

Executorial Power of State Administrative Court Decisions Associated with General Principles of Good Government

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Abstract. *The purpose of this research is to find out and analyze the executorial mechanism of the State Administrative Court's decisions, to know and analyze the executive power of the State Administrative Court's Decisions associated with the General Principles of Good Governance and to find out and analyze sanctions against Administrative Officials/Bodies. State Enterprises that do not implement the decisions of the State Administrative Court. This study uses a normative juridical method with the approach used is a statute approach and a conceptual approach based on descriptive analytical research specifications. In this context it is necessary to study the executorial power of court decisions and other reasons that may be the cause of the success and failure of the implementation of decisions so that it can be seen that apart from executorial power there are other conditions that are responsible for all the successes and failures in resolving disputes at the State Administrative Court. All of this boils down to the morality of the officials concerned and laws and regulations that do not explicitly regulate the implementation of punishments/sanctions from the state administrative court (PTUN). Officials who do not carry out the obligations ordered in the decision of the State Administrative Court which has permanent legal force (*inkracht van gewijsde*), will be subject to moderate administrative sanctions which include: a) payment of forced money and/or compensation; b) temporary dismissal by obtaining office rights; or c) temporary dismissal without obtaining office rights.*

Keywords: *Administrative; Executorial; Forced; Money.*

1. Introduction

The principle of having a TUN judiciary, to place judicial control in the administration of good governance, is biased in the Indonesian constitutional system. If a PTUN decision does not have executorial power how can the law and society be able to

oversee the running of the government which is carried out by TUN officials.¹

The problem of non-compliance by State Administrative Agencies or Officials in implementing State Administrative Court decisions was also raised by Supandi in his dissertation research, there are still frequent cases of State Administrative Court decisions not being implemented/obeyed by the State Administrative Officials concerned, so that it can lead to legal uncertainty in governance and development.

Apart from the disobedience of officials, Supandi also sees that from the weak side of the execution system regulated in Law Number 5 of 1986 concerning the State Administrative Court, the public is still pessimistic about the existence of the State Administrative Court.²

The disobedience of officials who do not implement a court decision that already has permanent legal force (*inkracht*) is not in line with what has been mandated in the 1945 Constitution in Article 1 paragraph (3) which states that "Indonesia is a country based on law". From the mention of this article, it is very clear that the Indonesian state is legal, not a state based on power (*machtstaat*).

As in the 1945 Constitution of the Republic of Indonesia in Article 24 paragraph (1) and paragraph (2), paragraph (1) it is stated that "Judicial power is an independent power to administer justice to uphold law and justice", while in paragraph (2) it states that "Judicial power is exercised by a Supreme Court and judicial bodies under it in the general court environment, religious court environment, military court environment, state administrative court environment, and by a Constitutional Court".

Further regarding state administration is regulated in Law 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning the State Administrative Court in Article 1 paragraph (7) states that "State Administration is the state administration that carries out the function of carrying out government affairs both at the central and regional levels.

In this case, the Governor of Aceh has issued Decree (SK) Number 180/704, dated

¹ Firzhal Arzhi Jiwantara and Gatot Dwi Hendro Wibowo, The Executorial Force Of Ruling Of Administrative Court And The Implications In Practice, *Journal IUS*, 2 (1), (2014): 165. <https://doi.org/10.12345/ius.v2i4.164>

² Supandi, *Problems with the Implementation of the Execution of TUN Judicial Decisions Against Regional TUN Officials*, the paper was presented at the Workshop on the Implementation of the Execution of Administrative Court Decisions about the Implementation of Regional Autonomy, LPP-HAN cooperates with KNH, (2016): 166.

January 16, 2019, regarding the Determination of the Inauguration of the Management Board and Traditional Stakeholders at the 2019-2023 MAA and Decree (SK) Number 821.29/298/2019, dated February 14, 2019, regarding the Appointment of the Acting Chairperson of the Aceh Traditional Council.

