




# Due To The Legal Non-Compliance of State Administrative Officers With The Implementation of Forced Money (Dwangsom) In The Execution of State Administrative Decisions

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## Abstract

**Introduction:** The non-compliance of the state administrative body or official with the TUN Court decision can be in the form of not revoking the disputed State Administrative decision, not revoking the TUN decision, not issuing a TUN decision, not complying with the obligation to pay compensation set by the court and not complying to rehabilitate the good name plaintiff.

**Purposes of the Research:** The purpose of this study is to examine and analyze the payment of forced money and administrative sanctions against state administration officials who do not comply with the state administration's decisions and legal actions due to non-compliance of state administration officials to the application of forced money (dwangsom) in the execution of state administration decisions.

**Methods of the Research:** The writing method used is sociological juridical research. The location of this research is the Ambon State Administrative Court, the Ambon City Government Legal Division, the Maluku Province Law and Human Rights Bureau and the Central Maluku District Government Law Department.

**Results of the Research:** The results of the study indicate that the disobedience of State Administrative Officials in implementing decisions that already have permanent legal force because there are no regulations and or legal provisions regarding forced payment of money to be implemented if the State Administrative Officials do not implement decisions that already have permanent legal force, and there is no special agency or executive body.

## 1. INTRODUCTION

Weak implementation of State Administrative Court Decisions is due to the absence of an executorial institution and coercive power in implementing State Administrative Court Decisions, so that the implementation of State Administrative Court Decisions depends on the awareness and initiative of State Administrative Officials. Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning State Administrative Courts, (State Gazette of the Republic of Indonesia of 2004 Number 35, Supplement to the State Gazette of the Republic of Indonesia Number 4380), Article 116 paragraph (4) and paragraph (5) namely the imposition of sanctions for State Administrative Officials who do not carry out decisions that have permanent legal force in the form of forced payment of

money (*dwangsom*) and/or administrative sanctions as well as publication in the print media.

Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts, (State Gazette of the Republic of Indonesia of 2009 Number 160, Supplement to the State Gazette of the Republic of Indonesia Number 5079) where in Article 116 paragraph (6) In addition to regulated efforts as regulated in the previous law, it also regulates reporting of the disobedience of State Administrative Officials to carry out the decisions of the State Administrative Court to the President as the holder of the highest government power and to the people's representative institutions to carry out the supervisory function. However, there are still many obstacles in the implementation of these coercive measures, both the implementation of *dwangsom*/forced money and administrative sanctions.

## 2. METHOD

This research is a sociological juridical research, namely a research in the field of law that aims to examine legal principles and legal rules and their implementation in society. The data obtained by means of field research is primary data. Primary data collection techniques, collected by collecting books, laws, and other regulations related to this research. Secondary data were obtained from the results of observations of the reality that occurred at the Ambon State Administrative Court, the Ambon City Government Legal Division, the Maluku Province Law and Human Rights Bureau and the Central Maluku District Government Legal Division regarding the Legal Consequences of Non-compliance by State Administrative Officials Against the Application of Forced Money (*Dwangsom*) In the Execution of State Administrative Decisions. Based on the problems and objectives to be achieved in this study, the data obtained in the field will be analyzed by qualitative analysis. Qualitative analysis is an analysis that describes the data obtained, both primary data and secondary data that cannot be quantified, so interpretation and conclusions must be given

## 3. RESULTS AND DISCUSSION

### 3.1 Payment of Forced Money and Administrative Sanctions Against State Administrative Officials who do not Comply with State Administrative Decisions

*Dwangsom* or forced money is the payment of a sum of money that is paid at once or in installments to the person or his heirs, or a civil law entity charged by the defendant (State Administrative Agency or Official) 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 persons or civil legal entities.

*Dwangsom* was only implemented if a convicted official committed a certain action based on a judge's decision, he did not obey it. *Dwangsom* is applied (forced) to officials if it is against the judge's decision. When a judge issues a verdict, in essence it is acting as a pseudo legislator (pseudo-legislative body), therefore the judge's product (judges) is a legal product that is equal to legislation. Therefore, when the TUN Official does not comply with the judge's decision, the non-compliance is categorized as a violation of law or legislation. Offenses committed by officials are violations or *faute personnelle*, so that the consequences of responsibility must also be personal (personal liability) 2from the person in office and not the institution or state. Which is in line with the "error" theory developed from the Conseil d'Etat Jurisprudence, which basically distinguishes between "official mistakes" (*faute personnelle*). Therefore, it is appropriate if an official does not obey or execute the decision

of the court judge, then the imposition of forced money (*dwangsom / astreinte*) must be charged or paid for from the personal money of the person in office or at that time. It is unfair if the personal violations of the law consequently (in the form of *dwangsom* payments) are borne by the State. This is certainly very different when as an official in carrying out a task that even though it is in accordance with the laws and regulations, it can cause harm to the community. In this situation, the losses suffered by the community must be the responsibility of the state to compensate for the loss.<sup>1</sup>

The burden of paying forced money is the problem that in theory, an official who is temporarily carrying out his duties is carrying out the role of the state. If in carrying out a role or duty, the loss is borne by the state because it is classified as an "service error". This is different from when an official disobeys a judge's decision (which can be equated with disobeying the law), at that time the 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's finances, but must be borne personally by the person in office because it is a "personal fault". This is in line with the "error" theory which was developed from *counsel d'etat* jurisprudence which distinguishes between official error (*faute de serve*) and personal error (*faute perdonalle*).<sup>2</sup>

The enforcement of forced payment is carried out since the expiration of the reprimand or order from the Chairman of the State Administrative Court as referred to in Article 116 paragraph (3) of Law Number 51 of 2009. However, the decision of the State Administrative Court does not stipulate the time limit for implementing the decision. The State Administrative Court often creates confusion in its implementation. This is an obstacle in implementing the decision of the State Administrative Court in the case of forced efforts in the form of paying the money. Therefore, in practice, the implementation of coercive measures with *dwangsom* or forced money has not been carried out optimally because the implementing rules regarding the *dwangsom* or forced money do not yet exist.

