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NULLITY AND LEGAL DEFECTS: SEVERELY UNLAWFUL ADMINISTRATIVE ORDERS IN THAI LAW AND COMPARATIVE JURISPRUDENCE

Jakkrit Na NAKHON¹

1 Political Science, Maejo University at Chumphon, Thailand;
jaknanakhon@gmail.com

Handling Editor:

Professor Dr. Christian KAUNERT Dublin City University, Ireland
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Abstract

This research provides a comprehensive examination of the theoretical underpinnings and legal concepts surrounding administrative orders issued unlawfully by state officials, particularly those with severe and manifest defects. Focusing primarily on the Thai legal framework, the study integrates comparative analyses with foreign jurisdictions, employing documentary research and legal analysis of statutory provisions, judicial precedents, and scholarly works. Findings reveal that administrative orders characterized by a blatant violation of statutory law or an incontrovertible factual contradiction are devoid of legal effect (null and void ab initio), and administrative authorities lack the competence to enforce them. The Administrative Court in Thailand is shown to possess the authority to raise issues of severe illegality *ex officio*. The study highlights the gradual judicial recognition of the doctrine of nullity in Thailand, drawing parallels with doctrines such as *nichtige Verwaltungsakt* in Germany and *acte administratif inexistant* in France. It argues for the adaptation of principles from foreign administrative law to enhance fairness, legal certainty, and efficiency within the Thai administrative adjudication system. The research proposes legislative and judicial reforms to clarify the distinction between void and voidable administrative acts, thereby strengthening the rule of law and ensuring greater alignment with international administrative law standards.

Keywords: Void Administrative Order, Legal Defects, Thai Administrative Law, Comparative Jurisprudence, Administrative Court

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Introduction

The Administrative Procedure Act 1996, as amended up to No.3 (2019), serves as Thailand's general administrative law, establishing a uniform procedural framework to ensure that administrative authorities act in accordance with the rule of law. It safeguards citizens from the arbitrary exercise of power and governs the issuance of administrative orders, emphasizing legality, effectiveness, and fairness in public administration (Panpaen, 2019).

Comparable statutes in Germany, France, and Japan similarly provide procedural foundations for administrative acts, guiding public authorities in exercising power while protecting individual rights under the rule of law (Schwarze, 2006; Cane & Kritzer, 2010). Administrative orders—unilateral legal acts that directly affect individual rights—must comply with the principle of legality, which prohibits arbitrary action and requires lawful authority (Craig, 2021).

Under Thai law, an administrative act is lawful only if it satisfies both substantive and procedural requirements. When an order contravenes such legal conditions, it becomes unlawful and may be revoked. If the defect is manifest and grave, the order may be void ab initio, similar to the doctrines of *nichtig Verwaltungsakt* in Germany and *acte administratif inexistant* in France (Forsthoff, 1973; Vedel & Delvové, 1982). Both systems recognize that seriously defective administrative acts produce no legal effect.

Section 36 of the Act outlines essential elements of a valid administrative order: (1) issuance by a competent authority; (2) exercise of public power authorized by law; (3) determination of legal status or rights; (4) application to specific cases or groups; and (5) external legal effect. Administrative orders may be delivered in writing, orally, or via electronic communication, provided they clearly express intent. Oral orders require written confirmation upon request within seven days, and the order becomes effective upon notification.

Administrative orders include formal directives, official letters, licenses, approvals, appeal decisions, announcements, registrations, and general orders. The Supreme Administrative Court Decision No.57/2554 held that an electronic public procurement notice constituted a general administrative order, while Decision No.201/2555 classified an unlawful transfer order as subject to judicial review under Section 9(1) of the Act on Establishment of Administrative Courts and Administrative Court Procedure, 1999.

Although the doctrine of gravely unlawful administrative orders remains uncodified, it has gained gradual judicial recognition. Records from the 1991 Drafting Committee show that members debated differentiating between void and voidable orders but left the matter to judicial development (Document No. 96/2535). The landmark Decision No.A.47/2546 (Grand Chamber) first recognized that an administrative order may be so gravely unlawful as to be deemed non-existent in law, reflecting comparative doctrines from Germany and France (Galligan, 1996; Schwarze, 2006; Craig, 2021).

Subsequent rulings of the Supreme Administrative Court, opinions of the Council of State (Krisdika), and interpretations by the Administrative Procedure Committee confirm the growing acceptance of this principle. These developments underscore the need to clarify the legal distinction between voidable and void administrative acts and to strengthen Thailand's alignment with comparative administrative jurisprudence.