Then the Chairperson of the Aceh Traditional Council (MAA) Badruzzaman Ismail on April 15 2019 sued Plt. Governor of Aceh to the Banda Aceh State Administrative Court regarding the issuance of Decree Number 180/704, dated 16 January 2019, concerning the Determination of the Inauguration of the Board of Management and Customary Stakeholders at the MAA Year 2019-2023 and Decree (SK) Number 821.29/298/2019, dated 14 February 2019, regarding the Appointment of the Acting Chairperson of the Aceh Traditional Council.

According to Arifin Marpaung, seeing the constraints of execution is also related to intertemporal issues as a result of changes in the decision enforcement system from a voluntary system and position hierarchy to a forced effort system. This problem arises due to the absence of transitional provisions governing the event.³

In contrast to the Civil Procedure Code, the function of the Court is as the executor of decisions that have permanent legal force, whereas the Rules of Procedure Law is based on the provisions of Article 119 of Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning Administrative Courts. As a state enterprise, the function of the Chief Justice is only to carry out the supervisory function (toezicht functie).

The problem of executing the decisions of the State Administrative Court is a general legal phenomenon, as Paulus Effendie Lotulung said, the problem of executions in various countries, although regulated by various regulations and mechanisms, is still not available sufficient coercive measures from a juridical perspective. effective way to force the agency or official concerned to comply with the contents of the decision.⁴

So the problem of executing the Administrative Court's decision can also arise related to the enactment of regional autonomy because with regional autonomy all regional head officials in regencies/cities have broad authority in managing their

³ Arifin Marpaung, *Implementation of State Administrative Court Decisions Through Forced Efforts*, Airlangga University Postgraduate Program Dissertation, (2010): 7.

⁴ Paulus Effendi Lotulung, *State Administrative Courts in Indonesia Compared to Administrative Courts Applicable in Various Countries*, in *Reviewing the Main Thoughts of Establishing State Administrative Equity*, LPP-HAN, (2003): 7.

area and this uses the method of administrative decisions.

In terms of state administrative law, it is a set of regulations that enable state administration to carry out its functions, which at the same time protect citizens against the attitudes of state administration and protect the state administration itself.⁵

The function of the TUN Judiciary should be able to encourage the realization of a clean and authoritative government, namely the creation of an atmosphere of non-enforcement from elements of the State that are flawed in law. This is due to the decision of the TUN Judiciary whose legal considerations along with the dictum contain a statement that a state administrative decision is invalid which is deemed to have violated the applicable laws and regulations and/or the General Principles of Good Governance (AUPB), should be able to provide encouragement to the government, namely bodies or officials state administration to improve the system and its performance in carrying out government functions to realize a clean and authoritative government (clean and strong government).

The TUN judiciary as an institution where people seek legal protection is often unable to provide satisfaction to the people as justice seekers for the victory they obtain in a case, which is because the formulation of norms governing execution in the Administrative Court Law still has a level of weakness so that it is often also encountered obstacles in the execution.

Because the norms governing execution are still weak, TUN officials often use it as an excuse for not heeding TUN Court Decisions such as Decision Number 16/G/2019/PTUN.BNA dated September 24, 2019, then the Medan State Administrative High Court Decision Number 293/B/2019/-PT.TUN.MDN dated 21 January 2020 and Supreme Court Cassation Decision Number 263 K/TUN/2020 dated 28 July 2020.

According to Taqwaddin (Head of the Aceh Ombudsman), "the actions of the Governor of Aceh are seen as a form of arrogance in power. Because of this, he asked the Minister of Home Affairs to respond to the attitude of the Governor of Aceh by giving a warning and need to pay attention and provide a solution to this problem because until the term of office of the Aceh Governor for the 2017-2022 period ends the Banda Aceh State Administrative Court decision has not been

⁵ Ridwan HR, *State Administrative Law*, Revised Edition, Rajawali Press, Jakarta, (2011): 36.

implemented.⁶

It is believed that the reluctance of the Governor of Aceh will undermine the authority of the Supreme Court. This condition will have an impact on harmonious relations between the Supreme Court of the Republic of Indonesia and the Government of the Republic of Indonesia, or between the Executive and the Judiciary, if the Aceh Government does not comply with the decision there will be broader implications because the Governor of Aceh as a State Administrative official must comply with the law by regulations. current regulation.