According to Philipus M. Hadjon, the provisions of Article 115 of Law Number 5 of 1986 concerning State Administrative Courts are formulations of articles that clearly show that the decisions that are carried out are decisions that are fixed in nature. This means that the decision cannot be reviewed or overturned. Thus, the nature of this decision has binding power in accordance with "one of the principles of the decision in the procedural law of the State Administrative Court, namely *erga omnes*, which means that court decisions have general binding force.<sup>3</sup> The same thing was also stated by Paulus Efendi Lotulung more fully, stating that a decision of the State Administrative Court which has permanent legal force (*inkracht van gewijsde*) has the following juridical consequences:<sup>4</sup>

- 1) With the relevant decision, it means that the dispute has ended and there are no other ordinary legal remedies that can be taken by the litigating parties;
- 2) The decision has binding power for everyone (*erga omnes*), not only binding on the two litigants (*inter partes*) as in civil cases;
- 3) The decision is an authentic deed that has perfect proving power; and

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<sup>1</sup> Soemaryo, *Tuntunan Praktek Beracara Di Peradilan Tata Usaha Negara* (Jakarta: Primamedia Pustaka, 1999), p. 89.

<sup>2</sup> H Zulkarnaen and Dwi Mayaningsih, *Hukum Acara Peradilan Tata Usaha Negara* (Bandung: Pustaka Setia, 2018), p. 288-289.

<sup>3</sup> Philipus M Hadjon, *Pengantar Hukum Administrasi Indonesia* (Yogyakarta: Gadjah Mada University Press, 2019), p. 332.

<sup>4</sup> Paulus Efendie Lotulung, *Hukum Tata Usaha Negara Dan Kekuasaan* (Jakarta: Salemba Humanika, 2013), p. 137.

- 4) The decision has executive power which means that the contents of the decision can be implemented. In fact, if necessary by force, if the defeated party does not want to voluntarily carry out the contents of the decision in question

Paulus Efendie Lotulung stated that although the revision of the provisions of Article 116 of Law Number 5 of 1986 was progress in developing legal certainty for the implementation (executie) of a decision of the State Administrative Court, the problem that arose in the case of forced payment of money (dwangsom) was as follows:<sup>5</sup>

- 1) It is necessary to have a legal product that regulates the procedures and mechanisms for the payment of forced money (dwangsom) such as Government Regulation Number 43 of 1991 concerning Payment of Compensation in the State Administrative Court;
- 2) When can be determined the amount of forced money (dwangsom) to be paid; and
- 3) To whom the forced money must be charged, whether to the finances of the relevant State Administration official or to private officials who are reluctant to implement the decision.

Paulus Efendie Lotulung stated that the problem of imposing administrative sanctions for State Administrative Officials did not implement the decisions of the State Administrative Court which had permanent legal force (inkracht van gewijsde). (2) basic regulations on which administrative sanctions can be used as a reference; and (3) what is the form of mechanism and procedure for the application of administrative sanctions that must be applied.

The application of coercive measures in the form of imposing administrative sanctions and payment of forced money (dwangsom) as well as announcements (publications) in the mass media which was originally a substitute for hierarchical executions as regulated in Article 116 of the first amendment of 2004 is still maintained in Article 116 of the second amendment of 2009, an addition to the mechanism imposition of administrative sanctions and forced payment of money (dwangsom) which in paragraph (7) gives orders to be further regulated (delegated legislation) through statutory regulations. However, until now, there is no implementing regulation that regulates the amount of forced money, and the procedure for its implementation. The application of coercive measures can only be imposed on a condemnatory decision or a decision that imposes an obligation on the losing party to carry out something.

State Administrative Officers who do not carry out their obligations as ordered in the decision of the State Administrative Court which have permanent legal force (inkracht van gewijsde), then according to the provisions of Article 116 paragraph (4) of Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning the State Administrative Court as previously described, State Administrative Officers may be subject to administrative sanctions.

Administrative sanctions as regulated in Article 4 of Government Regulation Number 48 of 2016 concerning Procedures for Imposing Administrative Sanctions to Government Officials (State Gazette of the Republic of Indonesia of 2016 Number 230, and Supplement to the State Gazette of the Republic of Indonesia Number 5943) are as follows:

- a) Light administrative sanctions;
- b) Medium administrative sanctions; and

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<sup>5</sup> *Ibid*, p. 139

- c) Heavy administrative sanctions.

Officials who do not carry out the obligations ordered in the decision of the State Administrative Court which have permanent legal force (*inkracht van gewijsde*), are 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.

