



The Execution of the Administrative Court's Decision; Looking for Its Justice and Legal Certainty

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Abstract

Introduction to The Problem: The execution of the Administrative Court's decisions seems floating, and there is no final settlement. The implementation of the decision of the State Administrative judge is entirely left to the awareness of the administration official or institution. The problem is that the officials are lack of awareness due to the less supervision by a higher institution like the House of Representatives.

Purpose/Objective Study: This article aims to find out the execution to carry out the Administrative court and Administrative court decisions that can provide a sense of justice and legal certainty to the public.

Design/Methodology/Approach: The study in this article uses a doctrinal approach with secondary data sourced from books and journals, and is presented using a qualitative method.

Findings: The study showed that the execution of the court's decision only emphasizes the sense of self-respect and legal awareness of the Administrative officials and there has been no application of forced efforts against Administrative officials if they do not implement it. Administrative actions must be following the principles of a legal constitution dominated by the norms of public policy to prevent acts of abuse of authority from higher powers.

Paper Type: Research Article

Keywords: Execution; Administrative Court's Decisions; Legal Certainty

Introduction

The settlement of Administrative Disputes can be done through judicial efforts and administrative efforts. Both efforts referred to the Administrative Act No. 5 of 1986 in Article 48 paragraph (1) and paragraph (2). Legislative efforts are a procedure that can be taken by a person or public legal entity who is dissatisfied with a State Administrative decision. The procedure is carried out in a self-government environment and consists of two forms, namely administrative appeals and objection procedures. In administrative appeal procedures or objection procedures, a complete assessment is carried out, both in terms of proper application and in terms of the policy by the agency that decides. If all the procedures and opportunities have been taken, and the parties concerned are still not satisfied, then the issue can be sued and submitted to the court. Settlement through this court, according to Article 51 paragraph (3) must be submitted to the Administrative Court.



The judicial effort is a legal effort through the Judiciary. Judicial efforts are made by submitting a lawsuit to the First Level Administrative Court, and it has a chance to appeal to the Administrative High Court and the Supreme Court. After resolving the examination of the dispute in the judiciary, a court will drop the decision. It is in contrast to the civil court ruling that binds between litigants. The verdict on the Administrative Court's decision has the power of work, such as a general public law decision that applies to anyone (*erga omnes*) (Hartana, 2016; Soetami, 2009). Thus, the court has legal force to carry out the decisions immediately.

Even though the court's decision already has permanent legal force (*inkracht van gewijsde*), the implementation of the Administrative Court's decision often faces difficulties due to the absence of an executive institution which specifically carries out administrative judge decisions. The Administrative Court is the only judicial institution that does not have an executing agency. Thus, the judge's decision implemented only by the awareness of the administration official or institution, so it causes many problems. Moreover, it seems as if it creates the impression of injustice in the judiciary because the administrative official or institution do not want to submit to court decisions. Administrative Court decisions seem floating, and there is no final settlement (Boneka, 2014).

From this short description, the question arises whether is there a forced effort that can be made to the administration official or institution to implement the Administrative Court Decision and how to create a judicial process that can provide a sense of justice and legal certainty to the society. This study aims to provide a concept and renewal in the execution of the Administrative Court decision that provides a sense of justice and legal certainty for the community in the legal system in Indonesia.

Methodology

The study in this article uses a doctrinal approach with secondary data, namely library books, legislation, scientific work, journal articles, and documents relating to research material (Soekanto & Mamudji, 2011). The data in this article are legal materials such as legal provisions, scientific articles, and related books or journals. The data collected from the literature study and then identified and classified according to the needs of the articles and presented in qualitative-analytical descriptive.

