a period of trial and error. Some courts followed the prewar approach, granting extensive discretionary power to the bureaucracy. In contrast, others aimed at a comprehensive judicial review of administrative dispositions.[57]

3.2 Judicial Remedies in Japanese Administrative Law

This section examines judicial review in Japanese administrative law, focusing on the *Administrative Case Litigation Act* (after this ACLA) and its amendment in 2004. ACLA was a particular branch of public law that provided a unique form of civil litigation for challenging government acts.[58] Under current practices, an aggrieved party unsatisfied

[48] Lorenz Ködderitzsch, in *History of Law in Japan since 1868*, ed. Wilhelm Röhl, vol. 12 (The Netherlands: Koninkklijke Brill NV, 2005), 634.
[49] "The Constitution of the Empire of Japan | Birth of the Constitution of Japan," art. 57.
[50] Matasuke Kawamura, "The Japanese Judiciary: A Step Toward Democracy," *American Bar Association Journal* 39, no. 3 (1953): 213.
[51] Ködderitzsch, 636.
[52] Yuichiro Tsuji, "Administrative Action and the Succession of Illegality," SSRN Scholarly Paper (Rochester, NY, June 14, 2016), 13, https://papers.ssrn.com/abstract=2987676.
[53] Pedriza, *Lectures on Japanese Law from a Comparative Perspective*, 74.
[54] "The Constitutional of Japan," art. 76 (2), accessed July 24, 2022, https://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html.
[55] Shuichi Sugai, "Chapter 3: Judicial Functions and the Government," in *Administrative Law in Japan* (Japan, 1999), 74.
[56] Ködderitzsch, 638.
[57] Ibid., 639.
[58] Jones and Ravitch, *The Japanese Legal System*, 355.

with an administrative disposition or adjudication can obtain judicial remedies through the ACLA and the *Code of Civil Procedure*.

Administrative law in Japan formally shifted under the 1947 Constitution from objective oversight of administrative disposition to protection of subjective rights under the ordinary courts.[59] Ordinary courts treat administrative litigation as a civil lawsuit. However, it cannot use civil procedures for individual disputes in administrative cases. Civil procedures for settling private disputes are only sometimes appropriate for resolving administrative disputes, as disputes over administrative activities usually include the public interest. Thus, special provisions for civil procedure law were necessary.

The *1948 Special Law for Administrative Litigation* enacted procedures for administrative litigation, which influenced civil procedure law, including establishing some special rules.[60] The *1948 special law* was supplementary legislation for the civil procedure code regarding administrative litigation. This special law made Japanese administrative law return to following the former administrative litigation court during the continental law path functioning once again as this law was inadequate and limited. This law contained only 12 articles that supplement the *civil procedure code* with special rules concerning administrative cases.[61] In 1962, as an addition to the code of civil procedure, the ACLA outlined comprehensive specific rules for administrative litigation. The critical elements of ACLA were to expand and define the types of legal remedies and abolish the principle of the exhaustion of administrative remedies.[62] In light of this, the 1962 ACLA was the first law on judicial review of administrative cases with quasi-general applicability.[63]

3.2.1 Types of Administrative Case Litigation

The 1962 ACLA was the first law to govern quasi-general administrative litigation. It discussed objective litigation in detail in Chapter 4, Articles 5 and 6 of the ACLA. ACLA did not have the right to file a claim for objective litigation. It only allows such action where a particular special law permits it. Article 3 of ACLA acknowledges subjective litigation as the primary form of litigation.

The ACLA provides four types of administrative case litigation: action for the judicial review of administrative disposition, public law-related action, citizens' actions, and interagency actions. Action for the judicial review of administrative disposition and public law-related actions are subjective litigations. Citizens' actions and interagency actions are objective litigation. Objective litigation is a unique individual type of litigation provided for in a specific statute.[64] Objective litigation aims to ensure the proper application of statutory provisions. Courts can only exercise their cognizance in cases where specific provisions permit access to the court. Subjective litigation is more common as it aims to protect the individual's rights and interests. The parties concerned do not need specific provisions permitting access to the court. The purpose of subjective litigation is the protection of individual subjective rights or interests.[65] Individuals can bring subjective lawsuits with specific cases arising from their personal, subjective interactions and with the administrative process.[66]

[59] Tsogt Tsend, "Recent Developments in Administrative Law: From Administrative Control Toward Remedy of Subjective Right?," SSRN Scholarly Paper (Rochester, NY, October 25, 2017), 82, https://papers.ssrn.com/abstract=3272659.
[60] Ogawa Ichiro, "Administrative and Judicial Remedies against Administrative Actions," in *Public Administration in Japan*, ed. Tsuji Kiyoaki (Japan: University of Tokyo Press, 1984), 218.
[61] Ködderitzsch, 639.
[62] Ichiro Ogawa, "Administrative and Judicial Remedies against Administrative Actions," in *Public Administration in Japan*, ed. Kiyoaki Tsuji (Japan: University of Tokyo Press, 1984), 218; Ködderitzsch, 641.
[63] Tsend, "Recent Developments in Administrative Law," 82.
[64] Colin P.A. Jones and Frank S. Ravitch, *The Japanese Legal System in a Nutshell*, Nutshell Series (United States of America: West Academic Publishing, 2020), 628.
[65] Ichiro Ogawa, "Outline of the System of Administrative and Judicial Remedies Against Administrative Action in Japan," *International Review of Administrative Sciences* 48, no. 2 (June 1, 1982): 248, https://doi.org/10.1177/002085238204800216.
[66] Jones and Ravitch, *The Japanese Legal System in a Nutshell*, 629.