The reluctance of the Governor of Aceh who does not to implement the Decision of the State Administrative Court which already has permanent legal force (inckrach) is considered not implementing a good government, as in Law Number 30 of 2014 concerning Government Administration in Article 1 paragraph (17) it states that " The General Principles of Good Governance, hereinafter abbreviated as AUPB, are the principles used as a reference for the use of Authority for Government Officials in issuing Decisions and/or Actions in administering government.

2. Research Methods

This research uses the type of normative juridical research, which is research that focuses on studying the application of positive legal norms or norms that apply.⁷ The approach used is a statute approach and a conceptual approach. Based on the approach method used, namely normative juridical, the type/specification of analytical descriptive research is to make a systematic, factual, and accurate description or description of the facts, nature, and relationship of the phenomenon or symptoms studied while analyzing it, namely looking for causes and effects of a thing and describing it in detail. logically consistent and systematic.⁸

3. Result and Discussion

3.1 Executorial Mechanism of State Administrative Court Decisions

Laws and regulations related to the State Administrative Court have been amended several times starting from Law Number 5 of 1986 concerning State Administrative Court, then amended by Law Number 9 of 2004 concerning State Administrative

⁶ <https://ombudsman.go.id/perwakilan/news/r/pwk-gubernur-aceh-tolak-laksanakan-putusan-ma-mendagri-harus-beriteguran>, Access in 3 Maret 2023 11.15 AM.

⁷ Jhony Ibrahim, *Theory of Normative Law Research Methodology*, Banyu Media, Malang, (2008): 295.

⁸ Moh. Nazir, *Research methods*, Ghalia Indonesia, Jakarta, (1985): 63.

Court, and finally amended by Law -Law Number 51 of 2009 concerning State Administrative Court.

As a manifestation of the implementation of the provisions of Article 24 of the 1945 Constitution of the Republic of Indonesia, considering (considering) letter an of Law Number 48 of 2009 concerning Judicial Power it states that "judicial power according to the 1945 Constitution of the Republic of Indonesia is an independent power exercised by a Supreme Court and judicial bodies under it in the general court environment, the religious court environment, the military court environment, the state administrative court environment, and by a Constitutional Court, to administer justice to uphold law and justice ".⁹

Furthermore, the provisions of Article 18 of the Law on Judicial Power state that "judicial power is exercised by a Supreme Court and judicial bodies under it in the general court environment, religious court environment, military court environment, state administrative court environment, and by a Constitutional Court". From these provisions, it is clear that the existence of the State Administrative Court and the Constitutional Court as judicial institutions that exercise control over the actions of the executive and legislative institutions is a manifestation of Indonesia as a rule of law.

The existence of the State Administrative Court is one of the judicial pathways in the context of implementing the principle of legal protection, in addition to the administrative oversight path which runs according to the existing pathways within the government itself. Therefore, the State Administrative Court provides a basis for judicial bodies to assess the actions of the executive body, as well as regulate legal protection for citizens.

Meanwhile, the control function of the judicial institutions carried out by the State Administrative Court over government actions as a form of protection for the rights of citizens as referred to in Article 53 paragraph (1) and paragraph (2) of Law Number 51 of 2009 concerning Amendments to the Law 5 of 1986 concerning the State Administrative Court, paragraph (1) states that "A person or civil legal entity who feels his interests have been harmed by a State Administrative Decision may submit a written claim to the competent court containing a claim that the disputed State Administrative Decision declared null and void, with or without a claim for compensation and/or rehabilitation", while paragraph (2) states that "The reasons that can be used in the lawsuit as referred to in paragraph (1) are: a. State Administrative Decisions the person being sued is contrary to the applicable laws

⁹ Mohammad Afifudin Soleh, Execution of Decisions of State Administrative Courts with Permanent Legal Force, *Justice Forum Journal of Law Science*, 14 (1), (2018): 18. <https://doi.org/10.30996/mk.v0i0.1604>

and regulations; b. The State Administration decision being sued is contrary to the general principles of good governance.”

These provisions are intended to create good government, with the existence of general principles of good governance (*algemene beginselen van behoorlijk bestuur*) as a touchstone to test the legitimacy of a government action in addition to the applicable laws and regulations.

