

Degradation of Government Officials' Compliance in Implementing Administrative Courts Decisions

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ABSTRACT

This article aims to explore the degradation of government officials' compliance in implementing state administrative court decisions. The data used as the basis for analysis is obtained through empirical juridical research with a socio-legal approach through observation, interviews and documentation. The results found in this article are that there is a degradation of compliance of government officials in implementing Administrative courts decisions due to a lack of awareness in obeying the rule of law. Improvements to the state administrative court law need to be implemented so that there are sanctions that can have a deterrent effect on government officials who do not comply with Administrative courts decisions.

Keywords: Degradation, compliance, government official, decision, administrative court

INTRODUCTION

There has been a decline in the obedience of government officials in complying with state administrative court decisions. Not only that, Ditjenbalditum showed that only 10% of Administrative courts decisions that have been legally enforceable were implemented by government officials. Some Administrative courts decisions that have been legally enforceable, it turns out that government officials are still reluctant to implement decisions that have been legally enforceable. The decision on the establishment of GKJ Yasmin Bogor house of worship that has been legally binding, but the decision of the State Administrative Court is still not implemented by the Mayor of Bogor. Not only that, the dismissal of the Regional Secretary of Pamekasan after winning a lawsuit at Administrative courts Surabaya, but the Regent of Pamekasan did not restore the position of the Regional Secretary of Pamekasan to its original position. The dismissal of village officials by the Village Head in Kediri Regency, from a lawsuit to a verdict that has permanent legal effect, but the village officials who won by the State Administrative Court were not re-inaugurated as village officials by the Village Head. The decline in compliance of government officials in implementing Administrative courts decisions that have legal force apparently needs to be improved.(Azzahra, 2020a, p. 132)

Many researchers have conducted studies on the implementation of State Administrative Court decisions. In general, these studies can be seen in three trends that cause the non-implementation of State Administrative Court decisions. First, Supandi in his research found that the non-compliance of government officials in implementing decisions was due to the lack of awareness of government officials.(Supandi & Hum, n.d.)Secondly, there is a tendency that the institution of execution in the state administrative court is still weak.(Yulius, 2018)Third, sanctions in the State Administrative Court are still weak.(Miranti & Pamungkas, 2022)These three trends can be assessed that experts place the degradation of compliance of government officials in implementing State Administrative Court decisions as an important topic. However, studies on the degradation of compliance of government officials in the implementation of Administrative courts decisions are still rarely noticed. In this context, it is very important to conduct this study.

This article aims to complement previous shortcomings by focusing on further exploration of the degradation of government officials' compliance in implementing State Administrative Court decisions. In line with this, there

are three important things that are studied/questions raised. First, how is the practice of implementing Administrative courts decisions by government officials? Second, what factors cause non-compliance by government officials in implementing Administrative courts decisions? Third, what kind of impact does the degradation of government officials' compliance have on legal certainty in Indonesia? The degradation of officials' compliance with judicial decisions and laws and regulations needs to be strengthened by the existence of special institutions and sanctions that provide a deterrent effect to implement Administrative courts decisions, not returned to the awareness of officials.(Veronica et al., 1978)

This paper is based on an argument that the implementation of Administrative courts decisions is based on the awareness of the officials themselves with the principle of self-respect for the judicial institution. The principle of self-respect given to the relevant officials to implement the decision with their own awareness has resulted in many decisions of the State Administrative Court that are not implemented. Courts under the Supreme Court have executors in implementing decisions. In criminal cases, the executor of the verdict is the prosecutor's office. The executor in civil cases in the District Court is the bailiff, while the executor in civil cases in religious courts is the bailiff. The absence of an executor as an executing agency and sanctions that provide a deterrent effect in state administrative courts that emphasize self-respect needs to be corrected so that state administrative court decisions can be obeyed by all parties.(Azzahra, 2020b)

Studies on the implementation of State Administrative Court decisions have often been carried out by experts. In general, these studies can be seen in three trends, namely awareness of officials, executorial institutions and administrative sanctions that provide a deterrent effect. However, previous studies have yet to provide a comprehensive understanding of the decline in compliance of government officials to implement state administrative court decisions. Government officials are still ignorant and indifferent in implementing these decisions. Studies on government officials who do not implement state administrative court decisions have yet to provide a concrete solution to the problem..(Abdullah, 2017)