3.2.2 Types of Action for the Judicial Review of Administrative Disposition

Two subcategories of subjective lawsuits of the ACLA are public law-related actions and actions of judicial review administrative dispositions. Public law-related action is a special kind of subjective litigation that differs from the action for judicial review disposition in terms of standing. Public law-related action contains two types of action. The first type relates to an original administrative disposition or administrative disposition on appeal that establishes or confirms a legal relationship between parties. In such a case, either party to the legal relationship may be the defendant according to relevant laws and regulations. The second type is a declaratory judgement regarding a legal relationship and any other action relating to a legal relationship under public law.[67]

Actions for judicial review of administrative dispositions are lawsuits brought by citizens to contest administrative agencies' exercise of public power. When judicial review of administrative decisions is unavailable, public law-related action is an action that serves as an alternative remedy. Actions for judicial review of administrative disposition do not apply when there is no exercise of public power or disposition.[68] The core of the ACLA is an action for judicial review of administrative disposition, as it allows the courts to redress illegal administrative activities directly. The 2004 Amendment to the ACLA improved public law-related actions and standing requirements for judicial review and added two types of judicial review actions: mandamus action and injunction action. Before the amendment, no explicit provisions existed for mandamus and injunction actions. After the amendment, ACLA provides six types of judicial review.

Action for the revocation provides two types of suits for revocation of original administrative disposition or determination, defined in articles 3, paragraphs 2 and 3 of ACLA. The first type is an action for revocation of the original administrative disposition, which refers to a legal action aimed at nullifying an original administrative decision and any other act carried out by an administrative authority as part of exercising public authority.[69] The latter type is an action for revocation of administrative determination or adjudication, which involves seeking the cancellation of an administrative determination, decision, or any other act by any administrative authority in response to an individual's request for an administrative review, objection, and further appeal (after this referred to an "administrative determination").[70] This type of litigation had traditionally been at the core of the administrative litigation system. An administrative act can have legal consequences when individuals or parties experience negative effects because of government actions.

The period for filing an action of illegal disposition of administrative agencies is within six months after such disposition or determination issuance under the current system. After this period, an individual cannot file a dispute or challenge the validity of an administrative act.[71] Typically, once government agencies issue an administrative disposition, the disposition will progress as planned, even if a plaintiff files a lawsuit. However, through a trial, a plaintiff can request the court to suspend the implementation of a disposition temporarily. Article 25 of the ACLA enables a court order to temporarily suspend the performance of an administrative disposition in case where it is urgent to prevent any severe damage resulting from the original administrative disposition.[72]

Action for the declaration of nullity of administrative acts refers to the legal action taken to obtain a judicial declaration regarding the existence, validity, or invalidity of an original administrative disposition or administrative appeal review.[73] When an administrative act has grave and plain defects, it can be regarded as invalid without legal effect, even before its revocation by an authorized administrative agency or the court. An affected party can assert

[67] "Administrative Case Litigation Act - English - Japanese Law Translation," November 1, 2022, art. 4, https://www.japaneselawtranslation.go.jp/en/laws/view/3781/en.
[68] Yuichiro Tsuji, "Marbury v. Madison and the Japanese Judiciary" 27(2) (2021): 234.
[69] Ibid., art. 3 (2).
[70] Ibid., art. 3 (3).
[71] "Administrative Case Litigation Act - English - Japanese Law Translation," art. 14 (1), accessed November 1, 2022, https://www.japaneselawtranslation.go.jp/en/laws/view/3781/en.
[72] Ibid., art. 25.
[73] Ibid., art. 3 (4).

the nullity of an act regardless of the expiration of the designated filing period.[74] Suppose the actions of an administrative agency cause harm to individuals' interests. In that case, they can appeal to the court to seek a declaration of invalidity for the administrative decision.[75]

Action for the declaration of illegality of inaction refers to when an administrative agency does not conduct the activity they must perform within a reasonable time.[76] One example is when an individual applies for the approval of a license in some business or trade, and an administrative agency must make a statement either granting or denying the application. If the administrative agency approves the application, the applicant has achieved his goal. When an administrative agency rejects their application or issues a denial decision, the applicant can take action to revoke the disposition. The applicant has the right to appeal for denial of their application. When the court determines the denial decision is unlawful and orders its cancellation, the decision binds the relevant administrative agency to accept the application and comply with the court's decision. Through this process, the applicant may attain the goals.

Under the former administrative court system, the only form of administrative litigation recognized was the action for revocation of administrative actions. As a result, individuals had no legal recourse action if the administrative agency neither approved nor rejected the application. However, under the new court system, there was debate over whether an individual who had no legal action could take against the administrative agency to order it to execute an act to which it was committed. Some argued that if the court ruled against an administrative agency's exercise of authority to approve or disapprove applications, it would go against the principle of the separation of powers. Others argued that the court should only ex post facto review administrative action and decide a case before the administrative agency decides the scope of its legal jurisdiction.