Article 11 Government Regulation Number 48 of 2016 concerning Procedures for Imposing Administrative Sanctions to Government Officials stipulates that the imposition of light administrative sanctions is carried out directly by superior officials, while the imposition of moderate and/or severe administrative sanctions is carried out through an internal inspection mechanism. Furthermore, regarding officials authorized to impose administrative sanctions, it is regulated in Article 12 of Government Regulation Number 48 of 2016 concerning Procedures for Imposing Sanctions.

Administration to Government Officials as follows :

- 1) Official's superior is an official authorized to impose administrative sanctions on Government Officials suspected of committing administrative violations.
- 2) In the event that an administrative violation is committed by a regional official, the authorized official shall impose administrative sanctions, namely the regional head.
- 3) In the event that an administrative violation is committed by an official within the ministry/institution, the authorized official shall impose administrative sanctions, namely the minister/head of the institution.
- 4) In the event that an administrative violation is committed by the regent/mayor, the authorized official shall impose administrative sanctions, namely the Governor.
- 5) In the event that an administrative violation is committed by the Governor, the authorized official shall impose administrative sanctions, namely the minister who carries out domestic government affairs.
- 6) In the event that an administrative violation is committed by a minister/head of an institution, the authorized official shall impose administrative sanctions, namely the President

The imposition of administrative sanctions on government officials who do not carry out the decisions of the State Administrative Court which have permanent legal force (*inkracht van gewijsde*), is carried out through an internal examination. And if it is proven guilty for not complying with or not implementing the decision of the State Administrative Court which has permanent legal force (*inkracht van gewijsde*), then the imposition of administrative sanctions is being carried out by superior officials. Provisions that require officials to implement court decisions with permanent legal force are regulated in Article 72 paragraph (1) of Law 30 of 2014 concerning Government Administration (State Gazette of the Republic of Indonesia of 2014 Number 292 and Supplement to the State Gazette of the Republic of Indonesia Number 5601) and/or Government Officials are obligated to implement valid Decisions and/or Actions and Decisions that have been declared invalid or canceled by the Court or the official concerned or the supervisor concerned".

The provisions of Article 81 of Law Number 30 of 2014 concerning Government Administration in conjunction with Article 9 of Government Regulation Number 48 of 2016

concerning Procedures for Imposing Administrative Sanctions to Government Officials, regulates the forms of administrative sanctions that can be imposed. These provisions:

- 1) Mild Administrative Sanctions as referred to in Article 4 letter a, are in the form of:
  - a) verbal warning;
  - b) written warning; or
  - c) postponement of promotion, class, and/or position rights.
- 2) (2) Moderate Administrative Sanctions as referred to in Article 4 letter b, in the form of:
  - a) payment of forced money and/or compensation;
  - b) temporary dismissal by obtaining office rights; or
  - c) temporary dismissal without obtaining office rights.
- 3) Severe Administrative Sanctions as referred to in Article 4 letter c, in the form of:
  - a) permanent dismissal by obtaining financial rights and other facilities;
  - b) permanent termination without obtaining financial rights and other facilities;
  - c) permanent dismissal by obtaining financial rights and other facilities as well as being published in the mass media; or
  - d) permanent dismissal without obtaining financial rights and other facilities as well as being published in the mass media.
- 4) Other sanctions are in accordance with the provisions of laws and regulations.

Administrative sanctions in the context of coercive efforts for State Administrative Officials to implement the decisions of the State Administrative Court which have permanent legal force (*inkracht van gewijsde*), it must first be seen regarding the severity of violations by officials who do not carry out the obligations ordered in the decision of the State Administrative Court. Permanent legal force (*inkracht van gewijsde*).

The provisions of Article 7 Government Regulation Number 48 of 2016 concerning Procedures for Imposing Administrative Sanctions to Government Officials, officials who do not carry out court decisions that have permanent legal force, may be subject to moderate administrative sanctions which state that:

- a) Obtain approval from the official's superior in accordance with the provisions of the legislation in the use of discretion that has the potential to change budget allocations;
- b) Notify the Official's Superior before the use of Discretion and report to the Official's Superior after the use of Discretion in the event that the use of Discretion causes public unrest, emergency, urgent and/or natural disaster occurs;
- c) To stipulate and/or take decisions and/or actions within a maximum period of 10 (ten) working days after the complete application is received by the Agency and/or Government Officials if the provisions of laws and regulations do not specify a time limit for obligations;
- d) Establish a decision to implement a court decision no later than 5 (five) working days after the court's decision is enacted;
- e) Returning money to the state treasury in the event that a decision that results in payment of state money is declared invalid; or
- f) Implement valid decisions and/or actions and decisions that have been declared invalid or canceled by the Court or the official concerned or the supervisor concerned.