Accordingly, this study aims to advance the understanding of administrative illegality under Thai law, drawing insights from foreign legal systems to support doctrinal development and inform future legislative reform of the Administrative Procedure Act. Specifically, the research pursues the following objectives: 1) To examine the theoretical foundations of the legal problems concerning gravely unlawful administrative orders issued by public officials. 2) To investigate the characteristics and nature of such unlawful administrative orders under Thai law and in comparative jurisdictions. 3) To analyze the legal implications and effects of administrative orders tainted by serious and manifest illegality. 4) To propose

recommendations for integrating comparative principles and theories on gravely unlawful administrative acts into Thai administrative adjudication and legal reform. By addressing these objectives, this study seeks to enhance the body of legal scholarship on administrative legality, promote consistency in judicial interpretation, and support the further institutionalization of the rule of law in Thailand's administrative justice system.

Literature Review

An administrative order represents a governmental decision that may directly affect the rights and liberties of individuals. To ensure fairness and legality, the law grants officials authority to issue such orders only under specific factual circumstances prescribed by statute. This means an administrative authority may issue an order only when the requisite legal facts or conditions have occurred. These factual circumstances, known as the factual grounds conferring administrative power, must exist at the time the order is made. Where an official issues an order in the absence of these legal prerequisites, the order is unlawful due to the lack of jurisdiction or authority at the time of issuance.

The Principle of the Rule of Law

The rule of law is a fundamental constitutional and philosophical principle that underpins all legitimate exercises of state power. It demands that government authorities act within the scope of their legal powers and that the law itself serves as a safeguard for justice and individual rights (Aksornsri & Saengsuwan, 2021). Within a democratic constitutional order, the rule of law guarantees equality before the law, due process, and protection of human dignity. Courts, as independent institutions, hold the exclusive authority to adjudicate disputes between the State and private individuals—or among private parties—in accordance with fair and lawful principles.

In administrative governance, the rule of law governs not only the process of lawmaking and decision-making but also the substance of administrative actions. It imposes constraints on administrative discretion, ensuring that administrative power derives from law, is exercised proportionately, and is subject to procedural fairness and judicial review. As modern legal thought has evolved, the rule of law has expanded beyond mere formal legality to encompass substantive legality, which includes principles such as legal certainty, proportionality, transparency, and accountability (Galligan, 1996; Craig, 2021).

Under Section 26 of the Constitution of the Kingdom of Thailand 2017, any law restricting personal rights or liberties must conform to the rule of law and must not impose disproportionate burdens, violate human dignity, or exceed the necessity required by public interest. Such laws must be general in nature, not targeted at specific cases or individuals, and must clearly specify the reasons for imposing such limitations.

Accordingly, an unlawful administrative order, particularly one that is gravely or manifestly unlawful, violates the rule of law and undermines the legitimacy of state authority. These orders not only cause direct harm to affected individuals but also erode public confidence in the administrative justice system. In many cases, affected parties seek judicial review before the Administrative Court, which frequently invokes the rule of law as a decisive standard for annulment. Therefore, adherence to the rule of law is indispensable to ensuring justice, legality, and the accountability of public officials. Issuing gravely unlawful administrative orders constitutes not merely a breach of administrative legality but also a violation of constitutional principles and democratic governance. Strengthening mechanisms of oversight, accountability, and judicial control is thus essential to protecting citizens' rights and reinforcing the rule of law in Thailand. The expansion of the rule of law into substantive legality, emphasizing proportionality and legal certainty, is also reflected in recent European administrative scholarship.

The Principle of Human Rights

Human rights refer to the fundamental rights and freedoms inherent to every person, regardless of nationality, ethnicity, belief, or social status. They are inalienable and universal, grounded in the intrinsic values of humanity—namely dignity, justice, equality, respect, and liberty. Although these rights are inherent, they may be lawfully restricted under certain circumstances, such as when an individual violates the law or acts in a manner that threatens national security or public order. Nevertheless, such restrictions must always comply with the principles of legality, necessity, and proportionality (Amnesty International Thailand, 2018).