To solve such problems, the 1962 ACLA completed the system by providing actions to confirm illegal inaction. The court's decision can only declare that inaction is unlawful; it has no authority to order the administrative agency to undertake any action. Even if a court affirms that an administrative agency's inaction was unlawful, it cannot mean the agencies must approve the application since they may still be free to reject it under their authority. In this situation, the applicant can take legal action to challenge the agency's rejection or denial of the disposition, relying upon the judicial remedy. The system, thus, does not necessarily conflict with the principle of the separation of powers. Under this system, the court functions only to confirm the illegality of the inaction and correct the situation. This system also aligns with the principle of ex post facto review by the court. However, there was a discussion on the problem of action seeking specific acts from an administrative agency and the validity of such legal action under the interpretation of Japanese law. [77] The 2004 amendment of the ACLA introduced the mandamus and injunctive order action.

Mandamus action refers to the legal process of seeking a judicial order compelling the government to performance a specific administrative action or adjudication in cases where the government has refused the plaintiff's application or revoked an administrative disposition.[78] When the government receives an application but leaves it without any disposition, the plaintiff cannot bring an action for judicial review of administrative disposition. Mandamus provides two types of actions: in cases where the administrative authority has failed to make an original administrative disposition that it should make and where the application or plaintiffs has filed or requested the administrative authority to make a certain original administrative disposition or administrative adjudication, but the administrative authority has not taken any action.[79]

[74] Ogawa, "Administrative and Judicial Remedies against Administrative Actions," 220.
[75] "Administrative Case Litigation Act - English - Japanese Law Translation," art. 36.
[76] Ibid., art. 3 (5).
[77] Ogawa, "Administrative and Judicial Remedies against Administrative Actions," 221–22.
[78] Tsuji, "Marbury v. Madison and the Japanese Judiciary," 231.
[79] "Administrative Case Litigation Act - English - Japanese Law Translation," art. 3 (6).

In the first type of mandamus action, whether a citizen has a right to file a lawsuit still depends on the interpretation of the statute, especially standing. Article 37-2 (1) of ACLA allows individuals to have standing when they can demonstrate severe damage and no alternative means to prevent such damage.[80] For instance, the residents living near a waste disposal site that is causing environmental pollution can bring a lawsuit seeking cancellation of the permission to operate the waste disposal site. The second type of mandamus action requires the plaintiff to have the right to apply for a certain action, but the government may fail to take action. For instance, when parents' applications for admission of their children to a public preschool, such as kindergarten, are denied. In such cases, the plaintiff must initiate legal action to revoke the refusal and mandamus order. This situation occurs when the government rejects or leaves an application request untouched to the application.[81]

Action for an injunctive order is where an administrative agency is about to make a specific original administrative disposition or administrative determination. The plaintiff can seek a judicial order beforehand so the administrative agency cannot make the disposition.[82] The plaintiff must prove that there is severe damage and no alternative way, other than the judicial order, to remedy the situation (article 37-4 of the ACLA).[83]

In a situation of urgency and to avoid severe damage on the grounds of merit, a plaintiff can seek a judicial order beforehand so that the administrative agency cannot make a certain disposition. On the other hand, the judiciary may deny a provisional injunctive order and provisional mandamus when the judicial order infringes upon public welfare.[84] Presently, the mission of the current judiciary is to secure the legality of administrative agency action under the rule of law. The court has protected its separation of powers by implementing barriers such as standing and requirements such as mandamus actions. The ACLA's provision prohibits the government from abusing the rule of law by using its authority arbitrarily and capriciously.[85]

3.3 Critical Issues in Action for Judicial Review

The current legal basis of Japanese administrative and judicial review is under the ACLA. However, this law has several issues and is still developing in dealing with administrative litigation. This section identifies and discusses the critical concerns in ACLA related to administrative action for judicial review.

3.3.1 Types of Litigations Remedies

This subsection discusses the types of litigation in judicial remedies. Though Japan allows claimants to file a lawsuit against an administrative disposition or determination, the claimants must select the types of litigation in ACLA, whether to pursue judicial review of the original administrative disposition or public law-related action among articles 3 and 4 of the ACLA.[86] The ACLA requires the plaintiffs to prove that they meet all the requirements of each type of litigation to qualify for actions. If a plaintiff makes the wrong decision, they will easily fail to bring the action for review, as the judge will dismiss the case. In contrast, in some countries, like the United Kingdom, the plaintiff only brings an action for administrative case litigation in the first stage, and the court discretionarily selects appropriate remedies in the final step.

3.3.2 Target of Judicial Review

Original administrative disposition is the target of judicial review. However, the ACLA does not define administrative disposition; the Japanese system refers to case laws. While Japanese statutory administrative law does not provide any conditions or examples of administrative disposition, the theory and practice of Japanese administrative law have established certain criteria for such dispositions. These criteria include exercising public authority, direct legal

[80] Ibid., art. 37-2 (1).
[81] Tsuji, "Marbury v. Madison and the Japanese Judiciary," 231.
[82] "Administrative Case Litigation Act - English - Japanese Law Translation," art. 3 (7).
[83] Ibid., art. 37–4.
[84] Ibid., art. 37 (5).
[85] Tsuji, "Marbury v. Madison and the Japanese Judiciary," 232.
[86] Tsend, "Recent Developments in Administrative Law," 146.

effect, issuance by an administrative agency, and the intention to resolve concrete and individual issues.[87] The approach of Japanese administrative law to legal interpretation begins with abstract concepts and then applies them to concrete cases. The traditional practice among Japanese legal scholars involves establishing the legal concept and using this concept to interpret and address concrete cases. Examining administrative dispositions begins with the theoretical concept of an administrative act, which ends with a concrete idea.[88] Consequently, the original administrative disposition has four essential elements: an exercise of public power, legal effect, an act of the state or public entity, and its direct and concrete legal effect. However, the case law relating to this matter is intricate.