The chairman of the Ambon State Administrative Court and members of the Ambon State Administrative Court Judges explained that the application of forced money

(dwangsom) in the execution of State Administrative Decisions against State Administrative Officials for the Ambon State Administrative Court had never been implemented because there were no laws and regulations. The law that regulates the procedure for applying Forced Money (dwangsom) to State Administrative Officials who do not implement State Administrative decisions, but in Book II of the Supreme Court of 2009 namely the Technical Guidelines for Administration and State Administrative Courts, it contains:

1. Forced payment:

- a) Requests for forced payment of money can be filed together in the lawsuit. In the event that the Plaintiff's lawsuit does not include the payment of forced money, the Judge or the Panel of Judges at the time of the preparatory examination, notifies the Plaintiff that he can include forced payment of money in his lawsuit.
- b) When the judge or panel of judges grants the lawsuit, the imposition of forced payment of money should be described in legal considerations together with the subject matter of the case.
- c) The amount of the forced payment can be requested by the Plaintiff in his lawsuit, but the Judge or the Panel of Judges on a case by case basis in accordance with their authority determines the amount of forced payment by taking into account legal reasonableness and may not determine it is greater than that requested by the Plaintiff.
- d) In accordance with the provisions of Article 116 paragraph (3) of the Law on State Administrative Courts, the payment of forced money can only be imposed if the Plaintiff's claim is granted against the subject matter of the case which requires the Defendant to:
  - 1) To revoke the State Administrative Decision of the object of the lawsuit and issue a new State Administrative Decree; or
  - 2) Issuing a State Administrative Decree.
- e) The payment of forced money as referred to in Article 116 paragraph (4) of the Law on State Administrative Courts is the result of the defendant not being willing to use his authority (his position) to implement court decisions that have permanent legal force. Therefore, the payment of a forced amount of money was imposed on the position of the defendant. However, on a case-by-case basis, judges are given freedom through developments in jurisprudence.
- f) Because the procedure for paying forced money has not been regulated, by analogy it can refer to the provisions in PP No. 43 of 1991.
- g) Payment of forced money to the defendant can be imposed in a lawsuit involving employment, namely if the defendant is not willing to carry out a court decision that has obtained permanent legal force which requires him to carry out rehabilitation of the plaintiff.
- h) The grace period for the imposition of forced money payments according to Article 116 paragraph (3) of the Law on State Administrative Courts is after 3 (three) months after the court's decision has permanent legal force. If after 3 (three) months the decision has permanent legal force, the defendant does not implement the decision, the plaintiff may submit an application to the Chairperson of the State Administrative Court/Head of the State Administrative High Court as a court of first instance, so that the defendant is subject to forced payment.
- i) The Chairperson of the State Administrative Court/Chairman of the State Administrative High Court as the court of first instance takes the following actions:

- 1) Issuing a letter asking the reason the defendant did not implement the decision.
- 2) Issue a warning letter (summation) to the defendant 3 times so that the defendant implements the decision if it turns out that there are no circumstances that cause the decision cannot be implemented.
- 3) Issuing a determination containing an order that the substitute bailiff / bailiff impose forced payment of money to the defendant if the defendant still does not carry out the decision.
- j) The payment of a certain amount of forced money is legally suspended as of the time the defendant in question carries out a court decision that has permanent legal force.
- k) If the principal of the lawsuit is granted, but the plaintiff does not include the payment of forced money in his lawsuit, and the defendant is not willing to carry out the decision, the Chairperson of the State Administrative Court/Head of the State Administrative High Court as the court of first instance may impose forced payments based on this provision.

## 2. Administrative Sanctions:

Article 116 paragraph (4) of the Law on State Administrative Courts regulates administrative sanctions against officials (defendants) who are not willing to carry out court decisions that have permanent legal force, but the law does not regulate the procedures for applying administrative sanctions to government officials and The types of administrative violations that may be subject to administrative sanctions are formulated/regulated in the Government Administration Draft Law, as follows:

- a. The types of administrative violations committed by the State Administration Agency/Official which may be subject to administrative sanctions, namely:
  - 1) Violating the General Principles of Good Governance.
  - 2) Incorporating elements of personal interest as a basis and consideration in decision making; ignores the prohibition that every decision he makes is not influenced by personal interests.
  - 3) Ignoring the prohibition that every decision it makes, the said State Administration Agency/Official does not constitute:
    - a) Parties involved.
    - b) Relatives and families of the parties involved.
    - c) Representatives of the parties involved.
    - d) The party who works and gets a salary from the parties involved.
    - e) The party providing recommendations to the parties involved; and/or
    - f) other parties prohibited by laws and regulations; and
    - g) What is meant by relatives and families of the parties involved, includes parties who have blood or marriage relations in a straight line up or down to the third degree.
  - 4) The issued decision does not meet the formal requirements, namely:
    - a) Not made by an authorized official.
    - b) The content is unclear, uncertain, and incomprehensible.
    - c) Not following the official script procedure in accordance with the provisions of the legislation
    - d) Determined not in accordance with statutory provisions.
  - 5) Decisions issued do not meet material requirements, which include:



- a) Not based on considerations or judgments by taking into account the balance between the interests of individuals, the balance between individuals and other parties affected and related to the decisions made.
  - b) Not based on legal certainty, justice, propriety, and fairness as well as game rules that commonly apply and become habits in the community concerned.
  - c) Violating the principle of equality of action and/or decision, if the facts, circumstances and situations related to the previous decision are the same as the facts, the circumstances that have been decided by the relevant State Administration Agency/Official.
  - d) Not paying attention to the consequences of canceling a decision, especially those resulting in losses suffered by the applicant, and which must be borne by the state/government.
  - e) Does not explain what considerations resulted in the decisions taken by the State Administration Agency/Official that issued the TUN Decree.
  - f) It must not contradict and/or exceed the authority of the State Administration Agency/Officer issuing the decision.
  - g) It must not conflict with the legal obligations of the State Administration Agency/Official issuing the decision.
  - h) Must not conflict with propriety and/or obligations that apply in the community concerned; and
  - i) It is not allowed to use the authority possessed for purposes other than the purpose for which the authority was given to the TUN Agency/Official that issued the Decision.
- 6) Violating the purpose of granting discretion and applicable legal limits as well as the public interest. The applicable legal limits are:
- a) Not against the law and human rights.
  - b) Does not conflict with the provisions of laws and regulations.
  - c) Mandatory to apply the General Principles of Good Governance.
  - d) Not against public order and decency.
  - e) Administrative sanctions that can be given are in the form of:
    - 1) Verbal warning.
    - 2) Written warning.
    - 3) Temporary suspension.
    - 4) Dismissal with honor; or
    - 5) Dismissal with disrespect;
    - 6) Reduced and/or revoked office rights and pensions.
    - 7) Payment of compensation with compensation.
    - 8) Publication through mass media.
  - f) Sanctions in the form of payment of compensation and compensation are only applied to the Agency, and their implementation is coordinated by the minister who is responsible for the utilization of the state apparatus.
  - g) Administrative sanctions are implemented by:
    - 1) The superior of the official who issues the decision.
    - 2) The regional head, if it concerns regional officials.
    - 3) The President, if it concerns ministers/officials at the level of ministers/Heads of Government Institutions, or Heads of Regions.

Forced money is an additional punishment in addition to the main punishment to put pressure (pressure) on someone who is required to carry out a condemnatory court decision

to comply with the court's decision by not aborting the basic sentence. In the context of the decision of the State Administrative Court which has permanent legal force (*inkracht van gewijsde*), the State Administrative Officer as a defendant if he is charged with an obligation to carry out something, but does not carry out that obligation, may be subject to coercive measures in the form of payment of a forced amount of money (*dwangsom*).

The actual nature of coercion such as taking hostages and forced fines to State Administrative Officials is not known in State Administrative Law, therefore the implementation of coercion on State Administrative Officials to implement State Administrative Decisions is a voluntary state administration of the administration concerned. Where coercion is possible, it should be borne in mind that:<sup>6</sup>

- 1) Assets used for public purposes cannot be placed in execution confiscation.
- 2) Gaining the power to carry out itself at the expense of the government (the executed party) is contrary to the principle of legality which says that doing something or deciding something based on public law is solely carried out by an authorized State Administration or Agency or based on regulations, statutory provisions.
- 3) Seizing the freedom of people holding government positions as a means of coercion will result in a major reflection on the running of the government.
- 4) The government is always considered capable and able to pay (solvable)

Factors causing non-compliance with the decision of the State Administrative Court judge in the form of forced money include:<sup>7</sup>

- a) Weak/incompetent decisions of the State Administrative Court judges themselves. A quality judge's decision, which is formulated properly, correctly and fairly, is a demand. A quality judge's decision will create authority which in turn will affect the implementation of the decision. There are still many decisions of the State Administrative Court judges (including the Postponement Decision) which are taken without sufficient consideration, or with wrong considerations, or even forced due to certain factors. There are important factors to create quality judge decisions, namely moral integrity (*istiqomah*) knowledge and understanding of material law and formal law. Based on good morality and equipped with sufficient material and formal legal knowledge, it is hoped that quality decisions can actually be realized. Upgrading, training and other scientific gatherings among judges should be further improved and more focused towards the creation of a quality judge's decision product.
- b) The level of legal awareness of the State Administration Agency or Official and the interest of the State Administration Agency/Official in the disputed State Administration decision product. The existence of an official's personal interest in the existence of a State Administrative Court decision that is issued and the weak level of legal awareness of the State Administrative Court or Agency is a very large influence on whether or not the decision of the State Administrative Court judge is obeyed, because normatively the execution of the State Administrative Court

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<sup>6</sup> Dezonda R. Pattipawae and Faisal Santiago, "Application of Execution of Forced Money (*Dwangsom*) on Country Business Justice," *Journal of Law, Policy and Globalization* 88 (2019): 173-82, <https://doi.org/10.7176/JLPG/88-25>.

<sup>7</sup> Dezonda Rosiana Pattipawae, "Kekuatan Eksekutorial Putusan Dalam Penerapan Eksekusi Uang Paksa (*Dwangsom*) Pada Peradilan Tata Usaha Negara Guna Mewujudkan Asas-Asas Umum Pemerintahan Yang Baik" (Universitas Borobudur, 2020), p. 199-201.

judge's decision is more rely on the willingness of the official concerned to carry it out (floating execution).

- c) The absence of coercive institutions in the State Administrative Court laws governing executions. The low quality of judges' decisions and the existence of personal interests of officials as well as the weak level of legal awareness of the State Administrative Agency/Official coupled with the existence of arrangements for the execution of decisions of the State Administrative Court in Legislation regulated by a floating norm, making decisions of the State Administrative Court less and less teeth. The lack of firmness in the regulation resulted in the State Administration Agency/Official looking down on the judge's product called the decision. Because there is no sanction if the decision of the State Administrative Court judge is not obeyed. In theory, in addition to regulating law, it also has sanctions and these sanctions are coercive. Likewise, the judiciary, as a law enforcement agency, absolutely must be equipped with a coercive instrument/coercive institution. The three courts that have existed before in Indonesia have indeed been equipped with the forced institutions.