The principle of human rights is explicitly embodied in the Universal Declaration of Human Rights (United Nations, 1948) and further reaffirmed in international instruments such as the International Covenant on Civil and Political Rights (ICCPR). In Thailand, the 2017 Constitution enshrines the protection of human rights and requires that the exercise of state authority be consistent with the rights and freedoms of the people. Administrative law thus functions as a mechanism to operationalize these principles—ensuring that public officials act within lawful boundaries and respect the fundamental rights of citizens in all administrative processes.

In practice, however, administrative authorities have at times exercised their powers unlawfully by issuing orders that gravely violate legal and human rights norms. When such unlawful administrative orders occur, especially those of a severe and manifestly unjust nature, they not only violate administrative legality but also constitute infringements of human rights.

The interrelationship between human rights and gravely unlawful administrative acts highlights that the exercise of state authority must always conform to the principles of legality, proportionality, and fairness. The protection of human rights is not merely a moral obligation of the State but serves as a measure of the legitimacy of administrative power. Consequently, any unlawful or arbitrary administrative order undermines both the individual's rights and the credibility of the State's legal order.

Therefore, safeguarding human rights within the framework of administrative governance requires effective systems of oversight, transparency, and state accountability. This ensures that administrative authorities operate under the rule of law while reinforcing the stability and legitimacy of the democratic state (Nickel, 1987; Steiner et al., 2008; Donnelly, 2013).

Theories and Doctrines Relating to the Exercise of Administrative Power

The exercise of administrative power requires legal mechanisms ensuring that public actions are conducted lawfully, effectively, and in accordance with constitutional principles. Administrative authorities may affect individual rights and legitimate interests only when expressly empowered by law and within the limits prescribed by it. This restriction prevents arbitrariness and upholds constitutional and legal accountability.

1) Concepts of Administrative Power and Administrative Acts: Administrative power refers to the performance of public functions under the rule of law, legality, and good governance. Administrative agencies must act consistently with the general principles of law derived from constitutions, statutes, and universally recognized doctrines—namely, proportionality, legal certainty, equality and non-discrimination, legitimate expectation, and protection of the public interest. These principles collectively form the normative framework governing administrative conduct and ensure that authorities act within their jurisdiction for legitimate public purposes (Cane, 2011; Craig, 2021).

2) The Principle of Legality in the Exercise of Administrative Power: The principle of legality, regarded as the cornerstone of administrative law, requires administrative bodies to act strictly within the boundaries of statutory or self-imposed legal rules (Wongchai, 2020). Its sources include written legislation, customary law, and general legal principles recognized by civilized nations (Schwarze, 2006).

In Thailand, this principle is constitutionally enshrined in Section 3 of the Constitution of the Kingdom of Thailand 2017, mandating that all State agencies act under the rule of law. Reflecting the *Rechtsstaat* doctrine, it comprises three core dimensions: 1) Constitutional Supremacy - All laws must conform to the Constitution and clearly define the limits of power, restricting citizens' rights. 2) Legality of Executive Action - Administrative agencies may act only within powers explicitly granted by law. 3) Judicial Control - Courts must be empowered to review and annul unconstitutional or *ultra vires* acts, thereby preserving the balance of powers (Galligan, 1996; Cane, 2011). Thus, the principle of legality serves as both the foundation and limitation of administrative authority. Any administrative act affecting rights must not only be legally authorized but also substantively reasonable and procedurally proper in compliance with the law.

The Principle of Legality of Administrative Orders

The principle of legality governing administrative orders—known in German law as *Verwaltungsakt* is a fundamental concept in administrative jurisprudence. An administrative order represents a unilateral act of public authority that establishes legal relations between the State and an individual within the framework of public law. Although similar in form to private transactions, such orders are bound by public law principles and must operate within statutory limits.

Under the Administrative Procedure Act 1996, administrative orders must conform to legal and procedural standards. The Act not only prescribes procedures for administrative officials but also protects individual rights, reflecting the shift toward democratic governance under the rule of law. It ensures that all administrative actions are lawful, reasonable, and proportionate while preventing arbitrary exercise of power (Forsthoff, 1973; Schwarze, 2006).

1) Issuance of Administrative Orders and Conditions of Legality: As Wongchai (2020) explains, an administrative order must strictly comply with the legal conditions outlined in the enabling statute and related laws. An order is lawful when these conditions are satisfied; violations render it defective and unlawful. Legality is assessed based on the factual and legal circumstances at the time of issuance—subsequent changes do not retroactively affect validity. If an order breaches a legal condition, it cannot produce valid legal effects. Depending on the gravity of the violation, the order may be void *ab initio* (null from inception) or voidable, subject to annulment by a competent authority, typically the Administrative Court (Galligan, 1996; Craig, 2021).