3.3.3 Relation between Administrative Appeal and Judicial Review

Another issue is the relationship between administrative appeal and judicial review. Article 8, paragraph 1 of ACLA, even when the plaintiff requested administrative authority to review an original administrative disposition under the laws or regulations, a plaintiff still can file an action to revoke the disposition.[89] The requirement of exhaustion of administrative remedies might reduce the court caseload. At the same time, it might obstruct access to the courts of the citizens. Under the current system, the plaintiff is not required to exhaust administrative remedies before bringing an action for judicial review, and the plaintiff can immediately submit legal action to revoke an administrative act, only in some exceptional cases where the laws stipulate that citizens must finish administrative appeal procedures before seeking recourse in court.[90]

3.3.4 Standing Rules

To have standing, plaintiffs must demonstrate their rights and legal interests protected by the statute. Article 9, Paragraph 1 of ACLA limits the ability to file lawsuits for the revocation of a disposition as only a person with a legal interest in seeking the revocation.[91] For example, the ruling of the supreme court 2005.12.07, *Minishu vol. 59, No. 10, at 2645*, article 9 of the ACLA grants standing to individuals who wish to file a lawsuit for revocation. The term "person who has legally protected interest" refers to an affected person whose right or legally protected interest is injured or is likely to be injured by the administrative disposition.

In this circumstance, the interpretation of the administrative legislation governing a disposition recognizes the need to protect individual concrete interests rather than solely include them under the broader public interest. In that case, individuals whose interests fall within the scope of these legally protected rights are eligible to file a lawsuit seeking the revocation of the disposition.[92] The problem is that plaintiffs must have the right or personal interest protected by the statute that authorizes the administrative issue. Their standing depends on the interpretation of the statute. At the same time, this case law is rigorous. The supreme court places importance on the fact that judicial review is a type of subject litigation. It distinguishes between public interest and individual rights or interests, so it has a strict standing requirement.

Furthermore, whether plaintiffs have a stand in administrative litigation depends on interpreting the relevant statute that authorizes the administrative disposition on a specific matter. The 2004 amendment of the ACLA, Article 9, paragraph 2, provides explicit requirements for determining the eligibility of a third party to challenge and administrative disposition, regardless of whether they are the recipient of the disposition, as long as they have a legal interest. The amendment of ACLA provides the court must consider the language of the provisions of the laws and regulations. The court needs to consider the purpose and objective of that law and regulations and the content and nature of the interest of that disposition.[93] This provision has broadened the scope of standing by allowing the

[87] Robert W. Dziubla, "The Impotent Sword of Japanese Justice: The Doctrine of Shobunsei as a Barrier to Administrative Litigation," *Cornell International Law Journal* 18, no. 1 (1985): 38, footnote 5.
[88] Tsend, "Recent Developments in Administrative Law," 115.
[89] "Administrative Case Litigation Act - English - Japanese Law Translation," art. 8 (1).
[90] Ibid., art. 8 (3).
[91] Ibid., art. 9 (1).
[92] "Details of 2004 (Gyo-Hi) 114 | Judgments of the Supreme Court," accessed March 21, 2023, https://www.courts.go.jp/app/hanrei_en/detail?id=795.
[93] "Administrative Case Litigation Act - English - Japanese Law Translation," art. 9 (2).

court to examine any related laws and regulations that share a common objective with those governing the administrative disposition.[94]

3.3.5 Time Limits

Time limit provisions are beneficial in determining the effectiveness of an administrative disposition, ensuring legal certainty, and safeguarding the public interest and the legitimate expectation of the third party who may be affected by administrative decisions. Before the amendment of ACLA, the subjective period for filing a revocation lawsuit was three months, and it was often difficult to prepare in such a brief time. The amended law provides two ways for a more extended period. Article 14, paragraph 1 of the ACLA extends the subjective statute of limitation from three to six months, making it possible to sue for revocation beyond the statute of limitation if there is justifiable ground. In principle, the person seeking revocation can initiate the process within six months of becoming aware of the original administrative disposition or determination. However, this time limit may not apply if there are valid and justifiable grounds for the delay in meeting the deadline.[95] Article 14, paragraph 2 of the ACLA states that after one year has elapsed from the original administrative disposition or determination date for the objective period, individuals cannot often bring an action to revoke an administrative disposition.[96] However, such provisions can impede citizens' ability to access the courts and seek redress.

3.3.6 Standards of Judicial Review

Finally, the ACLA does not prescribe the standards of judicial review, whether an administrative disposition is legal or illegal. Article 30 of ACLA, a court may revoke an initial administrative disposition if it determines that the decision exceeds the agency's discretionary authority or has abused its power.[97] In such cases, the court can nullify or invalidate the administrative disposition. The standard of judicial review, for example, error of statutory interpretation, fact-finding, failure to consider relevant consideration, irrelevant information, bad faith, improper purpose, or disproportionality, also depends on the case law.

