

Defendant's Ignorance of State Administrative Court Decision Contempt Of Court

Yustus Pondayar

yusponyar@gmail.com

Faculty of Law, Cenderawasih University, Jayapura-Papua, Indonesia

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Abstract

In a state of law, the existence of the State Administrative Court is the most important part of the repressive efforts to protect the community to obtain justice and legal certainty. It is impossible for the Defendant to cancel the decision of the State Administrative Court for several reasons: first, there is no execution institution in the State Administrative Court, second, there are no legal sanctions, and third, ignoring the decision of the State Administrative Court creates legal uncertainty for the Plaintiff. In addition, the Defendant's ignoring the decision constitutes a ignoring of the general principles of good governance. The Defendant's attitude includes committing unlawful acts (unfair government actions) or arbitrary (desire or shift of power). The actions of state administrative bodies/officials who do not comply with and carry out the decision of the State Administrative Court judge can be categorized as acts that are contrary to the law.

1. Introduction

Justice and legal certainty must be upheld, especially in Indonesia, which is a country of law and everyone must obey the applicable law, but in reality there are still Defendants who do not obey and obey the law by committing reprehensible acts by not complying with the decision of the State Administrative Court. This kind of behavior is very unfortunate if not corrected, it will set an example for the next generation of the nation. It should be professional if the Defendant is found guilty and must be punished, never reject the Judge's Decision.

On the principle of "Erga omnes" according to Philipus M. Hadjon "the decision applies to everyone, also emphasized by Indroharto: "If in a civil court decision in principle only has binding force between the parties, then the PTUN decision has the power of a public law decision that is general in nature that applies to anyone.¹ In Article 115 of Law Number 51 of 2009 concerning State Administrative Courts, it states "only court decisions that have obtained permanent legal force can be implemented". This article clearly states that the decision that is implemented is a decision that is *inkracht*, meaning that the decision has permanent law or cannot be challenged, thus, the nature of this decision has binding force according to the principle of *erga omnes*, meaning that the court decision has binding force for everyone.²

There is no reason for the Defendant to challenge the PTUN decision because, based on the philosophy contained in the *erga omnes* principle, the decision is binding on all parties to the dispute. As previously mentioned, Article 116 explicitly states that the Defendant must implement the Court's decision that has chosen permanent legal force. If the Plaintiff's application is not accepted, the Chief Justice will gradually submit this decision to the superior agency to ask the subordinate state administrative bodies or officials to comply with the PTUN decision. Although the PTUN has made this effort, the Defendant has ignored it. Several cases show disobedience to the decisions of the State Administrative Court by State Administrative Agencies or Officials in cases where they are in the position of Defendant. These cases, as shown in the table below, are authentic legal evidence of arbitrary actions by State Administrative officials, but do not reflect the supremacy of law and its principles.

NO	Plaintiff	Defendant	No. PTUN Decision
1	DR. Origenes Ijie,SE,MM	Acting Governor of West Papua	18/G/2023/PTUN.JPR
2	Anwar Usman	Constitutional Court	604/G/2023/PTUN.JKT
3	Rusdi Masawoy	Mayor of Ambon	48/G/2022/PTUN.ABN
4	Dr., dr. Theresia Margaretha Dorotheakaunang, SpKJ (K)	Chancellor of Sam Ratulangi University, Manado	22/G/2023/PTUN.MDO
5	Muktamar Umar	Head of Palopo City Land Office	133/G/2022/PTUN.MKS

Table 1.1 PTUN Decisions Ignored by the Defendant

The cases shown in the table above, case number 1 is a case tried by the Jayapura State Administrative Court, case number 2 is the Jakarta State Administrative Court, case number 3 is the Ambon State Administrative Court, case number 4 is the Manado State Administrative Court, and case number 5 is the Makassar State Administrative Court, the data was obtained from the Supreme Court's decision directory via the internet.³

The State Administrative Court does not have an executive institution. As a result, court decisions that have permanent and binding legal force cannot be implemented by institutions that have executive power. The Head of the State Administrative Court has determined that decisions that have been sent to the Defendant will not be implemented. Because the State Administrative Court does not have an executive institution like the District Court, the definition of contempt of court must be expanded to go beyond the trial process.

Basically, the main problem of the non-implementation of the TUN court decision is because the execution is handed over to the relevant TUN Official. This means that when the execution is handed over to the relevant TUN Official, the TUN Official (in this case as the executor) has taken over the judicial function in a trial process.