Studies that highlight the implementation of Administrative courts decisions, namely Supandi in his research found that the non-compliance of government officials in implementing decisions is due to the sanction factor that there is still no sanctioning institution against government officials. The institution of sanctions is needed as a reinforcement for the decision read by the panel of judges. Punishment as a sanction requires the existence of an executor of the order from the court. the absence of a sanctioning institution in carrying out the decision affects the obedience of officials in carrying out the decision of the state administrative court.(Yulius, 2018)

Second, the lack of awareness of government officials. The lack of awareness of government officials requires encouragement from the executive and the community as an effort to control public officials. The public can supervise as a form of democracy towards these officials. The executive element as the leader of these officials can also provide supervisory control so that there are no people who are harmed by not complying with court decisions. The low awareness of officials requires control efforts from the community and executive officials.(Jiwantara et al., 2014)

Third, the weakness of State Administrative Court sanctions. Administrative sanctions are reparatoir in nature (recovery) or as an effort to correct policies issued by government officials. However, officials consider the Administrative courts decision as a form of "lose-win" in court. Officials who are found guilty by the court consider themselves defeated through the court's decision. The weakness of administrative sanctions has made several state administrative court decisions not yet maximally obeyed.(Sanksi et al., 2021)

It can be seen from these three trends that scholars place the degradation of government officials' compliance as an important topic in the scope of Administrative law study. The degradation of compliance of government officials contradicts the rule of law in the Indonesian Constitution Article 1 paragraph (3). The rule of law regulates all matters regulated by laws and regulations and binds the entire society, including government officials. However, studies on the degradation of compliance of government officials in the implementation of Administrative courts decisions are still rarely noticed.

Previous studies have not considered that strengthening sanctions and executors in state administrative courts is a

matter that needs attention. Sanctions in state administrative law that are implemented by the superior of the official are still not widely implemented. An official who loses a dispute in the state administrative court is punished by the superior of the official, up to the House of Representatives and the President. Disputes over the dismissal of employees within the government, then the superior official who gave the decree on the dismissal of the employee to make a new decree.

Disputes about unlawful acts by the government or *Onrechmatige overheidsdaad* also as the executor of the decision is the official concerned, the Chairman of the State Administrative Court is only in charge of supervising the execution. (Yulius, 2018) Administrative sanctions that provide a deterrent effect need to be explored as well as the executor of these sanctions needs to be regulated in an amendment to Law Number 5 of 1986 concerning State Administrative Courts jo. Law No. 9 of 2004 jo. Law No. 51 Year 2009.

RESEARCH METHODOLOGY

This research method uses empirical juridical research using a socio-legal approach. (Njonge, 2023) The scope of this study in administrative law study. Interviews with the President of the State Administrative Court, lawyers, and government officials. Data was obtained from interviews with plaintiffs, government officials, administrative court judges, as well as from recent literature on the implementation of administrative court decisions.

The data obtained is then processed to be analyzed in finding the answers raised in this paper. The findings of the analysis are expected to find a solution to the degradation of compliance of government officials in implementing Administrative courts decisions.

The use of empirical juridical and normative juridical research is because it can find a solution to the problem of the implementation of Administrative courts decisions that are less effective. The lack of effectiveness of a court decision needs to be analyzed in depth by conducting interviews with government officials and the community. Government officials who do not implement judicial decisions have reasons for their non-compliance, including the plaintiffs who sued the Administrative courts knowing about the non-compliance of government officials. This empirical research will find the real causes of non-observance of Administrative courts decisions.