3.4 Chapter Summary

Japan has gradually developed in establishing administrative law remedies for judicial review. During the Meiji Constitution era, criticisms of the administrative courts and limited administrative matters were prevalent in Japan. Japan incorporated the continental European "administrative state" system in the prewar period. However, the Anglo-American "judicial state" model has influenced Japan under the current Constitution. This transition reflects a shift in Japan's approach to governance and the judiciary's role in administrative matters. Japan's government had gradually adopted remedies for revoking administrative disposition. The judiciary can review administration actions or decisions within the ordinary court under the *Administrative Case Litigation Act* (ACLA). This law provides for both subjective and objective lawsuits. Action for judicial review of administrative disposition and public law-related action is subjective litigation. Citizen's actions and interagency actions are objective litigation. ACLA provides six types of judicial review: revocation for administrative disposition or adjudication, action for the declaration of nullity of an administrative act or illegality of inaction, mandamus, and injunctive order action. However, ACLA is not perfect. Several critical matters challenge citizens to challenge government authority, such as standing to sue, limit remedies, and time limit for filing for revocation, which led to the amendment of this act in 2004.

4. Comparative Analysis

As stated earlier, Chapters II and III are related to the practice and method of dealing with administrative litigation in Cambodia and Japan. The study has pinpointed the weaknesses of Cambodia's current practices as areas that require improvement. One key area is the absence of comprehensive provision for administrative law, as private law may not effectively address administrative litigation within the branch of public law. At the same time, the Civil Procedure and Civil Code have not stated many provisions about administrative law remedies, especially since Cambodia still need to develop judicial remedies. This chapter will study the strengths and limitations of the

[94] Tsend, "Recent Developments in Administrative Law," 114.
[95] "Administrative Case Litigation Act - English - Japanese Law Translation," art. 14 (1).
[96] Ibid., art. 14 (2).
[97] Ibid., art. 30.

Japanese system related to judicial review and remedies that could be lessons for Cambodia. The chapter also suggests that Cambodia can learn from Japan to improve its situation.

4.1 Strengths of Japan and Weaknesses of Cambodia

This section identifies and analyzes Japanese judicial law development's strengths and limitations. Japan developed an administrative law system and broadened the remedies for judicial review of administrative action of agency through ACLA. This section also analyses the Cambodian weaknesses in dealing with administrative litigation in the current practice.

Firstly, Japan has undergone a significant development of administrative law, transitioning from an administrative state to a judicial state. This transition involved a shift in the balance of power from administrative authorities to the judiciary in dispute resolution. Before WWII, Japan followed French and Prussian laws. The Germany system had influenced the primary legal model for modernizing the Japanese legal system as they shared similarities at that time. Thus, during the Meiji Constitution period, administrative adjudication was subject to the emperor and under the control of the administration, not under judicial jurisdiction. The ordinary courts could not accept the administrative case because of the limitation of legitimate competency and jurisdiction over administrative matters. If a court accepted administrative cases, it would infringe on administrative power based on the separation of power under the *Meiji Constitution*.

Even though administrative jurisdiction was administrative court control, in the postwar period, GHQ introduced a new legal system, establishing a new administrative law. Under Article 76 of the current Constitution, judicial power is exclusively vested in the court to resolve "legal disputes." The term "legal dispute" relates to a dispute about the existence of specific rights, duties, or relations between the parties and can be settled by applying the relevant law. Legal disputes in administrative litigation occur among private parties with a legal interest or subjective right against public authority. Under this Constitution, establishing litigation necessitated fulfilling three essential elements: judicial power (administrative litigation structure), legal dispute, and subjective litigation. These three elements must work together to define the concept of legal dispute.[98] These elements shape the main administrative litigation structure. Japan developed and transformed administrative law from primary administration power to primarily judicial power.

Secondly, Japan has developed the legal provision of the judiciary to review administrative actions or decisions under an ordinary court with branches of special public laws under civil cases. In the early postwar period, the *Code of Civil Procedure* provides the procedures for handling and resolving dispute administrative litigation. This Code did not spell out any specific remedy in cases with an illegal administrative disposition. Section 8 of the *law on Temporary Amendment of the Code of Civil Procedure for the Enforcement of the Constitution 1947* concerns the time limits of asserting an action for revocation of illegal disposition of administrative agencies within six months. There were no other provisions specifically addressing administrative lawsuits.

The *1948 Administrative Case Special Litigation Measure Law* supplemented the civil procedure code with special rules concerning an administrative dispute. It has not broadened its scope of review yet. Japanese administrative law shifted back to adopting the Continental European law system once again, as it required the exhaustion of administrative appeals and addressed the period for filing a suit. [99] Subsequently, the *Administrative Case Litigation Act,* finally adopted in 1962, was a law of quasi-general applicability concerning the judicial review of administrative cases for some types of public law-based administrative litigation. The 2004 amendment of the ACLA allows for reviewing administrative matters under an ordinary court with extensive remedies.

Thirdly, throughout history, Japan developed and evolved from a control type (objective) to a remedy type (subjective) of administrative litigation. The 1947 Constitution of Japan guarantees the remedy type of litigation.