If a state administrative body or official does not comply with a court decision that has permanent legal force, they can be punished with contempt of court, which has criminal elements. The excusory institution in the PTUN, the expansion of the definition of contempt of court, and criminal sanctions for contempt of court are ideas that support the existence of the State Administrative Court in the development of the *ius constituendum* of the Republic of Indonesia.

2. Research Method

The method used in this research is normative research with the type of approach being legislation, legal concepts, and court decisions.

3. Result and Discussion

Every action taken by the government and society of a country, including the Republic of Indonesia, must be based on law. Legal sanctions imposed by the state through its law enforcement institutions are one of the characteristics of a state of law. Anyone who commits an unlawful act will be punished. Ignoring the decision of the State Administrative Court by the defendant can be categorized as an unlawful act by the authorities (*onrechtmatige overheidsdaad*). This category includes: (i) unlawful acts by the authorities, (ii) ignoring the decision of the state administrative court by the defendant, and (iii) the idea of criminal sanctions that can be imposed on the defendant.

¹ Suparto Wijoyo. (1997). *Karakteristik Hukum Acara Peradilan Administrasi*, Airlangga Universitas Press, Surabaya, p. 75.

² Yohanes Usfunan. (2002). *Perbuatan Pemerintah Yang Dapat Digugat*, Djambatan, Jakarta, p. 72.

a. Unlawful acts

Before the law stipulates that an act is prohibited, the act is no longer unlawful. Therefore, if the act is carried out in accordance with the laws and regulations, then the act becomes prohibited. In Philipus M. Hadjon's book on legal protection for the people in Indonesia, the Supreme Court stated that unlawful acts by the authorities can be considered unlawful if they are carried out by their administrative bodies or officials. This is due to two things: (i) the applicable laws and formal regulations and (ii) the propriety that must be observed by the authorities.

The High Court of Justice in the Netherlands (H.R.) defined unlawful acts in its decision of 31 January 1919 and its verdict of 24 November 1942, better known as the "Ostermann prison", which J.P. Fockema Andreae called the "November revolution". This decision allowed unlawful acts to be committed not only by individuals, but also by institutions or organizations.

Johanes Usfunan also reviewed the same thing in his book "Government Actions That Can Be Sued". He explained that the actions of state administrative bodies or officials who do not follow and implement the decisions of the State Administrative Court judges can be considered as acts that are contrary to the law. This can be understood because Law Number 5 of 1986, which has been amended by Law Number 51 of 2009, explicitly regulates what must be done by bodies or authorities as defendants in state administrative disputes. Therefore, it is clear that violating the decision of the State Administrative Court is the same as violating the law by the authorities.

According to Djasadin Saragih in Yohanes Usfunan, there are criteria for unlawful acts: 1. The act is unlawful because it is contrary to the legal obligations of the perpetrator, violates the rights of others, and is considered contrary to morality and accuracy. 2. Without the act, there would be no violation of the law. This shows that the person was not careful to avoid the act. 3. The lawsuit for damages consists of compensation for the judge's statement, as well as the judge's orders or prohibitions.⁴

Therefore, the Defendant can be considered to have committed an unlawful act due to its disobedience to a court decision that has permanent legal force. Based on the author's idea mentioned above, it is emphasized again in this discussion that the Defendant did not comply with the decision of the State Administrative Court for several reasons, namely: (i) the absence of an executive institution in the PTUN; (ii) the absence of legal sanctions for the Defendant; (iii) the Defendant's disobedience to the PTUN decision caused legal uncertainty; and (iv) the Defendant's disobedience to the PTUN decision caused a violation.

³ <http://putusan.mahkamahagung.go.id>, diakses pada tanggal 02 Desember 2023, pukul 19.30 WIT.

The author places the above into two categories: unlawful acts and non-unlawful acts. Disobedience to the PTUN decision causes legal uncertainty for the Plaintiff, violation of the General Principles of Good Governance (AAUPB), or violation of the Laws and Regulations. These acts are categorized as unlawful acts. All three actions are considered unlawful by the Defendant. However, those categorized as non-unlawful acts have significant consequences for ignoring the decision of the State Administrative Court, namely: (i) the absence of an executive institution in the PTUN and (ii) the absence of legal sanctions. Below is an explanation of the groups in question:

- 1) There is no executive institution in the PTUN. As a result, PTUN decisions cannot be implemented because there is no executive institution and coercive power to implement them. Therefore, the implementation of PTUN decisions depends on the efforts and awareness of TUN officials themselves. With the model of hierarchical system supervision and reprimands regulated in Law Number 51 of 2009, it has proven to be ineffective in implementing decisions of the State Administrative Court. Paulus E. Lotulung stated that a number of factors, especially those related to legal principles, cause difficulties in implementing decisions of the State Administrative Court. The principle of implementing execution adopted by all countries also does not affect the difficulty of execution, where the revocation or change of decisions can only be done by the official himself (the principle of *contrarius actus*).
 - 2) The Plaintiff and Defendant face uncertainty due to disobedience to the PTUN decision by the KPUD. The decision of the Administrative Court is evidence of justice and legal certainty for every citizen who seeks justice. The State Administrative Decision made by the Defendant does not take into account the future legal consequences. The Plaintiff is in legal uncertainty because he expects the decision to be implemented by the Defendant, but the Defendant does not do so, as seen in the previous case.
 - 3) Decisions issued by TUN officials that are detrimental can be challenged by individuals or legal entities.
- b. The Impact of the Defendant Rejecting the Decision of the State Administrative Court.

John Austin, a philosopher who created the legal positivism school, argued that law is a collection of directions given by the ruling party to its society, which is an independent political society in which its authority (the ruling party) has the highest authority. as an order issued by a sovereign authority in society, an order that is an expression of the will directed by a sovereign authority that requires someone to do or not do something. The order is based on the threat of suffering or suffering that will be borne by the perpetrator if they do not obey it. Every order has sanctions that threaten disobedience.

One of the legal phenomena that harms the authority of the judiciary is the disobedience of officials or state administrative bodies to the existence of the TUN Court's decision. Therefore, strict sanctions are needed for TUN officials and bodies who refuse to voluntarily implement PTUN decisions. This sanction is intended to restore the authority and honor of the TUN judicial body against the despicable actions of officials and TUN bodies, which will ultimately cause the public to have less trust in the court as a law enforcement institution. Justice, legal certainty, and benefit are the goals of law, according to Mahfud MD. Legal security in an effort to achieve justice. The implementation or enforcement of the law against an action without considering who did it is an original form of legal certainty.⁵

⁴ SA. Marbun dan Moh. Muhfud MD. (2009). *Pokok-Pokok Hukum Administrasi Negara*, cetakan Kelima, Liberty, Yogyakarta, p. 70.

One of the requirements for law enforcement is legal certainty, according to Sudikno Mertokusumo. Sudikno said that legal certainty is "justiciable protection against arbitrary actions which means that someone will be able to obtain something expected under certain circumstances." Protection from acts of violence carried out by the state or a group of other parties outside the state is an important issue in legal certainty.⁶

According to this perspective, sanctions are an important part of the legal tools that can be used to guarantee law enforcement and legal authority. Therefore, the decisions made by the Court of Justice are legal standards that contain sanctions.

Theoretically, the State Administrative Court as an Administrative Court in deciding administrative disputes has several types of decisions. According to its nature, the decision of the State Administrative Court can be a Declaratory, Constitutive and Condenatoir decision. The declaratory decision is explanatory in nature, the constitutive decision is to eliminate or create a new legal situation, and the condemnatory decision is punitive in nature or contains an obligation to take certain actions against the loser.

Legal sanctions for the Regional General Election Commission for the KPUD's non-compliance with the decision of the State Administrative Court are considered important because this non-compliance is considered an attitude of defiance against the court decision which is a manifestation of justice and legal certainty, therefore administrative criminal sanctions and criminal sanctions should be applied to the KPUD, although there has been the application of witnesses in the form of violations of the code of ethics that can be imposed on the KPUD, however, in the case of disobedience to the decision of the State Administrative Court by the KPUD, there has never been any sanction that can be imposed on the Regional General Election Commission.

Administrative Sanctions are normatively regulated in Law Number 30 of 2014 concerning Government Administration. Administrative sanctions that are normatively regulated in this Law are grouped into three types, namely: light administrative sanctions, moderate administrative sanctions, and severe administrative sanctions.

c. Concept of Criminal Sanctions That Can Be Imposed on the Defendant.

This discussion is a very interesting part because it is the ending of the legal discovery (rechtsvinding) in writing this article. The question that arises from this discussion is whether criminal sanctions can be imposed on the Defendant? The answer is that it can be punished by expanding the concept of Contempt of Court.

