The Responsibility of State Administrative Officials in the Implementation of the Decisions of the State Administrative Court

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Abstract

Decisions of State and Government administration, namely decisions made by Government Agencies, either regulating (regression) or beschikking. Making decrees is a legal act. This research uses normative juridical legal research methods (normative research) with descriptive analytical research specifications that use secondary data. The data collection procedure is in the form of documentation of notes or quotations, tracing legal literature, books and others related to identification of problems both offline and online which are then analyzed through the content analysis method (content analysis method) with a focus on the problem of how the factors inhibiting the implementation of the injunction of state administrative court decisions and how the responsibility of state administrative officials to the implementation of administrative court decisions state effort. That the factors inhibiting the implementation of court decisions that are legally enforceable include: The absence of a special executorial institution or sanction institution that functions to implement decisions. The low level of awareness of State Administration officials in obeying the decisions of the State Administrative Court. There is no stricter regulation regarding the implementation of the decision of the State Administrative Court.

Keywords:
Responsibilities, State Administrative Officials, Amar Verdict, State Administrative Court.

How to cite:
Zainuddin, (2020), “The Responsibility of State Administrative Officials in the Implementation of the Decisions of the State Administrative Court”, IJRS: Internasional Journal Reglement Society Vol. 1 (2), Pages 25-30

A. Introduction

Licensing law is part of public law, namely State Administrative Law. Where a permit is in the form of authority from a State Administration Officer or a permit is issued by a State Administrative Official. The purpose of licensing is to create public welfare. But the reality is that licensing in the midst of society is still the object of lawsuits at the State Administrative Court. Government agencies or officials in carrying out their duties and jobs often make various policies. The policy is taken, formulated and outlined in the form of a decision. Usually after the policy becomes a decision then it is formulated administratively as a concrete, casuistic, and individual decision using freies ermessens, namely the agency or state administrative official concerned formulates the policy in various forms of “juridische regels” such as regulations, guidelines, announcement of circular and announce that wisdom.

Decisions of State and Government administration, namely decisions made by Government Agencies, both regulating and beschikking. Making decrees is a legal act. As a legal act, stipulations give birth to rights and or obligations, and provisions that give birth to rights and/or obligations are called positive prescriptions. Van der Pot mentions 4 conditions that must be met in order for a decision to be valid: 1). Made by an authorized organ; 2). Its formation should not contain juridical deficiencies; 3). Must be formed; 4). The content and purpose must be in accordance with the basic rules.

1 Ali Mufliz, Materi Pokok Pengantar Administrasi Negara, Jakarta : Karunika, (1998), p.177.
2 Suady Husin, Hukum Tata Pemerintahan Suatu Pengantar, Medan: Laboratorium Pendidikan Pancasila FIS Unimed, (2011), p.24.
3 Suady Husin, Ibid., p.26.
4 Anna Erliyana, “Keputusan Administrasi Negara (Beschikking)” Law Review Fakultas Hukum Universitas Pelita Harapan IV, No. 3 (2005): p.188.
In view of this, the Law on the Supreme Court does not explain the court's decision at what level it is unable to suspend a request for review and whether decisions that do not have legal force are still valid. Meanwhile, Article 115 of Law Number 5 Year 1986 concerning State Administrative Courts states that only Court decisions that have obtained permanent legal force can be implemented. This is in stark contrast to what is mandated by the Law on the Supreme Court. so as not to provide legal certainty which rules must be implemented and enforced.

