

Implementation of State Administrative Court Decisions: Conception, and Barriers

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ABSTRACT

This research aims to analyze how the effectiveness of the implementation of the ruling of the Administrative Court of the State and what are the factors that influence the effectiveness of the Court ruling The country. The research was carried out on the courts of The State of Makassar, data collection techniques are carried out by means of interviews and read scientific books, magazines, newspapers and other readings related to research. Results of the study showed that the effectiveness of the implementation of the ruling of the Court of The Country has not been effective, because so far there are still many Administrative Bodies and Officials of countries that are unwilling to comply with the ruling of the Court of The country, then plus the lack of participation of the parties to the dispute has led to a court could not ascertain whether a State Administrative Court ruling that has a magnitude of law has been implemented or not. As for the factors that influence the Court ruling The Country, among which is the absence of a special eksekutorial institution or institution of sanctions in carrying out the Court ruling The country, The official low awareness Countries in obeying the Court ruling The Country, the absence of more detailed provisions governing sanctions if the verdict is not implemented. Advice from the research is that, should the Government contains provisions governing the institutions executorial institutions or special sanctions ruling of The judiciary of the State, so the State Administrative Court's verdict can be run and judicial administration can emerge again in the eyes of the community.

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1. INTRODUCTION

Indonesia as a rule of law has divided powers into three, namely the executive, legislative and judiciary. These institutions have a relationship with each other and supervise each other using the principle of "checks and balances" (Putra, 2021). One of the roles of the judicial institution (judiciary) is regulated in the provisions, Article 24 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which regulates that "The administration of judicial power is carried out by the Supreme Court and judicial bodies under it within the scope of general justice, environment of religious

court, environment of military court, environment of state administrative court, and by a Constitutional Court."

This provision becomes the legal basis for the formation of the State Administrative Court which is regulated in Law Number 5 of 1986 concerning State Administrative Courts, which was later revised into Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning Judiciary. TUN. The purpose of establishing a state administrative court is to act as a juridical controller for the actions of state administrative bodies / officials, both preventively and repressively. In addition, the aim of the state administrative court is also to provide legal protection for state administrative bodies / officials if they have acted properly in accordance with applicable legal regulations (Kusmawardi et al., 2018). Meanwhile, according to Prajudi Atmosudirdjo, the purpose of establishing the PTUN is to protect citizens whose legal interests are often oppressed or squeezed by the wider interference of the authorities into people's lives. Through the PTUN, the community can sue the authorities and get corrective action from the PTUN (Suhariyanto, 2019). This provision has been regulated in Article 116 of Law Number 9 of 2004 and Law Number 51 of 2009 concerning amendments to Law Number 5 of 1986.

The provisions of Article 116 of Law Number 9 of 2004 stipulate that in the execution of the Decision of the State Administrative Court there are two types of execution of decisions, namely: execution of decisions containing obligations as intended in the provisions of Article 97 paragraph (9) sub a a decision containing the obligations referred to in Article 97 syat (9) sub b and c of Law Number 9 of 2004 (Pattipawae, 2019).

A decision containing the obligations referred to in the provisions of Article 97 paragraph (9) sub a, then the execution of the Decision according to the provisions of Article 116 paragraph (2) of Law Number 51 of 2009 is sixty days after the Court Decision which has obtained permanent legal force. as referred to in Article 116 paragraph (1) was sent, the Defendant did not implement it, then the disputed State Administration Decree no longer has legal force (Pattipawae, 2019). A decision that contains the obligations as specified in Article 97 paragraph (9) sub b and c, the provisions of Article 116 paragraph (3) to paragraph (6) of Law Number 9 Year 2004 are applied, namely in the case of State Administrative Bodies or Officials. stipulated that they must carry out the obligations as stated in the Decision to issue a State Administration Decree, but it turns out that after three months have passed, these obligations are not fulfilled.