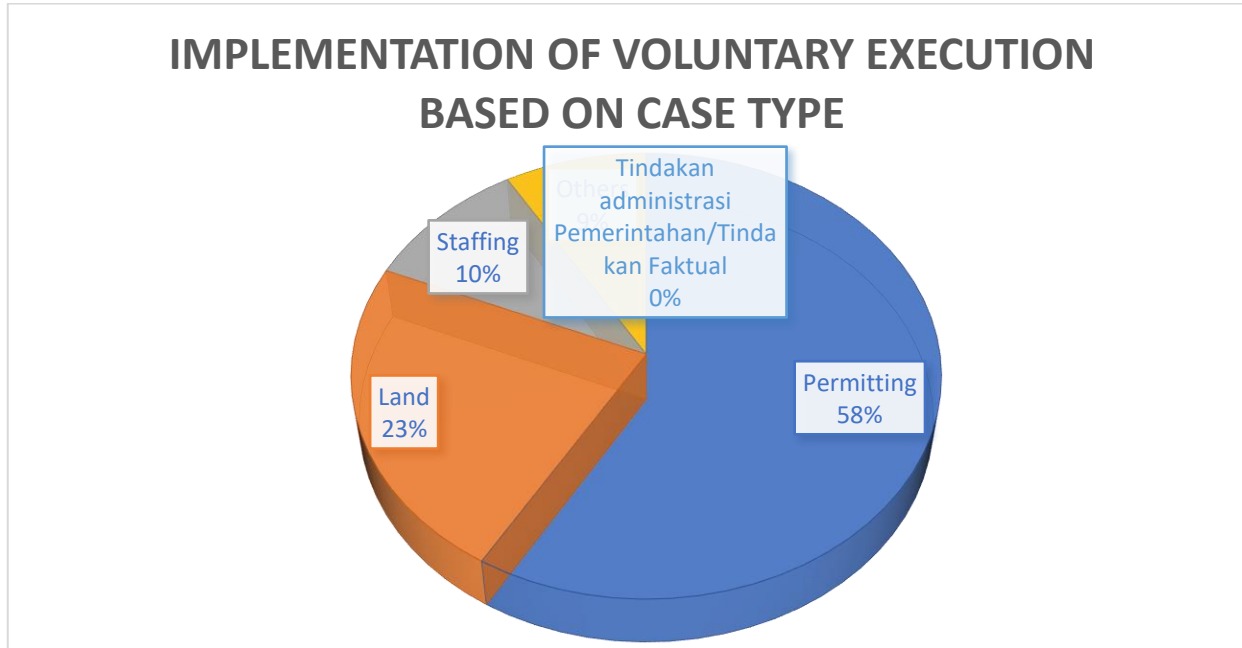
Respondents used were plaintiffs regarding policies issued by government officials, judges, and also advocates as legal counsel in state administrative disputes. The selection of judges, the public and advocates as respondents is due to the fact that factors and reasons for the non-implementation of State Administrative Court decisions can be found.

Civil service dispute decisions will be able to find answers to civil service disputes, if employees who are in dispute at the Administrative courts are used as research respondents. Experience and knowledge directly from the first source, namely judges, plaintiffs and attorneys, will make the findings in finding the causes of non-implementation of Administrative courts decisions more reliable. (Njonge, 2023)

Data collection using the interview method and also the use of data on the implementation of Administrative courts decisions from time to time that have been reported by the Directorate General of Public Prosecutions on the Supreme Court website. Interviews with lawyers, judges and the public further strengthened the data received to be used to deepen and find problems. The results of the interviews were processed in accordance with the research objectives. Interview techniques and the appearance of information on the implementation of decisions are used as materials in analyzing the implementation of Administrative courts decisions. (Kurniawan & Hidayat, 2022)

The data that has been obtained is then described and analyzed to be able to find solutions regarding the degradation of compliance of government officials in implementing Administrative courts decisions. The description is to be used as a depiction of the problem after the reading of the Administrative courts decision which has permanent legal force. After reading the decision, government officials did not follow and also ignored the decision that defeated them. Analyzing data on the level of compliance of officials in implementing Administrative courts decisions will find solutions that cause a decrease in compliance by government officials.

DISCUSSION AND RESEARCH RESULTS



Source: <https://eksekusi-ptun.djmt.id/> is accessed at 23 June 2024

There is a decreasing level of compliance of government officials with the implementation of Administrative courts decisions. The data shows that from year to year there is a decrease in the compliance of government officials in implementing Administrative courts decisions that have permanent legal force. There are 3 (three) interesting points from the data, first, the implementation of voluntary executions by government officials averages only 3% from year to year. Second, requests for execution by plaintiffs (the public) are increasing from year to year. Third, executions that are carried out/completed are not 100% carried out by all government officials. (Dwipayana et al., 2020)

This data shows the non-compliance of government officials in complying with and implementing Administrative courts decisions. The implementation of judicial decisions, which is a manifestation of the rule of law, is increasingly undermined due to the non-compliance of government officials representing the State. Non-compliance in implementing decisions that have permanent legal force, by voluntarily implementing court orders without waiting for reports from the plaintiff. It is feared that such non-compliance will further reduce the spirit and public confidence in law enforcement agencies in Indonesia.