Based on the description above, the main problem can be drawn how the factors inhibiting the implementation of the verdict of the State Administrative Court and what are the responsibilities of State Administrative Officials in implementing the decisions of the State Administrative Court. This writing uses normative juridical legal research methods (normative research), namely legal research conducted by examining library materials or secondary data. The research specification in this paper is descriptive analytical research. Descriptive is showing the comparison or relationship of a set of data with another set of data, and its purpose is to describe, analyze, explain and analyze.5

According to the type and nature of the research, the data source used in this paper is secondary data consisting of primary legal materials in the form of; in the form of; Law Number 14 of 1985 concerning the Supreme Court. Law Number 5 of 1986 concerning State Administrative Courts, Circular of the Supreme Court Number 08 of 2005, KUHperdata. Secondary legal materials consist of books, scientific journals, papers and scientific articles that can provide an explanation of primary legal materials. Tertiary legal materials; in the form of the Big Indonesian Dictionary (KBBI) and others in finding definitions of terms in discussing matters related to the issues being discussed. The procedure used to collect data in this study is in the form of documentation, namely the guidelines used in the form of notes or quotations, search for legal literature, books and others related to the identification of problems in this research by offline or online. Analysis of legal materials is carried out using the content analysis method (content analysis method) which is carried out by describing the material of legal events or legal products in detail in order to facilitate interpretation in the discussion.6

B. Discussion

1. Factors Inhibiting the Implementation of Decisions of the State Administrative Court

Sudikno Mertokusumo in the book Fence M. Wantu states that the implementation of a judge's decision or execution is essentially nothing but the realization of the party's obligation to fulfill the achievements stated in the decision. Implementing a decision means being willing to fulfill the obligation to perform well that is imposed by the judge through his decision. Basically there are 3 (three) types of execution of decisions (executions), namely as follows: First, executions regulated by Article 196 HIR or Article 208 Rbg, namely carrying out a judge's decision, where people are punished to pay money. Second, the execution referred to in Article 225 HIR or Article 259 Rbg, namely carrying out a judge's decision in which a person is sentenced to commit an act. This punishment cannot be carried out by force. Third, the real execution which is not regulated in the HIR. Article 115 of the Law on State Administrative Courts states that only decisions that have obtained permanent legal force can be implemented. Court decisions that have not obtained legal force still do not have the power of execution.7

Based on the current reality, the existence of the State Administrative Court still does not meet the expectations of the justice-seeking community. The number of decisions of the State Administrative Court that cannot be executed. This condition is a concerning fact that the existence of the State Administrative Court has not been able to provide guarantees for justice seekers in the field of government administration. Things that can be imagined if a decision of the State Administrative Court does not have executorial power, how can the law and the public supervise the running of the government.8

Furthermore, in implementing the Court's decision within the State Administrative Court, the main thing that needs to be observed is the provisions in Article 97 paragraph (8) of the State Administrative Court Law which states that in the event that the lawsuit is granted, the Court's decision can determine the obligations which must be carried out by the State Administration Agency

5 Soekanto, Pengantar Penelitian Hukum, Jakarta: UI Press, (1996), p.63.
6 Petter Mahmud Marzuki, Penelitian Hukum, Jakarta: Kencana Prenada Media Group, (2011), p.171.
7 Fence. M. Wantu, Ibid., p.81.
8 Fence. M. Wantu, Ibid., p.82.
or Official that issues the State Administrative Decree. Thus, decisions to be implemented will only be decisions that oblige State Administrative Bodies or Officials to take certain actions. This action is further emphasized in Article 97 paragraph (9) as follows: 1). Revocation of the State Administrative Decree concerned; or Revocation of the relevant State Administrative Decree and issue a new State Administrative Decree; or Issuance of a State Administrative Decree in the event that the lawsuit is based on Article 3 of the Law on State Administrative Courts.9

Based on Article 97 paragraph (9), there are two types of obligations that must be carried out by the Defendant in a decision of the State Administrative Court, namely as follows:10

1) Obligation to revoke the State Administrative Decree concerned (the one being challenged). In this case, the provisions in Article 116 paragraph (2) of the Law on State Administrative Courts shall apply which states that in the event that four months after the Court's decision has obtained permanent legal force as referred to in paragraph (1), the defendant does not carry out his obligations as referred to in paragraph (1). Article 97 paragraph (9) letter a, then the disputed State Administration Decree no longer has legal force. As a consequence of this provision on the disputed and decided decision, there is no need for any other action or effort by the court. For example, a warning letter and so on. Paulus Effendi Lotulung in Yuslim's book called it automatic execution.