However, even though the formation of the State Administrative Court is an advanced idea in the framework of realizing a modern rule of law state. But what has been a problem for nearly 30 (thirty) years of the existence of the State Administrative Court is the implementation of the decisions of the State Administrative Court.

This condition is a fact that is of concern that the existence of the State Administrative Court has not been able to bring justice to the community within the scope of government administration. The principle of having a State Administrative Court, to place judicial control in the administration of good governance is biased in the Indonesian constitutional system. If a decision of the State Administrative Court does not have executorial powers, how is it possible that the law and society can oversee the running of the government which is carried out by the State Administrative Agency or Officials.

The role of the State Administrative Court in the practice of resolving "Government Administration" disputes in Indonesia is caused by the absence of an executorial institution, as well as a strong legal basis, resulting in the decision of the State Administrative Court having no coercive power.

The Law of the State Administrative Court also does not regulate explicitly and clearly regarding the issue of coercion of the decision of the State Administrative Court, so the implementation of the Decision depends on the good faith of the State Administrative Agency or Officials in obeying the law. This situation is quite concerning, because the principle of having a State Administrative Court, to place juridical control in government has lost meaning in the Indonesian constitutional bureaucratic system.

The ability of the judiciary to resolve disputes is largely determined by the implementation of the decision. The decision implementation mechanism is an important means of settling or ending disputes. In this context, it is necessary to study the executorial power of court decisions and other reasons that may be the cause of the success and failure of the implementation of decisions so that it can be seen that apart from executorial power other conditions are responsible for all the successes and failures in resolving disputes at the State Administrative Court.

The final stage of TUN dispute resolution at PTUN is the execution or implementation of TUN Judicial decisions that have permanent legal force. Execution implies the implementation of a decision by or with the help of other parties outside the parties to the dispute. The essence of the execution is nothing but the realization of the obligation of the party concerned to fulfill the achievements listed in the verdict.

As described above, the formulation of the problem related to the execution mechanism for the decision of the State Administrative Court which has permanent legal force has been regulated in Articles 115 to Article 116 of Law Number 51 of 2009 concerning Amendments to Law Number 5 of 1986 concerning State Administrative Court. In Article 115 it is stated that "Only Court decisions that have obtained permanent legal force can be implemented".

Before the decision is implemented, the court which has obtained permanent legal force must first be sent to the parties a registered letter by the local court clerk at the order of the head of the court who tried him in the first instance no later than 14 (fourteen) working days as stated in Article 116 paragraph (1).

If after 60 (sixty) working days a court decision that has obtained legal force is still accepted, the defendant does not carry out his obligation to revoke the relevant State Administrative Decision, then the disputed state administrative decision will no longer have legal force as stated in Article 116 paragraph (2).

If the defendant is determined to have to carry out the obligation to revoke the relevant State Administrative Decision and issue a new State Administrative Decision or issue a State Administrative Decision if the claim is based on Article 3, then after 90 (ninety) working days it turns out that the obligation is not implemented, then the plaintiff submits a request to the head of the court so that the court orders the defendant to carry out the court decision as referred to in Article 116 paragraph (3).

3.2 Executorial Power of Administrative Court Decisions Associated with AAUPB

The existence of the State Administrative Court is held to protect people seeking justice, who feel themselves harmed by a State Administrative Decree. Basically, every decision of the State Administrative Court whose verdict is condemnatory has executorial power after the decision has permanent legal force, this is because the decision contains punishment for the defendants, so it is necessary to have coercive power for the defendants who do not carry out the decision of the State Administrative Court.¹⁰

¹⁰ Jimly Asshiddiqie, *Post-Reform State Development and Consolidation*, Secretariat General and Registrar's Office of the Constitutional Court of the Republic of Indonesia, Jakarta, (2006): 40.

Even though the provisions in the Law on the State Administrative Court contain provisions regarding the element of coercion, in practice sometimes the decisions of the State Administrative Court do not have the power of execution, so they cannot protect people seeking justice, who feel they have been harmed as a result of an Administrative Decision. State Enterprises, this is because there are no apparatus or bodies that are coercive to carry out executions so that the defendant carries out the decision of the State Administrative Court as is the case with decisions that are condemnatory in civil and criminal courts.¹¹

Such conditions indicate that the success of implementing a decision must get support from the determinant factor apparatus so that the emphasis is more on legal accountability. legal awareness of State Administrative officials that no instrument can compel the defendant to obey and carry out the decision.