Analysis and Results

Execution of Administrative Court Decision

The basis for the birth of an administrative dispute is a decision or decree (*beschikking*) (Neno, 2006), but not all decisions or provisions of administration can be the dispute objects. There are notions which unincluded in the definition of Administrative Decrees, those are:

1. Administrative Decisions which constitute acts of civil law;
2. Administrative Decisions which are general arrangements



3. Administrative Decisions that still require approval
4. Administrative Decrees issued under the provisions of the Criminal Code and Criminal Procedure Code or other Legislation that are criminal law;
5. Administrative Decrees issued based on the results of an examination of the judicial body based on the provisions of the applicable legislation;
6. Administrative Decisions concerning the Administration of the Indonesian National Army;
7. The decision of the General Election Commission, both at the center and in the regions regarding the results of general elections.

However, a decision issued by an agency or state administration official based on arbitrariness or abuse of power can cause harm to a person or public legal entity called maladministration (Guslan, 2018). It is the starting point where a state administrative dispute arises.

Indonesia is a state of the law by the concept of the rule of law proposed by Freidrich Julius Sthal. He proposed the characteristics of a legal state (*rechtsstaat*), namely (Neno, 2006):

1. The protection of human rights;
2. The separation or division of power to guarantee human rights (*trias politica*);
3. The regulation-based government;
4. The Judicial State Administration.

The inclusion of administrative justice elements as one of the *rechtsstaats* elements or characteristics is intended to provide legal protection for citizens against government actions that violate the human rights of citizens.

In administrative disputes, there are subjects to the dispute, namely the administrative agency or a person or local legal entity. Sjahran Basah argues that the purpose of the administration or administration of the judiciary is to provide legal protection and legal certainty, both for the people and for state administration in the sense of maintaining the balance of the interests of the people with individual interests (Basah, 1997). The purpose of the state administrative court can also be formulated preventively to prevent illegal state administrative actions. The distinctive feature of the procedural law of the state administrative court lies in the principles of law, which are (Hadjon, 2011):

1. The principle of presumption of reconciliation (*vermoeden rechmatigheid/praesumptio iustae causa*). This principle implies that every act of the ruler always considered as legitimate (*rechmatig*) until there is a cancellation; the claim does not delay the implementation of the administrative decree;
2. The principle of free evidence;
3. The principle of activeness of the judge (*dominus litis*), the activeness of the judge is intended to compensate for the position of the parties both are a plaintiff (person or legal entity), and the defendant (official of the state administration);



4. The principle of court decisions has the power to bind (*erga omnes*). Administrative disputes are public legal disputes; thus, the Administrative Court decision ruling applies to anyone not only to the parties to the dispute.

Execution is a legal action carried out by the court against the losing party if it does not want to run or fulfill the court's decision voluntarily. A court decision that can be executed is a decision that has permanent legal force (*inkracht van gewijsde*). Execution of court decisions is the implementation of court decisions by or with the assistance of outside parties from the parties. If the defeated party does not want to obey the decision voluntarily, the court forces the decision on him (Soleh, 2018).

The definition of execution in a broader sense is stated by Mochammad Dja'is, who states that execution is an attempt by the creditor to realize rights by force because the debtor does not want to fulfill his obligations. Thus, the execution is part of the process of completing legal disputes (Djais, 2000). From the above understanding, the execution is not only interpreted in a narrow sense but also a broad sense. Execution in the broadest sense is an effort to realize rights, not just the implementation of court decisions. In this case, if the party who loses in the trial is the defendant (administrative official or agency), how is the execution of the administrative court decision executed.

There are various types of court executions, including automatic executions, hierarchical executions, and executions of forced attempts. The automatic execution contained in the Act of State Administrative Court No. 5 of 1986, Article 116 paragraph (1) and (2) as well as its amendment in the Act of No. 51 of 2009. Within a period of no later than 14 (fourteen) days, the Chair of the Court orders to send a copy of the court's decision which has obtained permanent legal force to the parties. If after 60 (sixty) working days a court decision that has obtained legal force remains accepted by the defendant and the defendant does not carry out his obligations, the disputed Administrative Decision has no legal force. It means that the Administrative Court decision automatically have no more binding power.