So the Plaintiff submitted an Application to the Head of the Court ordering the Defendant to implement the Court's Decision, in the event that the Defendant was still unwilling to implement the Decision, the Officials concerned were subject to forced efforts in the form of payment of forced money and / administrative sanctions (Article 116 paragraph 4). Furthermore, Article 116 paragraph (5) of the Law determines if Officials who do not carry out the Court Decision as referred to in Article 116 paragraph (4) of Law Number 9 of 2004 and Law Number 51 of 2009 will be announced in the mass media. local printing by the Registrar. In addition, Article 116 paragraph (6) of Law Number 51 of 2009 also stipulates that in addition to being announced in the mass, print, local media as referred to in paragraph (5), the Chairperson of the Court must submit this matter to the President as the holder of the

highest government authority for order the official to carry out the Court's Decision and to the People's Representative Council to carry out the supervisory function. Likewise paragraph (7) which states that the provisions on the amount of forced money, types of administrative sanctions, and procedures for implementing forced payments and / or sanctions. Unfortunately, the implementation of the PTUN decision ordering this corrective action was not always followed by the compliance of the TUN officials who were sentenced (Hengky & Antoro, 2020). One of the main problems is the implementation of the provisions on the force of force of the PTUN decision which must be carried out by the parties.

According to Dani Habibi and Winda Nuryani, the provisions of Article 116 of Law Number 9 Year 2004 raise problems, namely: a. There is no special executorial institution or sanction agency that functions to implement decisions; b. The low level of awareness of state administration officials in obeying the state administration court decisions; c. There is no firmer regulation regarding the implementation of the PTUN decision (Habibi & Nuryani, 2020). This is why there are still administration officials who are disputing at the State Administrative Court not wanting to carry out court orders in accordance with the prevailing laws and regulations.

The same thing was also found through the results of other research by Ismail Rumadan which revealed that the decisions of the State Administration Court that have not been clearly regulated in the UUPTUN are; First, the execution mechanism that is being pursued is still floating, there is no final settlement in the implementation of the TUN Court decision which has obtained permanent legal force, when the President ignores the last attempt made by the Chairman of the PTUN. Peroblem like this is also faced with the execution model through the superior agency which so far cannot be executed. Second, regarding forced money, against whom the forced money is charged, and how much money must be paid, where will the source of financing be if it is borne by the government agency or government agency of the TUN official; Third, the legislative execution of the TUN Court decision related to the implementation of regional autonomy, especially for regents or mayors as state administration officials who have never recognized themselves as subordinate to the governor (Rumadan, 2012). Starting from the problems stated above, it can be understood that the effectiveness of implementing the decisions of the State Administrative Court is still a controversial and fundamental weakness for the effectiveness of law enforcement in the field of State Administration / Administration. This of course makes the effectiveness of the implementation interesting to be studied further from a scientific perspective, especially from the aspect of legal science.

2. METHOD

This type of research used in this research is to use the type of empirical research by focusing on the research location at the Makassar State Administrative Court. Sources of data used in this study are primary data, secondary data and tertiary data. The data collection technique used was purposive sampling. Results of data analysis through a quantitative approach, answering and solving as well as thorough and intact deepening of the object under study in order to produce descriptive conclusions in accordance with certain conditions.

3. RESULTS AND DISCUSSION

3.1. Implementation of the Decision of the State Administrative Court

The verdict of the state administrative court that can be enforced is only a decision with a permanent legal force (in kracht van gewijsde). The provisions of Article 116 of Law Number 5 Year 1986 concerning State Administrative Courts emphasize more on the implementation (executie) of decisions with a tiered system or better known as hierarchical implementation. This is because there is the involvement of higher officials or superior officials (Habibi & Nuryani, 2020). In fact, up to the President as the highest person in charge of government power (bestuur).

Article 116 paragraph (1) stipulates that a copy of the court decision which has obtained permanent legal force, is sent to the parties by registered letter by the local court clerk on the order of the head of the court who will judge him in the first instance within 14 (fourteen) working days at the latest. , which the elucidation of Article 116 paragraph (1) states is calculated from the time the court's decision is legally binding.