In the context of the State Administrative Court decision that is not obeyed by state administrative officials in implementing the Court's decision, it will have a negative impact on the authority of the judicial institution in the midst of society. Therefore, an innovative idea is needed for imposing sanctions on state administrative bodies/officials who do not comply with the PTUN decision.

⁵ Irvan Mawardi. (2014). *Dinamika Sengketa Hukum Administrasi Di Pemilukada*, Cetakan Pertama, Rangkang Education, Yogyakarta, p. 131.

⁶ E. Fernando M. Manullang. (2007). *Manggapai Hukum Berkeadilan Tinjauan Hukum Kodrat dan Antinomi Nilai*, Cetakan Kedua, Kompas, Jakarta, p. 92.

Forms of contempt of court as mentioned in the Indonesian Criminal Code, there are several articles that can be applied in the context of contempt of court. For more details, see the table below:

NO	Chapter	Provision
1	209	Giving or promising something to an official with the intention of moving him to do or not do something in his position that is contrary to his obligations.
2	210	Giving or promising something to a judge or advisor.
3	211	Forcing an official to carry out official acts or not to carry out legitimate official acts.
4	212	Against an official who is carrying out his lawful duties.
5	216	(1) Those referred to as officials also include people who are elected in elections held based on general rules, as well as people who, not by election, become members of law-making bodies, government bodies, or representative bodies of the people, formed by the government or on behalf of the government; as well as all members of the subak council, and all heads of the native Indonesian people and heads of the East Asian group, who exercise legitimate power. (2) Those referred to as officials and judges also include referees; those referred to as judges also include people who carry out administrative justice, as well as the chairmen and members of religious courts. (3) All members of the Armed Forces are also considered officials.
6	217	Causing a commotion in a court hearing.
7	220	Regarding false complaints.
8	221	Hiding people who commit crimes.
9	222	Prevent, obstruct or frustrate the examination of a corpse for the purposes of court.
10	223	To release or provide assistance in escaping to a person who is detained on the orders of a general authority, upon a judge's decision or decree.
11	224	As a witness, expert or interpreter according to the law, you intentionally do not fulfill your obligations.
12	233	Destroying/removing evidence.
13	240	A judge who accepts gifts or promises.
14	242	False statement

15	314	(1) If the insulted person is found guilty of the alleged crime by a final judge's decision, then criminal prosecution for slander is impossible. (2) If he is acquitted of the alleged crime by a final judge's decision, then that decision is seen as perfect evidence that the alleged crime is untrue. (3) If a criminal prosecution has been initiated against the insulted person for the alleged crime, then prosecution for slander is stopped until a final decision is obtained regarding the alleged crime.
16	422	An official who in a criminal case uses coercive means either to extort a confession or to obtain information.
17	522	Witnesses, experts or interpreters, do not appear unlawfully.

Table 1.2 Criminal Offenses Against the Judicial Process in the Criminal Code

The idea that is a solution or finding in this dissertation is to include the concept of contempt of court as a form of coercion for state administrative bodies/officials who do not comply with the court's decision. This concept is the author's concept of thinking in expanding the concept of contempt of court so that the scope of this concept is not limited to the process in the courtroom but can be expanded regarding disobedience to a legally binding court decision. Therefore, disobedience to a legally binding Court decision and then not implemented by the Defendant can possibly be punished using Article 216 of the Criminal Code, which stipulates:

- (1) Anyone who intentionally prevents, obstructs or thwarts an action to implement the provisions of a law carried out by an official is threatened with a maximum prison sentence of four months and two weeks or a maximum fine of nine thousand rupiah.
- (2) Equated with the above officials, anyone who according to the provisions of the law is continuously or temporarily entrusted with the task of carrying out a public office.
- (3) If at the time of committing the crime two years have not yet passed since the criminal sentence that has become permanent for a crime of the same kind, then the punishment can be increased by one third.

Any act that does not comply with the decision of the TUN court is an act that has an element of intent, and this element of intent has implications for the fall of the authority of the judicial institution in the midst of the community of justice seekers. Based on this basic principle, the act can be interpreted as contempt of court in the category of civil contempt mentioned above.

Therefore, the elements of contempt of court in the Criminal Code should be expanded in meaning to include the actions of TUN officials who do not comply with the decision of the TUN court that has obtained permanent legal force. Because in this context, the trial, execution is the final series of the trial process. Execution cannot be separated from the trial process which is the responsibility of the court in carrying out its judicial function.