The implementation of the PTUN decision is very dependent on the legal awareness of the defendant. Even though forced efforts are possible, the forced efforts offered are also still unable to answer the problem. The problem is increasing the responsibility for state administrative matters is not personal or personal responsibility. In state administration cases, the position of responsibility is only to the position, so that the moral burden borne by the defendant is not too great.

According to Usman Lamreung¹², the polemic of the Aceh Traditional Council (MAA) seems to have not been over and resolved, since the rejection of the results of the 2018 Grand Deliberation (Mubes) by Plt. Aceh Governor Nova Iriansyah (at that time not yet definitive governor) who was considered legally disabled, was not by the Aceh Qanun Number 3 of 2004 concerning the Establishment of the Organizational Structure and Working Procedures of the Aceh Traditional Council of the Province of Nanggroe Aceh Darussalam. At that time the chosen one from the meeting was H. Badruzzaman Ismail (Plaintiff). Finally, the chairman elected as a result of the October 2018 MAA meeting H. Badruzzaman Ismail filed a lawsuit against Plt. Governor of Aceh Nova Iriansyah to PTUN Banda Aceh.

Finally, according to court decisions starting from the Banda Aceh State Administrative Court (PTUN), Medan PTUN (appeal), to the Supreme Court (cassation), all of H. Badruzzaman Ismail's lawsuit has been won. So it is fitting that Plt. The Governor of Aceh is law-abiding and should immediately appoint the Chairperson of the Aceh Traditional Council elected as a result of the October 2018

¹¹ Amiruddin Ibramsyam, *The position of the KPU in the constitutional structure of the Republic of Indonesia after the amendment to the 1945 Constitution*, Laksbang Mediatama, Jakarta, (2008): 76

¹² <https://nukilan.id/usman-lamreung-polemik-majelis-adat-aceh-tak-kunjung-diselesaikan/>, Acces in date 6 Juli 2023 20.14 AM.

MAA Conference, Badruzzaman Ismail, because the legal process has been completed, the Governor must return the position of chairman of the MAA as a result of the 2018 General Meeting.

At that time, Plt. Aceh Governor Nova Iriansyah instead of appointing Badruzzaman Ismail as chairman of the MAA, according to the Supreme Court decision, instead appointed Plt. The Chairman of the MAA, to carry out the General Meeting again (Mubes) and on November 25-26 2020 to again carry out the MAA Conference, was elected as Chairman of the MAA at that time Farid Wajdi Ibrahim.

Whereas on May 21, 2021, the Wali of Nanggroe Aceh, Malik Mahmud Al Haytar appointed Farid Wajdi Ibrahim as chairman of the Aceh Traditional Council (MAA) for the 2021-2026 period. Unfortunately after the inauguration of the Chairman of the MAA, a few months later Farid Wajdi Ibrahim passed away, resulting in a vacancy for the Chairman of the MAA until now. Regarding the vacancy of the Head of the MAA, it seems that someone wants to fill the vacant position in the MAA structure, such as the current management. Deputy Chairperson and Head of Indigenous Stakeholders are not the choice of Mubes, it is very inappropriate to be nominated as Chairman of the MAA.

Regarding the Wali Nanggroe's authority, the Wali Nanggroe should not just inaugurate the Board of Aceh Traditional Council but must pay attention to the mandate of the Aceh Qanun Number 8 of 2019 concerning the Aceh Traditional Assembly because the Institution and Management of the Aceh Traditional Council are under and responsible to Wali Nanggroe, as well as the implementation of the Management of the Aceh Traditional Council since it was confirmed by the Wali Nanggroe.

The Wali Nanggroe should have followed the requirements to become an administrator for the Aceh Traditional Assembly and the procedure for determining its administrators. Because if the requirements for becoming an administrator and the procedures for determining the administrator violate the provisions of the law, then the said administrator is null and void.