[98] Tsend, "Recent Developments in Administrative Law," 79, footnote 285.
[99] Ködderitzsch, 639.

Article 32 of the Japanese constitution guarantees the right to access the court—one of the reasons why subjective litigations do not require specific provisions. The 2004 amendment of the ACLA is also crucial. The detailed objective litigation is in articles 5, 6, and Chapter 4 of ACLA. However, in principle, ACLA does not establish the right to bring an action for objective litigation; it allows action if individual special laws permit it. Articles 3 and 4 of the ACLA provide subjective litigation as the primary form of litigation.[100] The purpose of subjective litigation is unquestionably the protection of individual rights. However, the ACLA still prevents the third party from administrative litigation. The 2004 amendment of ACLA provides six types of judicial review. It permits the procedure of the civil procedure code concerning cases when the law lacks applicable provisions by providing administrative and judicial remedies. A third party now has a broader range of standing in the ACLA. Therefore, Japan has progressed and expanded the judicial review of remedy types.

Hence, the Japanese courts strengthened their judicial power and judicial review provisions. Article 81 of the current Constitution states that the courts can determine the constitutionality of any law, order, regulation, or official act. The Supreme Court is the court of last resort.[101] However, the power vested in the courts is limited to decisions on "legal controversies." Legal controversies signify factual disputes related to the rights and obligations of the parties concerned. The court can review the constitutionality of any law or any order. This power can only be necessary for deciding specific and concrete disputes. The court's role is to address the particular issues raised by the parties involved in the case.

One scholar argues that a court cannot review the validity of a law or an order unless it relates to a concrete dispute over the rights and obligations of an individual. The court only has limited authority to control administrative actions, such as in the case concerning litigations against the inaction of an administrative agency. A case involving government actions with a highly political nature should be exempt from judicial review. Even when the matter concerns the person's rights and obligations, it is appropriate for the government to use a political process such as deliberation in the Diet (national legislature) or public opinion.

There is much discussion on whether legal action could be taken against an administrative agency, demanding the exercise or non-exercise of a particular administrative act. Generally, admitting such forms of litigation could cause the court to invade the domain of administrative power, and there is a likelihood that the court would consequently supervise administration. On the other hand, specific forms of litigation should be recognized in certain cases to fully secure the individual's right against the exercise of administrative power.[102] In this sense, reforms in the postwar period transformed administrative litigation from control type into remedy type. They allowed court power to exercise a dispute related to the rights and obligations of an individual.

The current shortcoming in Cambodia's practice is primarily due to the lack of comprehensive provisions on administrative procedure laws and the inadequacy of judicial remedies on administrative matters. Cambodia provides three administrative complaint mechanisms: internal complaint mechanisms, external complaint monitoring groups, and courts. These mechanisms cannot address administrative disputes effectively and meet citizens' expectations.

Individuals suffer damage from illegal acts by government agencies; they can file a complaint seeking compensation. Even though this type of lawsuit falls under the category of civil litigation, this lawsuit still needs to examine the legality of government actions, which is a distinct characteristic of administrative matters. Under the current situation, there are insufficient compulsory judicial review remedies. There is a lack of clearly defined guidelines for judicial review of administrative matters. The distinctly defined action for judicial review would assist judges in identifying faults or liabilities resulting from administrative actions.

[100] Tsend, "Recent Developments in Administrative Law," 82.
[101] "The Constitutional of Japan," art. 81.
[102] Ogawa, "Administrative and Judicial Remedies against Administrative Actions," 223.

Cambodia can learn from the strengths of the Japanese experience in developing judicial review and enacting a special law for public law disputes under the civil court. Following the current Constitution, Cambodia adopts a system similar to Japan's remedy-type approach in its judicial practice. Cambodia should focus on developing public law provisions, particularly the Administrative Case Litigation Act, to enhance its administrative litigation framework.

4.2 Lessons Learned from Japan

This section analyzes the improvement of administrative action review through the 2004 amendment of the *Administrative Case Litigation Act* (ACLA). Moreover, this part will illustrate whether the Japanese as the ACLA could function in Cambodia as ACLA has become broader in some areas and easier to challenge governmental activities.

4.2.1 Type of Litigation and Standing to Sue

The 2004 ACLA amendment has broadened the scope of standing, and the Supreme Court has gradually relaxed the standing requirement. In this regard, the previous provision of the ACLA had restricted the qualified plaintiff. However, standing or interest to sue in ACLA is limited, as only a person with legal interest can file litigation against the administrative agency. Under the 2004 amendment of the ACLA, judges need to determine whether there is a legal interest based solely on the wording of the legal provisions that served as the grounds for the disposition or decision. Therefore, the 2004 revision makes legislative considerations the primary factor for determining whether individuals have a legal interest depending on the court's interpretation of statutory law. The purpose of the law is not based only on the language of its provisions of the law. Judges need to consider meaning and objectivity.[103] In some cases, the problem of whether the plaintiff has standing also depends on the statute's interpretation.

