

Legal Administrative Review of Deviations in the Execution of State Administrative Court Decisions in Indonesia



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ABSTRACT: The role of the Administrative Court in resolving disputes within the "Government Administration" in Indonesia caused by the absence of executive power has a significant impact. The State Administrative Court, Legal Proceedings Law, regulates the integration and clarification of the enforcement of State Administrative Court decisions, so the execution of the decision is genuinely dependent on the good faith of the government body or its officials in complying with the law. The problem of executing the decisions of the State Administrative Court is a common legal phenomenon. As mentioned by Paulus Effendi Lotulung, the issue of execution is present in various countries; even though multiple regulations and mechanisms regulate it, but there is still no sufficiently effective coercive legal means to force the relevant agencies or officials to comply with the decision. Several factors that cause the weakness of the execution of State Administrative Court (PTUN) decisions that have obtained legal force are as follows: First, the absence of legal regulations that require State Administrative Court officials to implement legally binding court decisions. Second, the factor of judges' reluctance to include forced monetary payments in case the relevant State Administrative Court officials do not execute the court decision. Third, the compliance factor of State Administrative Court officials in carrying out legally binding court decisions. The issue of executing State Administrative Court decisions is also related to the implementation of regional autonomy, as with regional autonomy, all regional government officials in districts/cities have extensive authority in managing their regions and inevitably use administrative decision-making methods.

KEYWORDS: Administrative Law, Deviation in Enforcement of Decisions, State Administrative Court (PTUN).

INTRODUCTION

The function of the State Administrative Court should ideally encourage the establishment of a clean and strong government, which means creating an atmosphere of accountability from the state authorities in upholding the law. This is because State Administrative Court decisions, including their legal considerations and verdicts, contain statements that declare the invalidity of a State Administrative Decision (KTUN) considered to violate applicable laws and Principles of Good Governance (AAUPB). These decisions should provide motivation for government bodies and officials to improve their system and performance in carrying out their functions to achieve a clean and strong government.

The State Administrative Court serves as a place for legal protection for citizens but often fails to satisfy the people seeking justice following their victories in a case. This is due to the fact that the legal provisions regarding enforcement in the State Administrative Court Law still have weaknesses, leading to frequent obstacles in the execution process. Because of these weaknesses in the enforcement regulations, State Administrative Court officials often use this as a reason to disregard State Administrative Court decisions.

The role of the State Administrative Court in addressing disputes in "Government Administration" in Indonesia is hampered by the lack of various executive bodies and a delayed enforcement process. The State Administrative Court Legal Proceedings Law aims to regulate and clarify the issues related to the enforcement of State Administrative Court decisions, so the actual implementation of these decisions depends on the good faith of government bodies or officials in complying with the law. This situation is of concern as it can undermine the State Administrative Court's principle of control over government actions within the Indonesian bureaucracy and the constitutional framework (Mohammad Afifudin Soleh, 2018).

Legal protection within the scope of administrative law brings a logical rationale that every citizen must be protected from government actions that result in the infringement of their rights as citizens. In this logical context, every government action should, in principle, be subject to assessment by administrative courts. Indonesia initiated its administrative court regime specifically based on Law Number 5 of 1986 concerning the State Administrative Court (Law No. 5/1986). However, this law turned out to be unenforceable because there were no implementing regulations. In 1991, the government issued Government Regulation No. 7 of 1991 concerning the Organization of the State Administrative Court in Indonesia (Basah S, 1992).

Legal Administrative Review of Deviations in the Execution of State Administrative Court Decisions in Indonesia

The issuance of Law Number 30 of 2014 concerning Government Administration as a material law for administrative court proceedings has emphasized that deviations from the implementation of legally binding court decisions constitute arbitrary actions (*willekeur*). In practice, the State Administrative Court (PTUN), as the embodiment of administrative justice in Indonesia, still relies on outdated procedural laws. Law Number 5 of 1986 concerning the State Administrative Court as the procedural law for administrative courts in Indonesia still contains several limitations on the jurisdiction of PTUN examinations. Specifically, Article 2 Letter E becomes problematic when related to administrative decisions deviating from legally binding court decisions (*inkracht van gewijsde*). Deviations from legally binding court decisions should be considered as a legal flaw, so the jurisdiction restrictions should have been reevaluated.

Administrative law and administrative courts, in theory, are based on the relationship between the concepts of democracy and the rule of law. Democracy without legal regulation would lose its form and direction, while law without democracy would lose its significance (Government Administration Law). In this symbiotic relationship, it is explained that the existence of the State Administrative Court is crucial in providing legal protection for individual interests and in upholding and safeguarding fundamental human rights (Marbun S).

PROBLEM STATEMENT

How is the Legal Administrative Review of Deviations in the Execution of State Administrative Court (PTUN) Decisions in Indonesia?