In summary, legality depends on five essential criteria: 1) Authority - the issuing officer must possess legal competence; 2) Constitutional conformity - the order must align with superior law; 3) Reasonableness and proportionality - the content must not exceed necessity for legitimate public aims; 4) Clarity and certainty - the order must be precise and enforceable; and 5) Feasibility - it must be both factually and legally practicable. Failure to meet these criteria may render the order unlawful or void upon judicial review.

2) Administrative Orders under Conditions of Illegality: Administrative orders that fail to satisfy the conditions of legality may be categorized based on external and internal defects. 1) External Defects (External Illegality): These concern procedural or formal irregularities, such as: Lack of authority (*ultra vires* acts), Procedural defects (failure to follow prescribed process), or Defects in form (failure to comply with required written or publication formalities). 2) Internal Defects (Substantive Illegality): 2.1) These relate to errors in judgment, reasoning, or discretion, including: (1) Misuse or abuse of discretion, (2) Decisions contrary to public interest, or (3) Improper exercise of discretionary power based on a misunderstanding of legal principles or factual circumstances. 2.2) Thai administrative law recognizes both dimensions of illegality through two main legislative frameworks: (1) The Administrative Procedure Act 1996 — governing external validity and procedural legality, and (2) The Act on Establishment

of Administrative Courts and Administrative Court Procedure 1999 — governing substantive legality and judicial oversight.

In practice, the Administrative Court evaluates whether an order was issued ultra vires, with procedural defects, or with substantive irregularities. The degree of the defect determines whether the order is void, voidable, or subject to revocation. This two-tier structure reflects the balance between administrative efficiency and the protection of individual rights under the rule of law (Schwarze, 2006; Craig, 2021).

The Concept of Gravely Unlawful Administrative Orders

The notion of non-existent administrative acts refers to administrative acts that are so gravely and manifestly defective that they are deemed void and incapable of producing any legal effect. Such acts are treated as if they never existed in law (void *ab initio*). The principle of nullity of administrative acts (*Nichtigkeit des Verwaltungsakts* in German law) has long been recognized in several continental European legal systems, particularly Germany and France, where their administrative codes expressly codify the distinction between unlawful acts that are void (nullité $\vee\circ$ absolue) and those that are merely voidable (nullité $\vee\circ$ relative).

1) Meaning of Gravely Unlawful Administrative Orders: According to Wongchai (2020), an unlawful administrative order may arise from various forms of defect, either procedural (form or process) or substantive (content or reasoning). The severity of these defects determines the legal consequences. Minor defects do not affect the validity or enforceability of an order. However, severe or substantial defects render the order unlawful and incomplete (incomplet administrative act), and such acts are classified into two categories: 1) Absolutely void acts (nullité $\vee\circ$ absolue) - completely invalid from inception and devoid of legal effect; and 2) Relatively voidable acts (nullité $\vee\circ$ relative) - initially valid and effective but subject to later annulment or revocation.

The doctrine distinguishes between these levels of unlawfulness to preserve administrative stability while maintaining the supremacy of legality. It reflects a balance between protecting individual rights and ensuring the continuity of public administration (Craig, 2021; Schwarze, 2006).

2) Gravely Unlawful Administrative Orders and Their Legal Consequences: When an administrative order is issued in flagrant and manifest violation of the law, it is considered void *ab initio*, having no legal effect whatsoever. Even in the absence of an explicit statutory provision, legal systems governed by the rule of law cannot tolerate administrative acts that grossly contravene legality. Such acts are inherently incapable of producing legal consequences because they lack the essential element of lawful authority.

Consequently, these acts cannot be rectified, validated, or cured by subsequent administrative actions, regardless of the passage of time. Affected parties may invoke the nullity of such acts at any stage, and courts may declare the invalidity *ex officio*, even if not raised by the litigants themselves. This judicial power is rooted in the principles of legality and the rule of law, which require that public administration be subject to law rather than above it (Galligan, 1996; Vedel & Delvolvé, 1982). Comparative jurisprudence shows varying approaches. In Germany, Section 44 of the Administrative Procedure Act (*Verwaltungsverfahrensgesetz* - VwVfG) defines "void administrative acts" (*nichtig Verwaltungsakt*) and lists cases in which nullity is presumed, such as acts violating public morality or issued by an incompetent authority. In France, the doctrine of *acte administratif inexistant* similarly treats acts as non-existent when the defect is "gross and apparent," such as a decision rendered without jurisdiction or contrary to constitutional principles.