Basically, the main point of the problem of the failure to execute the TUN court decision is because the execution is handed over to the relevant TUN Official. This means that when the execution is handed over to the relevant TUN official, the TUN Official (in this case as the executive) has taken over the judicial function in a trial process.

According to the author, the act of disobeying the decision of the TUN court is an act that was deliberately made, it is clear that there are regulations and laws in force but they still disobey the decision. Moreover, someone is a TUN official but his behavior is like someone who does not have a higher education and is not authoritative which has a negative impact on the community who do not believe in the applicable law, is not firm, and must be given severe sanctions for those who do not comply. In order to avoid contempt of court, the author conceptualized a new breakthrough in the world of state administrative law by including contempt of court as a legal discovery in the dissertation by including a criminal element as a form of misery for state administrative bodies/officials who do not heed the decision of the State Administrative Court which has permanent legal force.

The Defendant's neglect of the State Administrative Court decision can be punished. The Defendant's attitude is categorized as committing an unlawful act (*onrechtmatige overheidsdaad*) arbitrarily (*willekeur* or *de tournement de pouvoir*). The Defendant's actions are contrary to the Law and Formal Regulations and propriety that must be observed by the authorities. Therefore, to criminalize the Defendant Commissioner, the concept of contempt of court can be expanded so that the concept of contempt of court is not limited to the process in the Court but also outside the Court regarding Court decisions that are not obeyed. Criminal provisions that can be used as articles for criminalizing the Defendant are Article 216 of the Criminal Code.

Thus, the author concludes that the actions of state administrative bodies/officials who do not comply with and carry out the decisions of the State Administrative Court judges can be categorized as actions that are contrary to the law. This is understandable because Law Number 5 of 1986 has clearly regulated the requirements that must be carried out by the

governing body as the Defendant in a state administrative dispute. Therefore, it is clear that the act of not carrying out the decision of the State Administrative Court is an act that can be categorized as an unlawful act by the authorities. Violation of the law by the Defendant by not carrying out his obligations according to the State Administrative Court Law also violates the obligations according to PP. No. 43/1991 and the Civil Code.

In addition, the author also concludes that the government must provide a deterrent effect for officials who do not comply with the decisions of the TUN court, the sanctions given must be heavier than before from the first level to the appeal, so that the public can believe that no one is immune from the law. This proves that Indonesia is an honest, just country and can guarantee legal certainty. Wherever the community is, if a country has strict legal rules and witnesses and is consistent with court decisions, a safe, peaceful and prosperous atmosphere will be created. If someone, a legal entity or a ruler who is stubborn and does not obey it, they will be given a heavier sanction than the one decided earlier. Automatically, with this being determined by the government, the term immune from the law will never exist again. It is clear that whoever he is, ruler or not, must still obey the court's decision.

4. Conclusion

Based on the results of the discussion above, it can be concluded as follows:

- a. The existence of the State Administrative Court in a state of law is the most important part of repressive efforts, to protect the people so that they obtain justice and legal certainty.
- b. Ignorance of the Decision of the State Administrative Court by the Defendant, it can be found that the causes of the State Administrative Decision that has permanent legal force cannot be implemented by the Defendant, because: (i) there is no executive institution in the State Administrative Court, (ii) there are no legal sanctions, (iii) the Defendant's neglect of the State Administrative Court decision is a form of legal uncertainty for the Plaintiff, and (iv) the Defendant's neglect of the State Administrative Court Decision is a form of Ignorance of the General Principles of Good Governance.
- c. The concept of contempt of court can be expanded so that the concept of contempt of court is not limited to the process in the Court but also outside the Court against Court decisions that are not complied with. The Defendant's negligence towards the PTUN decision can be subject to criminal sanctions, the criminal provisions that can be used as articles to criminalize the Defendant are Article 216 of the Criminal Code. The Defendant's attitude is categorized as committing an unlawful act (*onrechtmatige overheidsdaad*) arbitrarily (*willekeur* or *de tournement de pouvoir*). The Defendant's actions are contrary to the Law and Formal Regulations and the propriety that must be obeyed by those in authority.

Based on the conclusions above, the following suggestions can be made:

- a) Expand the concept of contempt of court so that it is not limited to the process in the court but also regarding decisions that are not obeyed by the Defendant as a State Administrative Agency/Official.
- b) Expand Article 216 of the Criminal Code as a criminal threat for the Defendant who does not obey the decision of the State Administrative Court.
- c) Establishment of an executive institution at the State Administrative Court to become a coercive institution in implementing decisions of the State Administrative Court that have obtained permanent legal force.

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