4.2.2 Extension of Time Limits and Administrative Appeal

The 2004 amendment of the ACLA extends the litigation period to six months from the date the plaintiff learned that their interest would be harmed or violated.[104] The plaintiff could not file a lawsuit after the statute of limitation expired except for a valid reason. In this regard, when plaintiffs intend to file against an original administrative disposition, the court will check the legality of the lawsuit and whether the plaintiff and defendant are eligible for challenge administrative action. The plaintiff requires some consideration, such as the period of action, litigation requirements stipulated by individual laws, and the substantive disposition requirements of individual laws. These requirements are the basis for determining the illegality of disposition or decisions. In certain situations, it may not be mandatory for the plaintiff to fully exhaust administrative remedies before initiating a judicial review. However, some cases still require the exhaustion of administrative remedies, which creates barriers for citizens seeking access to the courts.

4.2.3 Expanded Types of Lawsuits and Remedies

Before the 2004 ACLA revision, there were no special provisions for a mandamus action or an action for injunctive order.[105] The previous law only recognized three types of lawsuits: an action for revocation, confirmation invalidity, and an action for confirmation illegality of inaction. The action to confirm the illegality of inaction had no explicit provision for actions for obligations. Therefore, it was up to the judge's interpretation whether an action for obligation was permissible since the previous law did not provide sufficient remedies. The 2004 amended obligatory actions, defined them as a new type of action for appeal against a ruling, and stipulated the requirements for such actions in article 3, paragraph 6, articles 37-2, and 37-3 of ACLA. Mandamus is a lawsuit seeking a court order to the effect of an administrative authority.[106]

The validity of injunctive actions was also subject to interpretation because no explicit provisions allowed or addressed such action. The 2004 revised act allows a plaintiff to bring a lawsuit of injunctive action when the

[103] Ministry of Justice, "法務省 平成１６年改正行政事件訴訟法の概要 [Overview of the 2004 Revised Administrative Case Litigation Law]," 6.
[104] Ibid., 5.
[105] Tsuji, "Marbury v. Madison and the Japanese Judiciary," 232.
[106] Ministry of Justice, "法務省 平成１６年改正行政事件訴訟法の概要 [Overview of the 2004 Revised Administrative Case Litigation Law]," 7.

administrative agency is about to make certain dispositions or determinations that they should not make. There is a possibility that the disposition or determination will result in severe damage unless there is another appropriate way to prevent such damage. Thus, this action created a new type of appeal lawsuit known as an injunction lawsuit.[107]

Though the 2004 amendment extended the type of lawsuit and remedies, the ACLA does not prescribe the standard of judicial review. Article 30 of the ACLA provides that the court may revoke an original administrative disposition made by a government authority at its discretion only if the agency's decision made by the agency is beyond the bounds of discretionary power or an abuse of its power. As a result, the standard of judicial review on whether the administrative disposition in issue is legal or illegal still relies on case laws.

Cambodia can consider this improvement of the 2004 ACLA when initiating a special provision relating to administrative case litigation. It is crucial to address aspects, including enhancing court remedies, clarifying standing requirements, standardizing administrative review processes, establishing clear time limits, and action for judicial review. Establishing the standing helps keep the judiciary within its proper orbit so that the court will not dominate or overpower the executive branches.[108] The court might have a broader understanding of the interest in suing to file a complaint against administrative action or decision, including the third party.

In addition, Cambodia can take a lesson from Japan, where affected parties do not have to exhaust administrative appeals before pursuing judicial review. The current practice requires an affected party to file a complaint to administrative authorities before going to court. In this case, a plaintiff has to postpone seeking judicial relief until the end of the proceeding. After this, judicial involvement may not prove necessary if the administrative agency might cause undue delay, adjust any initial errors at subsequent stages of the process, or the plaintiff may prevail on other grounds.[109] Therefore, the affected party can seek immediate judicial review. Doing this will enable the court to give actual relief from illegal administrative action. Moreover, Cambodia should also establish standardization for time limits to enhance the fairness and transparency of the process.

Cambodia should prioritize developing a comprehensive judicial review system for administrative actions, ensuring that plaintiffs have access to judicial review of administrative litigation. Additionally, it is essential to consider direct judicial review of the courts where a plaintiff determines that an administrative agency exceeds its jurisdiction and seeks to prevent irreparable damage. Currently, Cambodia has no provisions for state administrative remedies and addressing the illegality of administrative actions.

4.3 Suggestions

This study reveals that Japan's administrative law development has improved and expanded. Precise mechanisms and provisions will enhance opportunities for affected people to obtain judicial review of the due process of law and government action. Thus, after learning from Japan's experience, the study provides three suggestions where Cambodia can learn from Japan.

First, Cambodia can develop a general rule for administration processes to increase fairness and transparency. The current mechanism does not have uniform rules, making it difficult for citizens to follow. A general provision will enable clear procedural guidelines, review duration, and a hearing process. Developing a general rule for administration would enhance the fair procedure and transparency of government.

Second, the Cambodian government should further reform the current Code of Civil Procedure with special provisions that can address remedies for administrative matters. The current practice lacks specific provisions regarding administrative law remedies. The additional provision to deal with public law under the civil lawsuit would have provided broader resolutions to decide administrative matters, enabling citizens to challenge the

[107] Ibid., 8.
[108] Ernest and Ronald, *Administrative Law, and Process in a Nutshell*, 372.
[109] Ibid., 392.

government's action. A developing special provision under the code of civil procedure on administrative law remedies could enable citizens to find relief from illegal government action.