### **3.2 Legal Action Due to Disobedience of State Administrative Officials on the Application of Forced Money (Dwangson) in the Execution of State Administrative Decisions**

The defendant's non-compliance with the court's decision is not in the realm of administrative (public) law. Therefore, the form of the instrument is administrative in nature. Even though based on the general view, the coercive instrument is weak or has no fangs, but from an administrative point of view, the instrument is very heavy. If the administrative instruments are not adequate, there are still social or moral instruments by announcing in the mass media. The social or moral instrument for actual officials in an increasingly civilized society is a fairly heavy sanction. In order to maintain the court's authority, various policies have been adopted in the administration sector, from an administrative point of view, because the characteristics of administrative actions are not only related to individual interests, but also to public interests.<sup>8</sup> For officials who like to act or be authoritarian, the instrument of coercion is always considered a matter of course. Therefore, to improve the image of the apparatus in the eyes of the people, the State Administrative Court is also trying to improve the morale of officials who are arrogant towards the court. The arrogance of officials is actually contrary to natural law because from a philosophical point of view, court decisions are sacred decisions which can be understood from the phrase Head of Decision by using the word "FOR JUSTICE BASED ON THE ONE ALMIGHTY GOD". Violation of natural law is what needs to be conveyed to the public with the aim of realizing justice for justice seekers (plaintiffs).

The coercive instruments are as follows:<sup>9</sup>

- 1) Forced efforts in the form of payment of a sum of money
- 2) Administrative sanctions
- 3) Announcement in the local mass media that the defendant did not comply with the court's decision
- 4) Submission to the president to order officials to carry out their obligations.
- 5) Submitting to representative institutions in the context of supervision

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<sup>8</sup> Yuslim, *Hukum Acara Peradilan Tata Usaha Negara* (Jakarta: Sinar Grafika, 2015), p. 164.

<sup>9</sup> *Ibid*, p. 165.

The provisions mandated by Article 116 paragraph (7) of Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning the State Administrative Court until now there is no statutory regulation that regulates it. This will clearly cause problems if the court wants to decide on the imposition of forced money on the State Administration Agency or Official being sued. For this reason, it is necessary to immediately issue guidelines governing forced money so that its application is truly fair and balanced.

In the Administrative Administration and Technical Administration Guidelines for State Administration, mention execution:<sup>10</sup>

- a) A decision that can be implemented is a decision that has permanent legal force, that is, if the parties accept the contents of the decision, or if there has been no appeal for appeal or cassation. Administratively to mark that the decision has permanent legal force, the clerk makes a note on the final page of the original decision.
- b) The implementation of a court decision that has legal force remains with the Defendant.
- c) The implementation of decisions that have obtained the law still begins with:
  - 1) Chairperson of the TUN Court / Chairperson of the TUN High Court as the first level court makes an appointment containing an order to the court clerk to send a copy of the decision to the parties by registered letter no later than 14 (fourteen) working days counted since the court's decision obtains permanent legal force.
  - 2) The court clerk sends a copy of the court decision to the parties. Delivery is carried out by *sita* on behalf of the Registrar.
  - 3) Four months after a copy of the court decision is sent to the Defendant, and it turns out that the Defendant did not carry out his obligations as referred to in Article 97 paragraph (9) letter a of the Administrative Court Act which does not revoke the Decree of the State Administration concerned, then the Chairperson of the Court makes a letter stating the TUN Decree that has been canceled or declared invalid by the decision of the Court which has permanent legal force no longer has legal force. The letter was sent to the parties by the Registrar of the Court with a registered letter, the execution of which was carried out by the Court's Bailiff.
  - 4) In the event that the Defendant is determined to carry out its obligations as referred to in Article 97 paragraph (9) of paragraph b and c, namely revocation of the relevant TUN Decree and issuing a new TUN Decree, or issuance of a TUN Decree in the case of a lawsuit based on Article 3, then after 3 (three) months it turns out that the obligation was not implemented, the Plaintiff filed an application so that the Chairperson of the TUN Court / Chairperson of the TUN High Court as the first level court ordered the Defendant to carry out a court decision.
  - 5) In the event that the Defendant after being ordered to carry out the decision turns out to remain unwilling to implement it, then the Officer concerned shall be subjected to a forced effort in the form of payment of a number of forced

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<sup>10</sup> Dezonda R Pattipawae, "General Principles of Good Governance in Execution in State Administrative Courts," *Journal of Law, Policy and Globalization* 81 (2019): 130-44, <https://doi.org/10.7176/JLPG/81-16>.

money and / or administrative sanctions, as well as being announced in the local print mass media by the Court Clerk.

Supandi<sup>11</sup> argues that theoretically an official who is carrying out his duties is carrying out the role of the state, therefore when in carrying out his role/duties the task results in harm to people or the community as long as these tasks are carried out by law, then it is correct if the loss suffered the person or society is charged with payment to the state which is classified as a service error. Which is different from when an official does not obey the judge's decision (which can be equated with not obeying the law), then at that time an 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 from the person in office, because this is a personal fault. This is in line with the 'error' theory which was developed from conseil d'etat jurisprudence which basically distinguishes between official error (*faute de serve*) and personal error (*faute personnelle*).<sup>12</sup> In fact, the decisions of the State Administrative Court as one of the principles of the establishment of the State Administrative Court are not effective in protecting the rights and interests of citizens whose rights are violated by the State Administrative Body/Official, because the decisions of the State Administrative Court rely more on moral obedience whereas in Conditions that occur today are very rare to find State Administration Agency/Officers. The culture of obeying the law for State Administrative Bodies/Officials is a sight that is rarely seen due to the ineffectiveness of legal institutions in forcing officials to do so.