RESEARCH METHODOLOGY

Research is a process, a planned and systematic series of steps undertaken to obtain solutions to a problem or answers to specific statements. Research is essentially an effort to seek the truth systematically, methodologically, and consistently rather than merely observing an easily tangible object. This is because research aims to uncover the truth systematically, rigorously, and consistently. Through the research process, analysis and construction are carried out on the collected and processed data. To achieve the best results, the research method and approach used are juridical normative, which consists of:

1. Primary legal materials are legally binding documents. In this thesis, primary legal materials will be used, including Law Number 11 of 2012 regarding the Juvenile Justice System, Law No. 11 of 2012 regarding the Criminal Justice System for Juveniles, and Law No. 3 of 1997 regarding Juvenile Justice.
2. Tertiary legal materials, on the other hand, provide guidance and explanations for primary legal materials, and secondary legal materials can include Law Dictionaries or the Great Dictionary of the Indonesian Language to clarify the meanings of terms that may be difficult to interpret. This research utilizes a juridical-normative research method, with a descriptive nature and secondary data sources. Data is collected through library research and summarized in qualitative analysis (Soerjono Soekanto, 2010).

DISCUSSION

The fundamental goal of administrative law is to encourage administrators to deliver optimal services with greater efficiency. When decisions made have significant consequences for an individual or other parties, careful consideration is necessary. Administrative law enforcement is carried out through administrative, procedural law, which can be applied through general and specific administrative procedural guidelines and regulations. Consequently, the substance of procedural law can vary from one field to another.

Administrative procedures are a form of mechanism to encourage compliance by government institutions. Their aim is to build efficiency, consistency, accountability, and responsibility within government management at the implementation or technical-operational level. Administrative procedures are codified in formal regulations established by the organization. Their utilization can serve as instruments for legal oversight, control, and review. Instrumentally, administrative procedures can be instrumental in building legitimacy in the implementation of good administration (Dinoroy Marganda Aritonang).

Administrative law in Indonesia has several weaknesses, which have hindered its effectiveness in reducing legal violations committed by institutions or public officials. One of these weaknesses is the inability to enforce legal sanctions directly. The administrative law system lacks an authority responsible for enforcing the implementation of administrative court decisions, as is the case with the execution of criminal law carried out by the prosecutor's office.

Law Number 30 of 2014 on Government Administration mandates every government institution and public official to establish operational standards, particularly concerning decision-making and government actions. However, in practice, operational and procedural technicalities are rarely used as the basis for decision-making. In many cases, government administration still heavily relies on discretion. The Administrative Procedures Law also regulates that general guidelines for operational standards in decision-making must be publicly disclosed by government bodies or officials through print media, electronic media, and other channels. However, in reality, very few government entities publicize the procedures they have created, especially in print or electronic media.

Legal Administrative Review of Deviations in the Execution of State Administrative Court Decisions in Indonesia

State Administrative Court (PTUN)

The State Administrative Court was established initially in 1986 with the enactment of Law Number 5 of 1986 on the State Administrative Court, officially taking effect on December 29, 1986, and fully operational as of January 14, 1991, following the issuance of Government Regulation Number 7 of 1991. At this time, Law Number 5 of 1986 underwent revisions in accordance with Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 on the State Administrative Court. It was further amended with Law Number 51 of 2009 regarding the Second Amendment to Law Number 5 of 1986 on the State Administrative Court. However, the aspiration to establish the State Administrative Court had been conceived as early as 1946. This is evident from the drafting of the Bill on the Procedure for Administrative Cases in Government by Wirjono Projodikoro (Wirjono Projodikoro, 1971).

The presence of the State Administrative Court represents one avenue within the judicial framework to protect legal rights alongside the administrative, supervisory mechanism carried out within the government itself. Therefore, the State Administrative Court serves as a judicial institution to evaluate the actions of the executive branch while also ensuring legal protection for citizens. The State Administrative Court is established to resolve disputes between the government and the citizens regarding government actions (*bestuurshandelingen*) that are perceived to violate the rights of citizens. As a result, the formation of this judicial body empowers it to adjudicate against government officials who use their authority to violate the rights of citizens, whether they are individual or collective rights (Paulus Efendi Lotulung, 2013). Thus, the establishment of this specific judicial body, vested with the power to adjudicate against government officials who misuse their governmental authority to infringe upon the rights of the citizens, is considered a crucial step in upholding the rule of law.

Meanwhile, the supervisory function carried out by the judicial institution, the State Administrative Court, over government actions as a manifestation of protecting the rights of citizens is regulated in Article 53 of Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 on the State Administrative Court (Law No. 9/2004), which reads as follows:

1. Individuals or legal entities who feel their rights have been adversely affected by a particular State Administrative Court Decision may file a written lawsuit with the competent court, requesting the annulment or revocation of the disputed State Administrative Court Decision, with or without a claim for damages and/or rehabilitation.
2. The grounds that may be used in the lawsuit referred to in paragraph (1) are as follows:
 - a. The contested State Administrative Court Decision contradicts the prevailing laws and regulations.
 - b. The contested State Administrative Court Decision is in conflict with the fundamental principles of good governance.

These provisions are intended to create good governance, with the general principles of good governance (*Algemene Beginselen van Behoorlijk Bestuur*) serving as a standard to assess the validity of government actions alongside prevailing laws and regulations. However, despite this, the establishment of the State Administrative Court is a modern legal concept. Yet, a significant problem emerged 30 (thirty) years after the existence of the State Administrative Court, which is the enforcement of State Administrative Court decisions.