Although Thai administrative law lacks an express statutory codification of this doctrine, Thai Administrative Courts have embraced the concept through jurisprudence. The Supreme Administrative Court Decision No.A.47/2546 established that administrative orders can be declared void when their unlawfulness is grave and evident. This judicial recognition aligns

Thai law with comparative European administrative traditions and reinforces the rule of law in the exercise of administrative power (Wongwattanasan, 1997).

Research Methodology

This study adopts a qualitative legal research approach, relying primarily on documentary research and legal analysis. The research materials include statutory provisions, judicial precedents, academic textbooks, scholarly articles, dissertations, and other relevant literature. It also examines opinions and rulings of authoritative bodies such as the Council of State and the Administrative Procedures Committee.

In addition, the study undertakes a comparative analysis by consulting both Thai and foreign legal sources, as well as relevant internet-based resources, to provide a comprehensive account of the legal issues surrounding unlawful administrative orders of a grave and manifestly defective nature.

Research Results

The study found that different legal systems define gravely unlawful administrative orders in distinct ways. In France, they are termed “nonexistent administrative acts” (*actes administratifs inexistant*), while in Germany, they are known as “void administrative acts.” Despite differing terminology, both systems share the same principle: when an administrative order contains severe legal defects, it produces no legal effect and is deemed null and void. Accordingly, the researcher identifies this as a significant legal issue warranting further examination—specifically, the causes and implications of gravely unlawful administrative orders. The main findings are summarized as follows.

Legal Problems Concerning the Causes of Gravely Unlawful Administrative Orders

According to Chaiwat Wongwattanasan, the nature of a void administrative order should be interpreted primarily through its legal effects. In principle, voidness means that the order produces no legal consequences at all—similar in outcome to the revocation of an incomplete administrative order. However, Thai law remains unclear on retroactive invalidity, particularly where the defect renders the order entirely null and void. A void administrative order must therefore contain a manifest and serious defect clearly recognizable by ordinary persons, one far graver than that of a merely imperfect order. Such nullity precludes the creation of any rights or legitimate expectations, and the State bears no liability toward affected individuals. This understanding corresponds with comparative findings indicating that administrative jurisprudence across multiple jurisdictions recognizes the invalidity of gravely unlawful administrative acts as a safeguard for legality and due process (Alshawabkeh & Almajali, 2021).

Worajet Phakheerat further explains that a gravely unlawful administrative order, when its illegality is manifest, produces no legal effect whatsoever. This interpretation aligns with the Supreme Administrative Court’s Decision No.A.47/2546 (Grand Chamber), which first applied the doctrine of nonexistent or void administrative orders, holding that an order “manifestly and seriously erroneous in law shall be regarded as if none had ever been issued.” This reasoning reflects the French doctrine of *actes administratifs inexistant*, where acts with grave defects are deemed never to have existed.

In academic discourse, illegality in administrative orders is typically classified into two levels: (1) grave illegality, rendering the order void; and (2) ordinary illegality, making the order unlawful but still legally existent. Thus, the concept of void administrative orders is not new to Thai law—it simply remains uncodified, unlike in several foreign jurisdictions (Panyanon, 2024).

Problems Regarding the Grounds of Manifest and Grave Illegality

Although Thai law allows challenges to defective administrative orders, it remains unclear what specific circumstances give rise to nullity rather than mere voidability.

The Administrative Procedure Act 1996 contains no codified doctrine of nullity, leaving ambiguity over which defects are so grave and manifest that the order should be regarded as void or non-existent. Comparative studies of French and German law, along with Thai administrative court decisions and opinions from the Council of State and Administrative Procedures Committee, suggest that assessment should refer to the conditions of legality for administrative orders—distinguishing between (i) defects in issuance (competence, procedure, and form) and (ii) defects in the scope of authority (factual and legal grounds, purpose, and aim). Breach of these conditions renders an order unlawful and revocable; where the breach is manifest and grave, the order is treated as non-existent and without legal effect.