The hierarchical executions elements are contained in the Act of State Administrative Court No. 5 of 1986, Article 116 paragraph (1) and (2), as well as its amendment in the Act No. 51 of 2009. If after 90 (ninety) working days it turns out that the defendant did not carry out the court's decision, the plaintiff applies to the Chair of the Court to be announced to the local print media and submits the disobedient to the President as the highest government authority. The highest authority will then orders officials for carrying out a court decision to the people's representative institution. However, in its implementation, this execution is a challenging implementation, and it takes a long time. If the problem reaches the President, and the defendant does not carry out a decision that has permanent legal force, it will lead to the fall of the President's authority as the Supreme Leader of the Government.



If the defendant is unwilling to implement a court ruling that has obtained permanent legal force, the official concerned will be using forced efforts execution in the form of payment of some forced money and administrative sanctions. However, until now, there has been no legislation rules in the form of Government Regulations or lower laws and regulations as an implementing rule. Because it has not been regulated in the implementing rules below, then the issue arises concerning forced money, for who forced money is charged, and how much money must be paid, and where the source of the financing is if it should be charged; is it to the agencies or officials personally.

Even though the provisions for the execution of the Administrative Court ruling which has permanent legal force appear in the formal jurisdiction capable of providing legal certainty to the community, but in practice, the implementation of the court's verdict execution is still far from expectations. The law only regulates the principle of execution but has not yet regulated the mechanism and procedures for its implementation. The execution of the Administrative Court decision ruling has not provided a sense of justice and legal certainty to the public. It only backs to the basic, which the execution in the Administrative Court emphasizes moral respect (self-respect) and legal awareness of the State Administration Officers. They much oblige to carry it out voluntarily without any coercion (*dwangmiddelen*), which can be felt immediately and imposed by the court on the relevant State Administration Officers.

Justice and Legal Certainty of the Execution of the Administrative Court's Decision

The Administrative Court's decision will not provide legal benefits and certainty if the decision that has legal force remains uncarried out. There are obstacles in the execution of the Administrative Court decision; one of them is juridical barriers. Juridical barriers concern the issue of statutory provisions which are the basis of decisions, especially regarding the basis of the judge's authority to determine force and administrative sanctions regulated in the Act of Administrative Courts. The procedure for implementing it is also natural due to the implementing rules regarding its implementation.

Johan Utama stated that the juridical factors that hampered the execution of the PTUN ruling were as follows (Utama, 2010):

1. The system offered by Administration procedural law in decision enforcement is based on the pattern of moral compliance or legal awareness, not on the pattern of juridical compliance;
2. The enforcement system for executing decisions is unknown on a juridical system that can end the dispute. It is unsupported yet with instruments that can force the Defendant/Officer to comply with or execute the decision.
3. The system for implementing compensation which stipulated in Government Regulation No. 43 of 1991 and Decree of the Minister of Finance of the Republic of Indonesia No. 1129/KM.01/1991 concerning Procedures for Compensation Payment for the implementation of Administrative Court's Decisions is very



complicated and constitutes a rubber article because repayment of compensation is possible to be postponed up to several fiscal years.

4. Juridically there is no balance between the plaintiff and the defendant, where the plaintiff's bargaining position is fragile when the defendant/official is not obedient to the verdict.

There are steps for creating the Administrative Court that provides a sense of justice and legal certainty to the community regarding the execution of the Administrative Court Decision. The following steps are:

First, harmonizing and regulating legislation instruments. The government can review the regulations on State Administrative Courts, guarantee legal certainty for the community, and forms the implementing regulations. Administration Officials or Agency can be said to act arbitrarily if they do not implement the Administrative Court Decision, which has permanent legal force. Article 70 of Government Administration Act, No. 30 of 2014 states that the legal consequences of Decisions and Officials Arbitrary Actions are unbinding since the Decisions or Actions that have determined, and all legal consequences have deemed to are inexisted. The administrative act must obey the constitutional legal principle which dominates public law norms, so that administration will have to avoid regulations where the domain is reserved explicitly to particular normative acts of a higher legal force and also excess of power by acquiring some illegal competences (Gherghină, 2016).