The principle of the existence of the State Administrative Court, to place judicial control in the proper functioning of the government, has become biased in the constitutional system of Indonesia. When a State Administrative Court decision lacks enforcement power, how can the law and society oversee the actions of the government carried out by State Administrative Bodies or Officials (Mohammad Afifudin Soleh, 2017)?

Deviation in the Execution of State Administrative Court Decisions in Indonesia

State Administrative Court decisions are a form of action taken by State Administrative Bodies or Officials in the field of public law. State Administrative Bodies or Officials, in the course of performing their duties to achieve the goals of the Republic of Indonesia, as mandated in the Fourth Paragraph of the Preamble of the 1945 Constitution, require legal instruments to regulate society's life. They utilize legal instruments to exercise control and maintain security, order, and peace in the life of the nation and state. State Administrative Bodies or Officials may employ both public law and private law instruments. The use of private law instruments by State Administrative Bodies or Officials occurs when there is no regulation under public law. When State Administrative Bodies or Officials use private law, they personify the law.

The dominance of the government's role in the implementation of state affairs also refers to the concept of government intervention in managing the affairs of its citizens (*staatsbemoenien*) (Victor Situmorang, 1989). According to Anthony Giddens, such a concept of state function makes the state inherently interventionist, meaning that the state consistently involves itself in every aspect of society's actions and steps, with the rationale of enhancing the general welfare (Anthony Giddens). Therefore, the state's duties become extensive and cover all aspects of citizens' lives in various fields, including the private sphere of citizens.

There have been several obstacles that have marked the implementation of the State Administrative Court's decisions during the effectiveness of Law No. 5 of 1986 concerning State Administrative Courts until the enactment of Law No. 9 of 2004 and Law No. 51 of 2009 concerning the First Amendment and the Second Amendment to Law No. 5 of 1986 concerning State Administrative Courts. These obstacles include barriers related to the understanding of State Legal Theory and Principles of Good Governance by State Administrative Court Officials, technical barriers, legal barriers, barriers related to legal principles enforcement, regional autonomy influence, and non-compliance of State Administrative Officials.

Legal Administrative Review of Deviations in the Execution of State Administrative Court Decisions in Indonesia

The presence of the State Administrative Court (PTUN) serves a dual role within the administrative framework, functioning both as a judicial avenue and as an administrative oversight mechanism aligned with the government's own channels. Consequently, the State Administrative Court offers a legal route for appraising executive actions while overseeing and safeguarding citizens' legal rights. However, although the State Administrative Court has existed for three decades, its standing within the Indonesian judicial system remains somewhat limited, lacking the same executive authority as other judicial bodies. Regarding the execution of State Administrative Court decisions, as outlined in Law No. 5 of 1986, compliance remains predominantly voluntary. Article 116(2) of Law No. 5 of 1986 specifies that if a party fails to execute a legally binding court decision within four months of its issuance, the contested State Administrative Court decision loses its legal effect. This process is commonly referred to as "automatic execution." Additionally, Law No. 5 of 1986 introduces an alternative method for enforcing decisions through "hierarchical execution," entailing the implementation of court decisions through directives from authorized entities. Further details can be found in Article 116(3), (4), (5), and (6) of Law No. 5 of 1986

In the context of law enforcement, the success or failure of legal enforcement is highly dependent on the execution of every court decision that has obtained a legally binding status. This, in essence, serves as the measure of whether the law truly exists and is applied consistently and purely in a legal state. The introduction of administrative sanctions in the First and Second Amendments to Law No. 5 of 1986 aimed to provide a means of compulsion within the framework of improving officials' compliance in implementing State Administrative Court decisions. However, the existence of these regulations has not yet been fully realized due to the absence of further rules governing the provisions in Article 116(7) of Law No. 51 of 2009 (Farida Azzahra, 2020).

CONCLUSION

Government officials' compliance in implementing legally binding State Administrative Court decisions remains notably low. This, in turn, fosters a negative legal culture or precedent for other government officials in executing State Administrative Court decisions. The low compliance of government officials with State Administrative Court decisions has the potential to result in legal disobedience, evidenced by the issuance of a new State Administrative Decision (KTUN) that essentially replicates the State Administrative Decision (KTUN) that was annulled by a State Administrative Court (PTUN) decision. The formation of this negative legal culture is influenced by the absence of executive authority in the implementation of PTUN decisions.

The high number of PTUN decisions that cannot be executed has revealed a systemic issue in the administrative justice system, resulting in new challenges. This situation is deeply concerning because, in reality, the existence of the PTUN has not yet provided complete justice to the public within the administrative sphere of the government. This condition certainly poses a barrier to achieving a clean and effective government. With the increasing number of cases where State Administrative Court decisions cannot be enforced it gives the impression to the public that the presence of the State Administrative Court is ineffective and that the government has made a mistake in establishing laws related to the State Administrative Court. This, in turn, can lead to a loss of government prestige in society.

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Legal Administrative Review of Deviations in the Execution of State Administrative Court Decisions in Indonesia

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