2) The obligation to revoke the State Administrative Decree and issue a new State Administration Decree or the obligation to issue a State Administrative Decree in the event the lawsuit is based on Article 3. In this case, the provisions in Article 116 paragraph (3) shall apply which states that in the case of the defendant (2) is determined to carry out its obligations as referred to in Article 97 paragraph (9) letters b and c, and after three months it turns out that these obligations have not been fulfilled, the plaintiff submits an application to the Chair of the Court as referred to in paragraph (1) so that the Court orders the defendant to implement the Court's decision.

Based on Article 97 paragraph (7) the Court's decision can be in the form of: the lawsuit is rejected, the lawsuit is granted, the lawsuit is not accepted, and the lawsuit is dropped. In connection with a lawsuit granted in practice called defendant defeated, by the court to the Defendant may be liable in the form of revocation of the relevant State Administrative Decision and issue a new State Administrative Decision, or the issuance of State Administrative Decree based on Article 3 of Law No. 5 of 1986. Furthermore, in Article 97 paragraph (9) may be accompanied by indemnity.11

Based on the description above, the non-compliance of bodies or officials with the decisions of the State Administrative Court can be in the following matters:12

1) Not to revoke the disputed State Administration Decree, in which case the defendant should issue a new decision stating that the decision on State Administration is revoked. For revocation of a decision on State Administration must be carried out by the official concerned, it cannot be done by a judge because the judge cannot sit at the executive table.

2) Not revoking the disputed State Administrative Decree and ordering the issuance of a new State Administrative Decree. In this case there were two actions that the defendant had to take because with just one action what the plaintiff wanted would not be completed.

3) Failure to issue the State Administrative Decree the plaintiff is requesting in the case of the lawsuit with the defendant's silent attitude that does not heed and does not respond to what the Plaintiff has requested.

4) Failure to comply with the obligation to pay compensation stipulated by the Court.

5) Failure to comply with the obligation to rehabilitate the Plaintiff's good name.

Furthermore, in order to maintain the authority of the court, in the administration sector various memkasa policies have been pursued from an administrative perspective because the characteristics of administrative action are not only related to individual interests, but also public interests. Defendants' non-compliance with court decisions does not fall within the realm of (public) administrative law. Therefore, the form of the instrument is administrative in nature. Although based on the general view that the instrument of coercion is weak or fangless, from an administrative point of view the

9 Yuslim, *Hukum Acara Peradilan Tata Usaha Negara*. Jakarta: Sinar Grafika, (2015), p.160.
10 Yuslim, *Ibid.*, p.162.
11 Yuslim, *Ibid.*, p.163.
12 Yuslim, *Ibid.*, p.164.
instrument is already very heavy. If the administrative instruments are inadequate, there are still social or moral instruments by announcing them in the mass media. Social or moral instruments for officials in an increasingly civilized society are quite heavy sanctions.\footnote{Yuslim, \textit{Ibid.}, p.164.}

Factors that hinder the implementation of court decisions that are already in force remain good that are related to the revocation of building permits and globally for any State administrative decision that is considered conflicting that is judged by the judiciary in its normative decision among others:\footnote{Ahmad Dahlan, Dkk, “Faktor Penyebab Tidak Dilaksanakannya Putusan Pengadilan Tata Usaha Negara Dan Upaya Penanggulangannya (Analisis Kasus Putusan Pn Medan No: 17/G/2000/Pnun-Mdn)” \textit{Jurnal Mercatoria} 6, No. 2 (2013): p.142.}

1) There is no special executorial agency or sanction agency that functions to implement decisions.
2) The low level of awareness of State Administration officials in obeying the decisions of the State Administrative Court.
3) The absence of stricter regulations regarding the implementation of decisions of the State Administrative Court.
4) The absence of standard legal rules regarding the amount of forced money, types of administrative sanctions and methods of payment of forced money and / or administrative sanctions because they have to wait for further stipulation in statutory regulations.