1) Defects in the Process of Issuance: An order issued by an official clearly lacking legal competence, failing to follow essential procedures, or violating mandatory formal requirements may be void. Section 54(3) of the Thai APA allows such challenges even after the appeal deadline, mirroring French and German law (VwVfG § 44(1))—the Thai Supreme Administrative Court, in Judgment No. A.526/2554, affirms the gravity of jurisdictional usurpation, though minor internal irregularities are insufficient.

2) Orders Gravely Infringing Fundamental Rights (Voie de Fait): French law treats administrative measures that grossly exceed competence and seriously violate fundamental rights—property, liberty, religion, and home—as void. These include enforcing non-existent orders or committing abnormal administrative acts that cause serious rights violations. Whether this doctrine can be adapted to Thai law depends on Thailand's constitutional rights framework.

3) Lack of Factual or Legal Basis: In Judgment No. A.47/2546 (Grand Bench), the Thai court applied the doctrine of non-existence to an order issued without legal authority and in breach of essential procedure. Orders issued without factual or legal grounds are therefore manifestly defective.

4) Skipping Essential Procedures: Orders violating mandatory procedures may constitute manifest defects. In A.47/2546, such an order was treated as non-existent; A.781/2558 (2015) similarly annulled an order retroactively to its date of issuance.

5) Essential Defects of Form: Orders lacking identification of the issuing authority or required written form may be void. Section 36 of the Thai APA requires essential particulars, consistent with VwVfG §44(2) and French jurisprudence on actes inexistantes.

6) Self-Dealing or Disqualification: Where an official issues an order in a matter of personal interest (APA §13), the defect may be grave. Similar to VwVfG §20(1)(1), such acts may be void if the conflict of interest is serious and manifest, though minor conflicts may render them merely voidable (Council of State Opinion No.674/2552).

7) Fraud, Corruption, or Abuse of Purpose: Orders obtained through fraud, corruption, or issued for purposes contrary to public order or morality are gravely defective. The Administrative Procedures Committee Note No.761/2557 (examination fraud) recognized that rights cannot arise from fraudulent acts.

8) Impossible or Irrational Orders: Orders demanding objectively impossible or contradictory actions—such as demolishing an already demolished building—are void. VwVfG §44(2) treats impossible obligations as *nichtig*, while Council of State Opinion No.786/2548 found that rescinding an expired license has no effect *ab initio*.

9) Orders Requiring Criminal Acts or Issued Through Criminal Wrongdoing: Orders compelling criminal conduct or tainted by criminal issuance (e.g., extortion, bribery) are void. APA §51(3)(1) denies good-faith protection in such cases.

10) Other Statutory Grounds: Thai law lacks a general catalogue of nullity grounds comparable to the Civil and Commercial Code. Future amendment of the APA should codify nullity provisions, incorporating established grounds and cross-references to other relevant statutes.

Legal Problems Concerning Severely Unlawful Administrative Orders

Under Section 42, paragraph 2 of the Thai Administrative Procedure Act (APA), administrative orders—even if unlawful—remain effective until terminated. However, when illegality is manifest and grave, such orders are deemed void or non-existent *ab initio*. Although Thai statutes do not expressly codify the doctrine of nullity, they provide mechanisms for the withdrawal of unlawful orders. The key distinction lies in their legal effects: a void order produces no consequences whatsoever, unlike a voidable order, which requires revocation to cease effect. Because a void order is gravely and obviously defective, it cannot be ratified or cured; neither the administration nor the addressee is bound, and any party—including courts *ex officio*—may invoke its nullity without formal annulment.

1) Legal effects of manifest and grave illegality: Wongwattanasan (1997) distinguishes (1) void orders (no effect *ab initio*) from (2) voidable orders (effective unless and until annulled). Where a defect is manifest and grave, the order is void and produces no legal effects as intended by the issuer; the administration cannot enforce it; and subsequent “validation” is unavailable. Anyone may invoke the non-existence of such an order. This aligns with sections 43-44 of Germany’s *Verwaltungsverfahrensgesetz* (VwVfG) on nullity and with the French doctrine of l’inexistence in *Conseil d’État* jurisprudence.

2) Withdrawal of severely unlawful administrative orders: Comparative systems prioritize legality over good-faith reliance, allowing only limited exceptions. German law defines explicit grounds for nullity and treats withdrawal as retroactively effective. Thai APA Sections 49-53 regulate withdrawal of unlawful orders but omit criteria equating retroactive withdrawal with true nullity. Thus, when a Thai court determines that an order is gravely defective, it should declare withdrawal retroactive to the date of issuance, effectively recognizing nullity in substance.