Third, Cambodia should develop action for judicial review. Numerous hurdles remain to bring a successful administrative lawsuit and prevail through appeals. The court should protect citizens' rights and interests; that is, it is not enough that the court can only revoke administrative actions. The courts must consider the power to order administrative agencies to conduct a specific administrative action or to prohibit administrative agencies from conducting a certain action. Cambodia can follow some practices from Japan. Cambodia can learn from Japan's strengths of administrative justice and judicial review system improvement.

4.4 Chapter Summary

From a comparative perspective, the current constitutions of Cambodia and Japan follow a "judicial state" model, and administrative cases can be scrutinized under a judicial court within civil lawsuits. In Japan, the scope of judicial power under the present Constitution is much broader than in the prewar period, and administrative law has expanded. The ACLA created the current administrative litigation system in Japan. Whereas Cambodia still needs clear guidance about judicial remedies in administrative cases. Although Cambodian judges can decide administrative cases under civil litigation, there is still a need for improvement in the current situation. The Cambodian practice of dealing with administrative litigation should provide a comprehensive system to ensure the courts can rule on administrative actions' illegality. This thesis makes three suggestions for Cambodia's system: first, Cambodia should develop a comprehensive provision of administrative law to increase administrative fairness and transparency. A general provision will enable clear procedural guidelines, review duration, and a hearing process. Second, legislation should further improve the current Code of Civil Procedure, which can address the administrative litigation issue. The additional provision to deal with public law under the civil lawsuit would have provided broader remedies to decide administrative matters, enabling citizens to challenge the government's action. Third, Cambodia should develop judicial remedies for administrative litigation based on Japan's experience. Cambodia can follow some practices and learn from Japan's strengths and the improvement of a judicial review system through ACLA.

5. Conclusions

Even though the Cambodian constitution guarantees the rights of citizens to make complaints or claim compensation for damage caused by the state, the judicial system does not provide insufficient power in dealing with administrative case litigation. Cambodia has the limitation of law in administrative litigation matters. Therefore, this study analyzes the development of legal frameworks for judicial review of administrative actions and their issues in Japan.

This study first explores the legal framework of Cambodia relating to judicial review of administrative litigation and the weakness of current compliant dispute settlement mechanisms. This study found that though the court has jurisdiction over administrative litigation, there is no clear provision for recourse for administrative lawsuits. To file a complaint against the wrongdoing of government agencies, plaintiffs need to apply to the administrative authorities for remedies; the administrative process still lacks coordination, uniformity, and legal provisions for a standard review of administrative litigation. Therefore, Cambodia's settlement mechanisms still do not meet the citizens' expectations and could take longer to resolve the dispute.

Cambodia has provided different complaint mechanisms such as internal complaints processes, external monitoring groups, or courts; however, those mechanisms still face some difficulties with overlapping roles and responsibilities. The current practice has not provided an effective remedy for administrative disputes yet. Cambodia still needs to develop effective compulsory legal remedies for dealing with administrative matters at the administrative and court levels. Cambodia needs a special provision for administrative case litigation review for people to bring lawsuits against the authorities.

This thesis has compared and analyzed the legal development of administrative acts and the litigation process in Cambodia's administrative complaint mechanism with the Japanese context—the development of judicial review in Japan in the 2004 amendment ACLA. The Japanese legal system offers a good example of dealing with administrative case litigation. The continental European "Administrative State" during the Meiji Constitution era and the Anglo-American "judicial state" in the current Constitution influenced the Japanese system. Japan's government had gradually adopted remedies for revoking administrative disposition. The judiciary can review administration actions or decisions within the ordinary court under the *Administrative Case Litigation Act* (ACLA). The ACLA still has limitations and developed a legal framework and administration system broadening the court's scope in the 2004 amendment.

A comparative study of administrative litigation in Cambodia and Japan reveals some difficulties in handling administrative cases when a provision for judicial review is still absent from Cambodian law. This thesis argues legal reforms incorporating the Japanese approach would benefit Cambodia by enhancing the efficiency of procedure resolution.

After the analysis, this paper presented three suggestions for Cambodia. First, Cambodia should develop a general rule with a uniform and clear standard administration review to increase fairness and transparency. Second, the Cambodian government should improve the current Code of Civil Procedure to address administrative litigation. Public law requires special rules. Third, Cambodia should develop judicial remedies for administrative litigation from Japan's experience. Cambodia can draw lessons from Japan’s experience and apply them in developing its administrative system to establish judicial review administrative actions.

The limits of the thesis have framed the research area from only the legal aspect of judicial review in dealing with administrative litigation and partially as a problem related to the current practice of administrative bodies' complaint mechanisms. The limitation of this study is the inability to access actual cases in Cambodia's ordinary court. Furthermore, Problems in dealing with administrative complaints or appeals are also issues in the current situation. Therefore, further research should focus on determining an internal administrative review of Cambodia's territorial administration or ministry.

List of Abbreviations

ACLA: Administrative Case Litigation Act
ACU: Anti-Corruption Unit
CHRC: Cambodia Human Rights Committee
GHQ: General Headquarters
MoNASRI: Ministry of National Assembly- Senate Related Inspection
PAWG: Provincial Accountability Working Group
UNTAC: United Nations Transitional Authority in Cambodia

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