So far, the decisions of the state administrative court are only considered toothless tigers because many of their decisions cannot be executed. This view is of course based on the fact that in other courts, after a decision has permanent legal force, the decision can be executed immediately, which if necessary it can be executed by force (execution rieel). Meanwhile in the state administrative court, the reality is different. After winning in the State Administrative Court and the decision has permanent legal force (in kracht van gewijsde), if a State Administration official is convicted of not complying with the decision, the winner cannot immediately enjoy the benefits of his victory.\footnote{Uwaisyah Rani, “Urgensi Upaya Paksa Dalam Pelaksanaan Putusan Pengadilan Tata Usaha Negara” \textit{Jurnal JOM Fakultas Hukum} I, No. 2 (2014): p.4-5.}

Furthermore, in a situation like this it turns out that the state administrative court cannot do anything, because the normative execution institution in Law No.5 of 1986 which is formulated in a floating norm cannot force officials to comply with the decision, this is ineffective for facing State Administrative Officials who do not comply with the decision of the State Administrative Court Judge. In general, there is no point in including obligations or restrictions for citizens in the state administrative law, when the rules of conduct cannot be enforced by the State Administration. The important role in imposing sanctions in administrative law comply with criminal law. Most statutory licensing systems contain important provisions that prohibit citizens from acting without permission.\footnote{Uwaisyah Rani, \textit{Ibid.}, p.5.}

Legal normativisation is not enough to simply contain orders and prohibitions. Behind the prohibition, there must be sanctions for non-compliance in particular. Because legal sanctions are still the most powerful tool to maintain the authority of the law, or in other words so that everyone obeys the law. The non-compliance of state administrative bodies or officials to implement the decisions of the state administrative court can more or less affect the authority of the court, harassment of the judiciary, and it is not impossible that if the non-compliance occurs repeatedly, the public will increasingly distrust the court. In principle, a judge's decision that has legal force must still be carried out, but there are deviations from this principle as regulated in article 180 of the HIR, that not all decisions that are legally enforceable must be carried out, because all that needs to be implemented are decisions that condemnator, which contains orders to a party to do an action.\footnote{Uwaisyah Rani, \textit{Ibid.}, p.6.}

2. Responsibilities of State Administrative Officials in the Implementation of the Decisions of the State Administrative Court

Sudikno argues that if the verdict is seen as a determination of the rule of law, then what is directly binding is a consideration or reason that is directly about the subject matter, namely the rule of law which is the basis of the decision (ratio decidendi).\footnote{UwaisKayo Mertokusumo, \textit{Hukum Acara Perdata Indonesia}, Yogyakarta: Liberty, (1998), p.45.} As has also been mentioned by S.F. Marbun,
the validity of a State Administrative Decree includes material and formal requirements such as authority, substance and procedure.19

Government actions are always highlighted by the General Principles of Good Government and violations of the General Principles of Good Government are one of the sources of disputes against State Administrative Decisions. As referred to in Article 53 paragraph (2) of Law No. 5 of 1986 concerning State Administrative Courts, emphasizing the General Principles of Good Government is the reason for filing a lawsuit for State Administrative Decisions. The defendant's non-compliance with court decisions does not fall under the domain of (public) administrative law. Therefore, the form of the instrument is administrative in nature. Although based on the general view the instrument of coercion is weak or fangless, from an administrative point of view the instrument is already very heavy. If the administrative instruments are not available, there are still social or moral instruments by gathering mass media. Social or moral instruments for officials in an increasingly civilized society are quite heavy sanctions.

The Second Amendment of the State Administrative Court Law provides an explanation regarding the legal consequences that will be given to State Administrative Officials who do not carry out the Decision of the State Administrative Court, namely Article 116 paragraph (4) states that "In the event that the defendant is not willing to implement the court's decision who have obtained permanent legal force, against the officials concerned who are subject to coercive measures in the form of payment of an amount of forced money and / or administrative sanctions ". And Article 116 paragraph (7) of the Second Amendment of State Administrative Court Law confirms that "Provisions regarding the amount of forced money, types of administrative sanctions, and procedures for implementing forced payments and / or administrative sanctions are regulated by statutory regulations.