The weak implementation of the decisions of the State Administrative Court is due to the absence of an executive body and the power of coercion in the implementation of the decisions of the State Administrative Court so that the implementation of the decisions of the State Administrative Court depends on the awareness and initiative of the State Administration officials themselves.

Another sanction that can be imposed on a State Administrative official who is not willing to implement the Decision of the State Administrative Court is an administrative sanction. Administrative sanctions that can be given based on Article 8 of Government Regulation Number 94 of 2021 concerning Discipline of Civil Servants (State Gazette of the Republic of Indonesia Year 2021 Number 202, and Supplement to the State Gazette of the Republic of Indonesia Number 6718) state that the level of disciplinary punishment consists of: a). light disciplinary punishment; b). moderate disciplinary punishment; or c). severe disciplinary punishment.

Mild disciplinary punishment consists of: a). verbal warning; b). written warning; or c). a written statement of dissatisfaction. Disciplinary punishment consists of: a). deduction of performance allowance by 25% (twenty five percent) for 6 (six) months; b). deduction of performance allowance by 25% (twenty five percent) for 9 (nine) months; or c). deduction of performance allowance by 25% (twenty five percent) for 12 (twelve) months. (41 Severe disciplinary punishment consists of: a). demotion to a lower level for 12 (twelve) months; b). release from his position to become an executive for 12 (twelve) months; and c). honorable dismissal not at his own request as a civil servant.

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<sup>11</sup> Supandi, *Ganti Rugi Akibat Tindakan Pejabat Pemerintah Dalam RUU Administrasi Pemerintahan Dan Prospek Peradilan Tata Usaha Negara* (Medan: Sofemdia, 2002), p. 2-3.

<sup>12</sup> Paulus Efendie Lotulung, *Beberapa System Tentang Control Segi Hukum Terhadap Pemerintahan* (Jakarta: Bhuana Ilmu Populer, 2000), p. 15.

Administrative sanctions in the form of release from office are the most appropriate because when an official does not comply with the decision of the State Administrative Court, at that time the official does not want to use the authority of his position. The order for the imposition of administrative sanctions is addressed to the authorized official to punish the said State Administration official. However, in the event that the State Administrative officials are governors and regents because in accordance with the Regional Autonomy Law, hierarchically, these officials do not have superiors as officials authorized to punish, then in this case, of course, the judge can choose the imposition of forced money (dwangsom). Even though the implementing regulations regarding forced money itself do not yet exist, so they are still hanging.

If the State Administrative Officer is required to rehabilitate the position, dignity and worth of the plaintiff, a copy of the decision is sent to the State Administration official who is burdened with the obligation to carry out the rehabilitation within 30 days after the decision has permanent legal force. In practice, this is not easy, namely for the administration, for example, if the vacant position has been replaced, this will become an interrelated problem. In this kind of condition, the State Administration official cannot carry out rehabilitation perfectly because of the change in circumstances after the decision has permanent legal force. Within 30 days after the notification, the plaintiff may submit an application to the Chairman of the State Administrative Court so that the defendant is burdened with the obligation to pay an amount of money or other desired compensation, but the problem is whether there is a budget for this compensation.

Decisions that can be implemented are decisions that have permanent legal force, namely if the parties accept the contents of the decision, or if no appeal or cassation legal action has been submitted. Administratively, to indicate that the decision has permanent legal force, the Registrar makes notes on the last page of the original decision. The implementation of the Court's decision which already has legal force remains with the Defendant. The implementation of a decision that has received permanent law begins with if the execution concerning the Personnel as referred to in Article 97 paragraph (11) of the law concerning PERATUN, as well as executions other than those relating to employment which cannot or are imperfectly carried out due to changes in circumstances after the decision is rendered, then The Defendant is obliged to notify the Chairperson of the Court and the Plaintiff. The Chairperson of the Court issues a determination that the execution cannot be carried out (non-executable), and notifies the Petitioner and the Respondent of the execution as referred to in Article 116 paragraph (1) of the Law on PERATUN. Within 30 (thirty) days after receiving the notification, the applicant for execution may submit an application to the Chief Justice so that the defendant for execution is charged with the obligation to pay the amount of money or other compensation he desires. The Chief Justice then ordered the Registrar to summon both parties to seek an agreement on the amount of money or other compensation to be charged to the Defendant. If efforts to reach an agreement are not successful, the Chairperson of the Court shall with a Stipulation accompanied by sufficient considerations determine the amount of money or other compensation in question. The stipulation of the Chairperson of the Court regarding the amount of money or other compensation may be submitted by either the applicant for execution or the respondent to the execution to the Supreme Court for re-determination. The decision of the Supreme Court regarding the re-stipulation of the amount of money or other compensation must be obeyed by both parties.