To the Aceh People's Legislative Council, as a supervisory institution, it is appropriate to call on the parties, so that the dispute over the Aceh Traditional Council Institution is resolved, even if it is not finished, first start the budget in the Aceh Traditional Assembly institution, resolve this chaos first by deliberation by Acehnese customs and chaos finished well.

The existence of legal protection for the community against the legal actions of public administration officials who violate the law is associated with the existence of the state administrative court (PTUN) as a law enforcement and justice agency, according to the author, this situation is a form of good and authoritative government. The implementation of good governance is theoretically known as good governance.

The concept of good governance refers to the management of a government system that places transparency, control, and accountability as central values. In the implementation of good governance, the law must be the basis, reference, and sign for the application of this concept. That is, it needs an effort how the rule of law itself in determining good governance.

The author sees that there is a close relationship between the concept of good governance and the concept of the existence of state administrative courts (PTUN). This linkage can be known by understanding the main principles of good governance itself and the main function of the state administrative court (PTUN). Although many elements of good governance still provide their criteria, in essence, there are five main principles in good governance, namely accountability, transparency, openness, and rule of law. , and guarantees of fairness or a level playing field (fair treatment or equal treatment). This last principle is often referred to as the protection of human rights.

If the concept of good governance is connected with the concept of law supremacy and the concept of good and clean governance in state administrative law normatively, it will find similarities with the concept of *rechtmatigheid van bestuur* which is defined as "the principle of legitimacy in government" or the principle according to law. If the public legal actions by administrative officials are *onrechtmatigheid*, then the actions of these administrative officials have "violated the law".

In government, accountability is the embodiment of the obligation of a government agency to be accountable for the success or failure of carrying out its mission. Based on this, according to the author, state administration officials in carrying out their duties are also held accountable when carrying out public legal actions, especially if their actions violate the law. This responsibility legally can be submitted to the state administrative court (PTUN) as a legal institution that carries out the function of judicial control.

The elements of transparency and openness in the concept of good governance are

two inseparable things. Transparency and openness of public legal actions by state administration bodies or officials is a form of legal protection for the people. It is said so because, in the case of a state administration agency or official making a policy or state administration decision, the people who have an interest in the policy or decision must know transparently or openly. For example, in recruiting civil servants or admitting students to state universities, an administrative decision must be made that is transparent and open to the public to find out about the process and results of the recruitment. In this case, there will also be legal accountability, if there are parties who feel aggrieved by the decision of the state administration regarding the results of the acceptance earlier.

3.3. Sanctions for Officials/State Administrative Bodies Who Do Not Implement Administrative Court Decisions

A written determination issued by a State Administrative Agency or Official containing a state administrative legal action based on statutory regulations which creates legal consequences for a person or a Civil Legal Entity is final, individual, concrete, and a negative fictitious State Administration decision referred to as the Object of the State Administrative Court dispute (hereinafter abbreviated PTUN). Administrative Court facilitates civil legal entities or people who feel their interests have been harmed by a State Administrative Decree. This is intended to create good governance. Under such conditions, the legitimacy of government actions can be tested.¹³

Weak implementation of State Administrative Court Decisions is due to the absence of an executorial body and coercive power in implementing State Administrative Court Decisions, so that implementation of State Administrative Court Decisions depends on the awareness and initiative of State Administrative Officers.

The purpose of establishing and positioning a state administrative court (PTUN) in a country is related to the state philosophy it adheres to. The Unitary State of the Republic of Indonesia is a legal state based on Pancasila and the 1945 Constitution, therefore individual rights and interests are upheld as well as the rights of the people. Individual interests are balanced with the interests of society or the public interest.

According to S.F Marbun, philosophically the purpose of establishing a state administrative court (PTUN) is to provide protection for individual rights and

¹³ Kus Rizkianto, Contempt of Court for State Officials who do not Implement State Administrative Decisions, *SALAM: Jurnal Sosial dan Budaya Syar-i*, 8 (3), (2021): 680. 10.15408/sjsbs.v8i3.20717

community rights, so as to achieve harmony, balance and harmony between individual interests and the interests of society or the public interest.¹⁴

The purpose of the state administrative court (PTUN) is to provide legal protection and legal certainty, not only for the people alone but also for the state administration in the sense of safeguarding and maintaining a balance between the interests of the community and the interests of the individual. For the administration of the state, order, peace and security will be maintained in carrying out their duties in order to realize a strong, clean and authoritative government in a state based on Pancasila.