The elucidation of article 116 paragraph (1) also states that even though the court's decision has not yet obtained permanent legal force, the parties in a case can obtain a copy of the decision which is affixed with the clerk's note that the decision has not yet obtained permanent legal force. Particularly in this discussion, it will discuss the effectiveness of implementing the decisions of the State Administrative Court. as we already know that there are still many problems faced in law enforcement at the State Administrative Court, as mentioned earlier that only court decisions that have permanent legal force can be implemented. However, not all parties who were defeated were willing to voluntarily carry out the judge's decision. It is different in criminal and civil cases, law enforcers who will carry out the execution of decisions can ask for help from security forces, while in implementing the decisions of the State Administrative Court (Abdullah, 1991).

Therefore, in this discussion, the author provides limitations only on the final decision which has permanent legal force or how and what the State Administrative Court's decision will look like. According to the results of an interview with the chairman of the Makassar State Administrative Court that State Administrative Officials and Entities who do not want to comply with the Decision of the State Administrative Court, this is in line with what the Chair of the Makassar State Administrative Court said, that around 90% of Administrative Officials The state in the jurisdiction of the Makassar State Administrative Court which has been sanctioned by the Makassar State Administrative Court has not yet obeyed the law, furthermore Mr. Edi Supriyanto as Chairman of the Makassar State Administrative Court added that while serving as Chairman of the Court at the Makassar State Administrative Court he had not There is an Official or State Administration Agency who tells the Makassar State Administrative Court that the decision of the Makassar State Administrative Court has been obeyed or implemented. Then until now the State Administrative Court is still having trouble recording how many decisions have been executed. The State Administrative Court is only able to record data if there is a request for execution from the plaintiff. Meanwhile, if there is no submission of a petition by the plaintiff, it is very difficult for the State Administrative Court to know whether a decision has been executed or not. So far, the lack of participation of the disputing parties has caused the court to be unable to ascertain whether a verdict of a State Administrative Court which has legal force has been implemented or not.

Thus once again it can be concluded that the implementation of the decision has become completely ineffective even though the law has stipulated that the violator can be subject to coercion if the decision is not implemented. The main obstacle is the lack of active participation by the defendant in reporting the implementation of the decision of the State Administrative Court concerned. He said that the Chairman of the Court has limitations to do much, because the Chairman of the Court can only supervise without being able to carry out or order an official or an agency to carry out direct execution as in article 119 of the Law on State Administrative Courts which states that the Chairman of the Court is obliged to supervise the implementation of Court Decisions. which has obtained permanent legal force. From the information above, it can also answer the question that the State Administrative Court is very difficult to know how many State Administrative Court Decisions that have permanent legal force have been implemented.

In the research and results of interviews conducted by the author at the Makassar State Administrative Court, it is explained that when there are Officials or State Administrative Bodies who do not want to comply or do not want to implement the decisions that have been issued by the Makassar State Administrative Court, the State Administrative Court Makassar has made proactive efforts as stated in article 116 of the Law on State Administrative Courts, then the Chairperson of the Makassar State Administrative Court again adds regarding article 116 paragraph (6) in the case that the superior agency as referred to in paragraph (4), does not heeding the provisions referred to in paragraph (5), the Chairperson of the Court shall submit this matter to the President as the holder of the highest government power to order the official to implement the court's decision.

Referring to the provisions of Article 116 paragraph (2) UUPTUN, in relation to the provisions of Article 97 paragraph (9) sub a UUPTUN, it actually creates obstacles in the practice of executing decisions at the TUN Court itself and the plaintiffs as justice seekers, these obstacles can occur if the Court's decision The TUN has permanent legal force, but the defendant does not want to revoke the TUN decision by taking a silent attitude, not realizing the execution of the TUN Court decision in connection with the verdict according to the provisions of Article 97 paragraph (9) sub a UUPTUN, then according to the provisions of Article 116 paragraph (2) UUPTUN, must wait four months, after four months the disputed state administration decision has no legal force anymore. This kind of provision certainly raises problems related to legal uncertainty and violates the principles of fast, simple and low cost trial, because there is no explicit provision in the law regarding the obligation of the plaintiff to report to the TUN Court if the execution of the decision is not carried out by the defendant, as well as on the other hand, there is no binding obligation for the defendant to report to the TUN Court about the implementation of the TUN Court's decision as stipulated in Article 116 paragraph (2) of the Law and Law (Rumadan, 2012). This is in line with findings in the field that during his tenure as Chairman of the Makassar State Administrative Court, his party had never submitted a proposal to the President as the highest authority regarding the implementation of the Makassar State Administrative Court's decision.