3) Impact on persons subject to severely unlawful administrative orders: Withdrawal of benefit-conferring orders requires balancing legality against protection of legitimate expectations. Unlimited withdrawals could undermine public trust when beneficiaries acted in good faith (e.g., by relying on building permits or employment orders). German law resolves this tension through proportionality and, where appropriate, compensation for reliance losses (VwVfG §49(6)). Similarly, Section 19 of the Thai APA preserves the validity of acts performed by *de facto* officials, protecting public reliance when appropriate. Thai courts should thus safeguard good-faith reliance to a reasonable extent while ensuring that gravely unlawful orders do not persist within the legal order.

Conclusion and Discussion

This research concludes that the doctrine of nullity serves as a vital safeguard in administrative law, preserving legality, fairness, and public confidence in administrative governance. While the Administrative Procedure Act 1996 does not expressly codify this concept, Thai judicial precedents—particularly those of the Supreme Administrative Court—have gradually recognized that administrative orders suffering from manifest and grave illegality must be treated as void *ab initio*, as if they had never been issued. A comparative analysis highlights that both French and German law long ago institutionalized similar doctrines, such as *actes administratifs inexistants* in France and *Nichtigkeit* under Section 44 of Germany’s *Verwaltungsverfahrensgesetz* (VwVfG), both of which affirm that administrative acts with fundamental defects cannot generate legal consequences. The emerging judicial acceptance of this principle in Thailand marks an important step in the development of administrative law, yet legislative clarification remains necessary to ensure consistency and predictability.

Ultimately, incorporating the doctrine of nullity into Thai law would prevent gravely unlawful administrative orders from producing legal effects, thereby strengthening legality, individual rights, and the rule of law.

Building on these findings, the discussion elaborates on several key aspects, beginning with the fundamental principles of the Rule of Law and Administrative Legality. The concept of niti thamm underscores that administrative action must be lawful, proportionate, and predictable. Permitting gravely unlawful orders to stand fundamentally undermines both the rule of law and legal certainty, a concern echoed by European perspectives on the essential role of judicial enforcement for administrative justice. Comparative doctrinal insights further reveal distinct approaches in other legal systems, such as the French doctrine's emphasis on the 'non-existence' of severely defective acts and the German model's codified criteria for nullity under VwVfG Section 44. Adopting and adapting these principles would significantly help Thailand clearly distinguish between void and voidable orders, thereby improving uniformity in judicial review and reducing ambiguity. Recent comparative studies reinforce that the institutional design of administrative law systems profoundly shapes bureaucratic autonomy and the handling of void administrative acts (Carelli & Peters, 2024).

The Administrative Court plays a pivotal role in shaping and applying the doctrine of nullity, particularly through its power to raise issues *ex officio*, ensuring manifestly unlawful orders are invalidated even when not explicitly challenged. However, relying solely on judicial interpretation risks inconsistency, emphasizing the need for statutory codification to define 'manifest and grave' defects clearly. This necessity is further supported by comparative research in East Asia, which confirms judicial review as a primary mechanism for ensuring legality and limiting administrative discretion. From a policy and societal perspective, the doctrine of nullity protects individual rights. It reinforces the legitimacy of the administrative system by invalidating gravely unlawful acts, thus preventing the erosion of public trust. This highlights the crucial need to balance legality with public welfare and democratic freedoms, especially regarding administrative control over harmful or unlawful information.

In light of these findings, the study puts forth several policy recommendations. Legislative codification is paramount, necessitating amendments to the Administrative Procedure Act to explicitly define nullity, its criteria, and its distinction from voidability, thereby ensuring legal clarity and certainty. This legislative effort must be harmonized with judicial interpretation, fostering stronger coordination between the judiciary and the legislature, drawing on models from France and Germany while upholding Thai constitutional values. Furthermore, robust capacity building, including legal training for administrative officials, is essential to enhance their understanding of legality, proportionality, and the consequences of unlawful administrative acts. Concurrently, establishing effective public accountability mechanisms—such as citizen complaint processes and public scrutiny—will empower individuals to challenge gravely unlawful orders and promote administrative transparency. Finally, fostering ongoing comparative legal research is vital to drive continuous reform, engaging with European civil law systems to refine doctrines of nullity, proportionality, and legitimate expectation in line with global best practices.

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