The forced effort is expected to provide a deterrent effect on State Administration Officers who do not want to implement the Administrative Court Decision, which has permanent legal force. Forced efforts in the form of forced or compensation payments need to be regulated regarding the mechanisms and procedures for paying forced money and imposing a budget through Government Regulations (Gusman, 2010). The Government Administration Act No. 30 of 2014 mandates the establishment of Government Regulations concerning mechanisms and procedures within 2 (two) years after the enactment of the law. However, until now, there has been no specific Government Regulation regulating the mechanism and procedures for implementing these forced efforts. The judges should be able or Government Officials who are authorized to make decisions or give administrative sanctions based on the Act.

Second, to guarantee legal certainty and a sense of justice in the execution of the Administrative Court Decision, the judge can list the forced efforts in the dictum of its Decision. Court decisions can be included in legal decisions; therefore, the application of legal reasoning in judicial legal considerations is imperative (Putrijanti, 2013). Inclusion of forced efforts must also be supported by legislative instruments, with a legal basis for the State Administrative Court to include administrative sanctions in the ruling (Putrijanti, Leonard, & Utama, 2016). In principle, the verdict gives the defendant the period to carry out the decision, and if the defendant does not carry out the decision within the stipulated time, then the penalty for payment of the forced



money as stated in the verdict (*dictum*) of the decision applies. Additionally, when there is an application for the execution of a permanent legal force decision submitted by the Plaintiff, the Chairperson of the Administrative Court will call the Administration Official or Agency to impose administrative sanctions. So that the Defendant (Administration Official or Agency) does not carry out the contents of the decision (Kusmawardi, Suteki, & Ristyawati, 2018).

Third, the government should include provisions that regulate sanctions institutions or specialized executorial institutions for Administrative Court judicial decisions. Thus, the court's verdicts can be carried out and arousing the sense of justice for the community.

Fourth, improving and changing the legal culture of the Administration Official or Agency (defendants) who seem to have a higher position than the community (plaintiff). It also by improving the organizational performance of the government bureaucracy by changing the bureaucratic structure of the official's behavior (Susanto, 2015). By changing the behavior of government officials with a legal culture that adheres to applicable regulations, it is hoped that government officials will always have high legal awareness. Moreover, reconstructing administrative law that serves the public interest is urgently needed in the rapid development of society so that the law is expected to meet the needs of the community.

The last step is adapting the existing concepts outside Indonesia, such in France. Bodies or officials who are late in carrying out executions are given sanctions and threats by paying money daily. So that the longer the delay in the execution of the decision, the higher the amount of money to be paid later. In France, there is a *Conseil D'Etat* which can boycott or reject budget plans for subsequent periods, if they do not comply with the warnings or warnings (Lubna, 2015). In Indonesia, there is a House of Representatives that carries out this oversight.

Conclusion

Factually speaking, the execution of the Administrative Court decision is not yet fulfilled the justice and legal certainty. It is because the difficulty to make a forced effort against Administration Official, so they want to carry out the decisions of the State Administrative Court voluntarily. The implementation of forced measures is also ineffective because there is no regulation regarding the mechanism for imposing sanctions and forced money.

The government is expected to be able to make better regulations in the State Administrative Court Law in order to protect the interests of the community to achieve justice and legal certainty. There are steps to create an Administrative Court that gives a sense of justice and legal certainty to the community regarding the execution of the Administrative Court Decision. However, these steps will be going smoothly with integration between the regulations and the awareness of enforcement law agencies.



First of all, is harmonizing and forming a statutory instrument, including forced efforts in the dictum of the court's verdict. Through the dictum, the court has the power of force to execute the decision, directly and energetically. The other step is establishing the executive institution inside the Administrative Court. The institution will formally carry out the judge's verdict and execute it as the court's name. The last step this study proposed is developing the new development of legal culture within the Administrative Court, such as paying the forced money for them who do not obey to carry out the court's decision or be late to implement it. Other than that is increasing the supervision by the House of Representative so that the people who involved in the Administrative Court will not carelessly disobey the institution.

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