Rozali Abdullah is of the opinion that the President's intervention in implementing the decisions of the State Administrative Court is indeed necessary considering that their implementation is not as easy as the implementation of the decisions of the Criminal Court or the Civil Court, this is because the defendants in State Administration disputes are always State Administrative Bodies or Officials

(Abdullah, 1991). In the State Administrative Court Decision which is comdemnatoir in nature, containing the punishment for the defendant in this case is a State Administration Agency or Official to carry out an obligation in the form of;

- a. revocation of the relevant State Administrative Decree; or
- b. revocation of the State Administrative Decree and issuing a new State Administrative Decree, or
- c. the issuance of a State Administration Decree in the event that the lawsuit is based on article 3 of Law Number 5 of 1986.
- d. pay compensation;
- e. provide rehabilitation

Since the defendant who is convicted of carrying out the above obligations is an official, the success in implementing the decision of the State Administrative Court is highly dependent on the authority of the State Administrative Court and the legal awareness of the officials themselves (Abdullah, 1991). However, the State Administrative Court Law has regulated as best as possible so that the decision of the State Administrative Court can be carried out properly, even if necessary it is possible for the President to intervene himself as Head of Government (Anita Marlin Restu Prahastapa, Lapon Tukan Leonard, 2017) . Judging from the procedures that have been stated several times by the previous author, the process of implementing the decision of the State Administrative Court will take quite a long time, if it is not supported by the authority of the State Administrative Court and the legal awareness of the State Administrative Officials themselves, which in the end will be involving the President as the Head of Government, who is responsible for the development of the government apparatus (Antoro, 2021). If in the implementation of the decisions of the State Administrative Court too often involve the President, Rozali Abdullah is of the opinion that this will at least reduce the President's authority as Head of Government, but also as Head of State, because ordinary people find it difficult to distinguish the functions of the President as Head of Government and President as Head.

3.2. Factors Affecting the Effectiveness of the Implementation of the Decision of the State Administrative Court

The effectiveness of court decisions is essentially seen from the application of the law (Safrin Salam, Nurwita Ismail, Faharudin, Nuragifah, Erni Dwita Silambi, Shinta Nurhidayati Salam, Rosnida, 2020). The application of law must contain the value of justice, the value of usefulness and the value of legal certainty (Salam & Suhartono, 2020). The application of this law is carried out by the judge as a mouthpiece of the law (Amarasinghe, 2020).

In measuring the application of court decisions. The author finds that there are several factors that influence the effectiveness of the implementation of the Makassar State Administrative Court Decision. According to Mr. Edi Supriyanto as chairman of the Makassar PTUN Court, there are several factors that affect the effectiveness of implementing the decisions of the State Administrative Court, some of which are laws and regulations that do not completely regulate coercive measures that can be taken against officials who deny court decisions (Dolls, 2014), while the only effort that can be made by the court is to order the Defendant to carry out through an execution order as regulated in Article 116 of Law Number 51 of 2009 as the second amendment to Law

Number 5 of 1986 concerning State Administrative Courts (Lubna, 2015a), then Mr. Edi Supriyanto added, as stated in article 119 of the Law on State Administrative Courts that the Chairman of the Court is obliged to supervise the implementation of Court decisions that have obtained permanent legal force, meaning that the role and functions of the Court are limited to functions. supervision alone, the Court cannot act as executor in implementing the court's decision, because the only ones capable of executing a decision from the State Administrative Court are the Officials or State Administrative Bodies themselves (Lahopang, 2018), depending on the awareness of State Administrative Officials who has been ordered by the State Administrative Court to carry out the Court's Decision, while the level of awareness of State Administrative Officials in the jurisdiction of the Makassar State Administrative Court is judged to be still lacking (Lubna, 2015b). apart from that other factors are:

1. There is no special executorial agency or sanction agency that functions to enforce decisions.

In the State Administrative Court, there is no forced institution that can function to make forced efforts if all stages of execution have been carried out by the State Administrative Court, this is the only court in the judicial system in Indonesia, which does not have a forced institution (Alfons, 2019). For this reason, it is not surprising that many decisions are not implemented.

2. The low level of awareness of State Administration officials in obeying the decisions of the State Administration court.

State Administrative Officials often do not obey the law, because usually a person obeys the law because he is afraid of the sanctions that will be imposed if he breaks the law or because he feels that his interests will be guaranteed if he obeys the law, or because he feels that the applicable law is in accordance with values - values that prevail in him (Putra, 2021). In this case, the party who loses in the dispute will certainly feel that his interests are not guaranteed if he obeys the decision of the State Administrative Court, so he prefers not to comply with the court's decision. The absence of sanctions also makes State Administration officials feel afraid if they do not carry out the court's decision (Hengky & Antoro, 2020). The personal interests of officials in the decisions of State Administration issued and the weak level of legal awareness of State Administrative Bodies or Officials is a very big influence on whether or not the decisions of Judges at the State Administrative Court are obeyed, because normatively the execution of decisions of Judges at the State Administrative Court relies more on the willingness of the Official concerned to carry it out. By relying only on willingness, of course many officials are not willing to comply with the decision of the State Administrative Court, so they choose not to comply with the verdict.

3. The absence of stricter regulations regarding the implementation of the decisions of the State Administrative Court.

Provisions regarding the execution of decisions of the State Administrative Court have been contained in article 116 of Law no. 5 th 1986 in conjunction with Law

no. 9 of 2004 in conjunction with Law no. 51 of 2009, which states that the court can ask the superior of the State Administration official concerned or even the president to "force" the defendant to implement the court's decision (Habibi, 2019). Of course this is not allowed to happen frequently - often because if the president intervenes too often in the matter of enforcing the implementation of the decisions of the State Administrative Court, it is feared that the president will lose his authority as head of Government and also as Head of State (Untoro, 2018). Lawrence M Friedman has put forward three elements that must be considered in law enforcement, these three elements include the structure, substance and culture of law, this theory actually fulfills the elements that have been concluded by the author regarding the factors that influence the effectiveness of the implementation of the decisions of the State Administrative Court. namely, the absence of a special executorial institution or a sanctioning institution that functions to implement decisions (legal structures), the low level of awareness of State Administrative Officials in obeying the State Administrative Court Decisions (legal culture), and the absence of stricter regulations regarding the implementation of Court Decisions. State Administration (legal substance) If we look at the theory stated above, it is clear that the problems affecting the implementation of the State Administrative Court Decisions are caused by the failure to fulfill the elements that must be considered in law enforcement.

4. CONCLUSION

The implementation of the Decision of the State Administrative Court is still ineffective. So far, there are still many State Administration Officials and Bodies that do not want to comply with the Decision of the State Administrative Court. Factors that influence the Decision of the State Administrative Court: a) There is no special executorial institution or sanction agency in implementing the decisions of the State Administrative Court; b) Low awareness of State Administration officials in obeying the decisions of the State Administrative Court; c) There are no more detailed provisions governing sanctions if the verdict is not implemented. Suggestions from the research are a) There needs to be a limited revision of the PTUN Law, especially with regard to the provision of forced measures that have legal force. b) It is recommended that the government contains provisions that regulate sanctions or executorial institutions specifically for decisions of the State Administrative court, so that the decisions of the State Administrative Court can be implemented and the authority of the administrative court can appear again in the eyes of the public.

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