1. Compensation

Theoretically, compensation comes from the field of civil law, regarding the concept of "onrechtmatige daad". The principle that every action onrechtmatig a legal subject that causes harm to other parties requires accountability for the legal subject concerned is a principle that has been generally recognized and accepted. This concept is legally formal regulated in Articles 136, 1365, and 1367 of the Civil Code. The legislation referred to in Article 116 paragraph (7) of the Second Amendment of State Administrative Court Law is the Government Regulation of the Republic of Indonesia Number 43 of 1991 concerning Compensation and Procedures for Its Implementation at State Administrative Courts.

2. Administrative sanctions

These administrative sanctions are expressly regulated in the Government Administration Law. Administrative sanctions are divided into three (3) groups, namely minor administrative sanctions in the form of; verbal warning, written warning, and postponement of promotion, class, and / or job rights. Administrative sanctions are in the form of; payment of forced money and / or compensation, temporary dismissal by obtaining occupational rights. Heavy administrative sanctions in the form of; permanent dismissal by obtaining financial rights and facilities, permanent dismissal without obtaining financial rights and other facilities and being published in the mass media. Each of these administrative sanctions is adjusted to the violations committed by government officials. Apart from the Government Administration Law, this administrative sanction is also regulated in the State Civil Apparatus Law, which specifically regulates the profession of civil servants. This State Civil Apparatus Law explicitly regulates the code of ethics for state civil servants to implement the provisions of laws and regulations. There will be administrative sanctions in the form of disrespectful dismissal for committing fraud against Pancasila and the 1945 Constitution of the Republic of Indonesia, imprisonment or imprisonment for committing a criminal act and being a member and / or administrator of a political party.

Based on the explanation of administrative sanctions based on the Government Administration Law and this State Civil Apparatus Law, if the State Administrative Official does not carry out the State Administrative Court Decision which has permanent legal force then the administrative sanction is subject to the administrative sanction based on the sanction class set. Legal consequences, both compensation and / or administrative sanctions for State Administration officials, cannot be implemented automatically because there are processes and stages that must be passed. Besides being

19 S.F. Marbun, Administrasi Negara dan Upaya Administratif Di Indonesia, Yogyakarta: FH. UII Press, (2011), p.162.
announced in the local printed mass media as referred to in Article 116 paragraph (5) of the Law on State Administrative Courts, the head of the court must submit this matter to the President as the holder of the highest government power to order the official to implement court decisions, and to representative institutions. the people to carry out the supervisory function.

C. Conclusion

Factors that hinder the implementation of court decisions that are already in good standing law are related to the revocation of building permits and globally for any State administrative decision that is considered conflicting as assessed by the judiciary in its normative decision among others: Absence of executive body special or sanctioning institution that serves to implement the decision. The low level of awareness of the State Administrative Office in complying with the decision of the State Administrative Court. There is no stricter regulation on the implementation of the decision of the State Administrative Court. The Second Amendment to the State Administrative Court provides an explanation of the legal consequences that will be given to the State Administrative Officer who did not implement the State Administrative Court Decision, namely Article 116 paragraph (4) states that "In case the defendant is not willing to implement the court decision who has acquired permanent legal force, against the relevant officials and imposed coercive efforts in the form of payment of a certain amount of coercive money and / or administrative sanctions ". Article 116 paragraph (7) of the Second Amendment Code of the Administrative Court of State stipulates that "Provisions regarding the amount of forced money, the type of administrative sanctions, and the procedure for the implementation of the payment of forced money and / or administrative sanctions shall be governed by legislation. Such liability must be subject to administrative sanctions and damages.

In relation to the inhibiting factors for the non-implementation of court decisions that have permanent legal force, it is better to revise the Law on State Administrative Courts so that they can guarantee forced execution when a decision has permanent legal force. The efforts of the State which do not carry out the cancellation of building permits are to always act in good faith as the administrator of the government so that its credibility in public life is maintained and runs the government in accordance with applicable regulations.

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