Thus the state administrative court institution is as one of the judicial bodies that exercises judicial power, is an independent power that is under the Supreme Court in the framework of administering justice to uphold law and justice. Law enforcement and justice are part of legal protection for the people for public legal actions by state administration officials who break the law.

Based on this, state administrative courts are held in the context of providing protection (based on justice, truth and order and legal certainty) to people seeking justice (justiciabelen) who feel themselves harmed as a result of an act of public law by state administration officials, through examination, termination and settlement of disputes in the field of state administration.

Thus, it can be said that even though all forms of actions of state administration officials have been regulated in the norms of state administrative law, if there is no law enforcement agency from the state administrative law itself, then these norms have no meaning whatsoever.

Therefore the existence of a state administrative court (PTUN) is something that is mandatory, with the aim of being a means of juridical control over state administration implementers as well as a form or container of legal protection for the community because in terms of its legal position it is in a weak position.

Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Court in Article 116 paragraph (4) and paragraph (5), namely the imposition of sanctions for State Administrative Officials who do not carry out decisions that have been permanent legal force in the form of payment of forced money (dwangsom) and/or administrative sanctions as well as

¹⁴ S.F. Marbun and Moh. Mahfud MD, *Principles of State Administrative Law*, Liberty, Yogyakarta, (1987): 27.

publication in print media.

Article 116 paragraph (6) in addition to regulating the efforts as stipulated in the previous law, also regulates the reporting of disobedience by State Administrative Officers to implement the decision of the State Administrative Court to the President as the holder of the highest government authority and to the people's representative institutions to carry out oversight function. However, there are still many obstacles in implementing these coercive efforts, both the implementation of dwangsom/forced money and administrative sanctions.¹⁵

Dwangsom or forced money is the payment of an amount of money paid all at once or in installments to a person or his heir, or a civil legal entity that is charged by the defendant (State Administrative Agency or Officer) for not carrying out the decision of the State Administrative Court which has permanent legal force (*inkracht van gewijsde*) and this causes material losses to individuals or civil legal entities.

The application of forced money in the concept of administrative law is part of the administrative sanctions imposed as an alternative to real coercion (*bestuudwang*) by government organs or officials in carrying out government functions (*executive*). The juridical character of these sanctions is reparatory in nature intended to prevent further damage or loss and on the other hand to restore conditions that were directly imposed without going through a court decision.¹⁶

The problems that arise along with the mechanism for paying a forced amount of money about whom the forced money is imposed? Is it in the financial institutions of the TUN official concerned or in the finances/assets of the TUN official personally who does not want to carry out the TUN judicial decision? Similarly, how much money is to be paid?

Regarding the imposition of forced money according to the author, it should be charged to the agency or agency of the TUN official because of his position because the one who is obliged to pay is the agency or agency. However, another problem arises, if the forced money is charged to the institution or institution of the TUN officials concerned, then what amount must be paid, then where does the source of the budget be taken to pay the amount of money because, in government agencies

¹⁵ Agus Sujiono, Legal Consequences If State Administrative Officials Do Not Implement State Administrative Court Decisions, *TATOHI: Jurnal Ilmu Hukum*, 1 (4), (2021): 365. <https://doi.org/10.47268/tatohi.v1i4.613>.

¹⁶ Ismail Ramadan, Problems in the Execution of State Administrative Court Decisions, *Jurnal Hukum dan Peradilan*, 1 (3), (2012): 450. DOI: <http://dx.doi.org/10.25216/jhp.1.3.2012.435-462>

or institutions, it is regulated regarding the use of the budget that has been determined in the APBD and APBN. Of course, the authorized official in the agency does not want to use a budget other than what has been stipulated in the APBD or APBN.

Basically, in the provisions of the Law on the State Treasury, it has been stated that legal actions imposed on TUN officials who carry out state duties are borne by the state budget. It's just that there is controversy whether the state then asks for compensation for forced efforts, to TUN officials who issue TUN decisions or abolish them.