Implementation of the decision is a form of execution. Execution can be carried out if there is already a decision that has permanent or definite legal force. According to

Indroharto, who stated that the implementation of court decisions was carried out by or with the assistance of external parties from the parties.<sup>13</sup> Furthermore, it is said, in principle, a decision that can be executed is a decision that has obtained permanent legal force. Because in a decision that has permanent legal force there is a permanent and definite form of legal relationship.<sup>14</sup>

The Defendant who is a State Administrative Officer is determined to have to carry out the obligation, namely to implement a Court Decision which has permanent legal force, after 90 (ninety) working days it turns out that the obligation has not been carried out, the plaintiff submits an application to the head of the court, so that the court orders the defendant to implement the decision. the court. Through the Chairperson of the Court issues an execution order based on the request for execution from the Plaintiff to the State Administrative Officer who does not carry out the Decision which has permanent legal force. Central Maluku Regent as State Administrative Officer When he did not implement the Decision of the State Administrative Court Number 12/G/2015/PTUN.ABN, dated 5 November 2015 in conjunction with the Decision of the Makassar State Administrative High Court Number 05/B/2016/PT.TUN. MKS, April 4, 2016 in conjunction with the Supreme Court Decision of the Republic of Indonesia Number 334 K/TUN/2016, dated September 15, 2016 which has permanent legal force (inkracht), the Head of the State Administrative Court with the authority to apply for Number: W4.TUN3/256 /H.03.06/IV/2017 dated April 3, 2017 to the Governor of Maluku to be able to order the Regent of Central Maluku to implement a Decision which has permanent legal force. Based on the request of the Chairman of the Ambon State Administrative Court, the Governor with his authority in accordance with the Governor's Letter Number 180/1344 was addressed to the Regent of Central Maluku. May 24, 2017 to be able to implement the Execution Decision on the Decision of the Ambon State Administrative Court

The non-compliance of State Administrative Officials in implementing decisions that have permanent legal force because there are no regulations and or provisions of laws regarding forced money payments to be implemented if the State Administrative Officials do not implement decisions that have permanent legal force, and there are no institutions special or executive agency. Provisions regarding the amount of forced money, types of administrative sanctions, and procedures for the implementation of forced money payments and/or administrative sanctions are regulated by laws and regulations, but until now there is no statutory regulation that regulates forced money (dwangsom). Law Number 23 of 2014 concerning Regional Government (State Gazette of the Republic of Indonesia of 2014 Number 2, and Supplement to the State Gazette of the Republic of Indonesia Number 5587) in conjunction with Law Number 9 of 2015 concerning Regional Government (State Gazette of the Republic of Indonesia of 2015 Number 58, and an additional The State Gazette of the Republic of Indonesia Number 5679) regulates the obligations of Regional Heads and Deputy Regional Heads to comply with the provisions of laws and regulations in order to maintain ethics and norms for the implementation of government affairs which are regional authorities.

The Regent of Central Maluku as the State Administrative Officer did not carry out the execution of the decision of the State Administrative Court Number 13/G/2015/PTUN.ABN Jo Decision of the Makassar State Administrative High Court

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<sup>13</sup> Indroharto, *Usaha Memahami Undang-Undang Tentang Peradilan Tata Usaha Negara Buku I Beberapa Pengertian Dasar Hukum Tata Negara* (Jakarta: Pustaka Sinar Harapan, 1999), p. 360.

<sup>14</sup> *Ibid*

Number 12/B/2016/PT.TUN.MKS Jo Appointment of Chairperson Ambon State Administrative Court Number 13/PEN/G/2016, August 25, 2016 and Supreme Court Review Decision Number 206 PK/TUN/2017. Based on the Law on Regional Government, in conjunction with Government Regulation Number 23 of 2011 concerning Procedures for Duties and Authorities as well as the financial position of the Governor as a Representative of the Government in the Province of Article 4 paragraph (1) letters b and c, the Governor may impose strict sanctions on the Regent/Regent/ Mayor is related to performance, implementation of obligations and violation of oaths or promises. Court decisions that already have permanent legal force and are inkracht in principle must be implemented because court decisions can be equated with law so that they must be obeyed and carried out in order to create legal certainty in the community.

The implementation of decisions that have permanent legal force cannot be carried out properly by State Administrative Officials. There is even no administrative sanction or payment of forced money (*dwangsom*) for officials who do not carry out Court Decisions that have permanent legal force. The decision of the State Administrative Court which has permanent legal force is not obeyed by the Regent as the State Administrative Officer, based on the provisions of the law, the Governor has implemented the Regent as the State Administrative Officer to be able to implement the Decision of the State Administrative Court which has legal force. , but the execution is also not carried out and there are no sanctions for State Administrative Officials.

#### 4. CONCLUSION

Disobedience of the body or official to the decision of the State Administrative Court can be in the form of: a) Not revoking the disputed State Administrative Decision, b) Not revoking the disputed State Administrative Decision and ordering the issuance of a new State Administrative Decree; c) Does not issue the State Administrative Decree requested by the plaintiff; d) Failure to comply with the obligation to pay compensation determined by the court; e) Not complying to rehabilitate the plaintiff's good name. Weak implementation of State Administrative Court Decisions is due to the absence of an executorial institution and coercive power in implementing State Administrative Court Decisions, so that the implementation of State Administrative Court Decisions depends on the awareness and initiative of State Administrative Officials

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