For those who agree that TUN officials need to reimburse the state for coercive efforts, they have the reason that the TUN official has wrongly exercised the authority given by the state. Therefore he is responsible for replacing the money issued by the state for coercive measures. Meanwhile, those who disagreed had the reason that the TUN official issued a TUN decision based on upholding the law, even though the TUN court finally overturned the TUN decision.

So it is very illogical if the forced money is charged to the TUN official personally because the official is carrying out government functions because of his position. Then if the TUN official being sued has retired, it is not possible to be charged the new TUN official who occupied the position of the previous TUN official.

The implementation of the sanction of paying an amount of forced money causes the TUN court's decision to not work, moreover, there are no implementing regulations in implementing sanctions in the form of payment of the forced amount of money. Thus this model of sanction is not effective for application to TUN officials who do not want to voluntarily carry out TUN court decisions.

Next, related to administrative sanctions. Administrative sanctions can only be imposed by the violator's superiors. If the superior official is not willing to give the sanction, the administrative sanction will be meaningless. This is also supported because until now there is no legal basis to sanction regional heads who do not comply with PTUN decisions. Efforts that can be made by the winning party based on the Administrative Court Decision are only giving a copy of the Administrative Court Decision to the Minister of Home Affairs so that he can impose sanctions on State Officials who do not comply with the PTUN Decision.

The burden of paying forced money is a problem that in theory, an official who is temporarily carrying out his duties is carrying out the role of the state. Therefore, if

carrying out the role or task, it results in losses being borne by the state because it is classified as "service error. This is different from when an official does not obey a judge's decision (which can be equated with not obeying the law), at that time a state official is not carrying out the role of the state (because ideally, carrying out the role of the state is carrying out legal provisions).

Therefore, the risk of non-compliance with the law cannot be borne by the state finances, but must be borne personally by the person in office because this is a "personal mistake". This is in line with the theory of "error" developed from the jurisprudence of the council which distinguishes between official errors (*faute de serve*) and personal errors (*faute perdonnelle*).

Provisions that oblige officials to carry out court decisions that have permanent legal force are regulated in Article 72 paragraph (1) of Law Number 30 of 2014 concerning Government Administration which confirms that Government Agencies and/or Officials are obliged to carry out legal Decisions and/or Actions and Decisions has been declared invalid or canceled by the court or the official concerned or the superior concerned.

According to the author, if administrative sanctions are not effective in their application then there is a way to apply sanctions to officials who do not want to comply with the Administrative Court Decision, namely using criminal law as a last resort. Administrative law enforcement means can be in the form of criminal sanctions and administrative sanctions. Enforcement of criminal sanctions is carried out by courts and other law enforcement officials, while administration sanctions are carried out by superiors without having to go through a court process.

In general, laws and regulations end with criminal sanctions (*in cauda venenum*) and administrative criminal law is a criminal law in the field of administrative violations. Literally (*in cauda venenum*) means criminal sanctions follow for violators of state administrative law. Criminal sanctions are the last resort for people to comply with the provisions of the State Administrative Law. In other words, there is no need for Criminal Law to interfere if the State Administrative Law instrument can resolve itself.

Provisions regarding the imposition of criminal sanctions for officials who do not comply with PTUN decisions need to be drafted in the upcoming administrative law draft. On this basis, State Officials who do not comply with PTUN Decisions are categorized as having committed contempt of court.

4. Conclusion

Whereas the existence of the State Administrative Court has not been able to bring justice to the community within the scope of government administration. The principle of having a State Administrative Court, to place judicial control in the administration of good governance is biased in the Indonesian constitutional system. If a decision of the State Administrative Court does not have executorial power, how is it possible that the law and society can oversee the running of the government which is carried out by the State Administrative Agency or Officials? laws and regulations that are procedural, substantial, or issued by an unauthorized State Administrative Agency or Official because this aspect is the basis for testing (toetsingsgronden) to determine whether the State Administrative Decision being challenged is by the law (rechtmatig) or vice versa . Whereas the implementation of the sanction for payment of an amount of forced money causes the TUN court's decision to not work, moreover, there are no implementing regulations for implementing sanctions in the form of payment of the forced amount of money. Thus this model of sanction is not effective for application to TUN officials who do not want to voluntarily carry out TUN court decisions.

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