Most government officials who do not implement Administrative courts decisions do so voluntarily. Decisions that have been read out by the Administrative courts panel of judges must be implemented by government officials voluntarily. After the pronouncement of the verdict that invalidates the decision issued by the government official, the government official must voluntarily change the decision issued. The voluntariness of government officials in carrying out orders from the court is still quite low. (Suhariyanto, 2019)

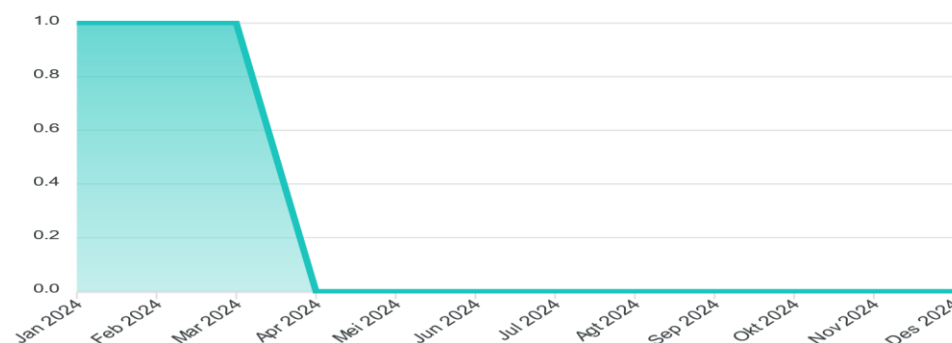


Diagram 1: Stastical Implementation of Voluntary Execution

source: <https://eksekusi-ptun.djmt.id/accesed> at 23 Juni 2024

There are several factors behind the non-implementation of Administrative courts decisions. There are internal factors and external factors. Internal factors are due to the absence of an execution institution in the Administrative courts, because the Chairman of the Administrative courts is only a supervisor of execution, while those who carry out executions are the superiors of these officials. The execution institution as in civil cases is the bailiff and in criminal cases the executor is the prosecutor's office. Administrative disputes still have an execution institution that causes Administrative courts decisions not to be obeyed by government officials.(Latifiani, 2015)

External factors are also the cause of non-implementation of state administrative court decisions. The implementation of Administrative courts decisions is based on personal awareness (self respect) to implement a decision. After the official does not voluntarily implement the decision, it is then reported to the superior official, so that the superior official orders the official to implement the Administrative courts decision. First, the lack of compliance and legal awareness of government officials towards laws and regulations. Second, officials have personal interests that make them reluctant to implement the Administrative courts decision. Third, there is an error of vision in the use of the authority of his position, where government officials act not based on public interests, but only for personal interests. External factors from the interests of government officials are one of the obstacles in the implementation of Administrative courts decisions.(Khairo et al., 2017)

Sincerity in carrying out decisions by government officials without coercion, it turns out that there are still many reports that show a decrease in compliance in implementing Administrative courts decisions. The decline in awareness is due to a person's reluctance to comply with the rules that have been made by the government. After the verdict is read out, then government officials file an appeal, cassation until the verdict is legally binding, officials do not want to implement the decision. Officials' non-compliance in implementing the Administrative courts decision is a form of violation of the law.(Jiwantara et al., 2014)

The impact of the degradation of government officials' compliance in complying with Administrative courts decisions is the weakening of public trust in judicial institutions. Weak public trust in judicial institutions will have an impact on law enforcement in Indonesia. Indonesia in the constitution is declared as a state of law, will turn into an authoritarian state due to weak law enforcement. The implementation of the Administrative courts decision on the Regional Secretary of Pamekasan was won by the plaintiff, but even though the defendant (former regional secretary) won the lawsuit, he was still not returned to his original position. The lawsuit for the construction of the GKI Yasmin church, in a Administrative courts decision that has permanent legal force to be built, but the Regent still has not implemented the Administrative courts decision. Administrative courts verdict in favor of village officials in Kediri, in which the Village Head did not restore the position of the plaintiffs as village officials. The non-compliance of government officials who were defeated in a lawsuit at the Administrative courts will lead to weak public confidence in judicial institutions.(Jiwantara et al., 2014)

The form of the rule of law is to carry out all orders from laws and court decisions. Weakness in carrying out the rules in the rule of law will make the regulations that have been formed less feared by the community and government officials. As a strong state of law, all regulations should be implemented by all elements of society. Administrative courts decisions that have permanent legal force should be carried out by government officials. The decline in compliance of government officials in implementing Administrative courts decisions can be improved by strengthening the judicial institution with the existence of an executorial institution.(Wahyudi, 2021)

The executorial institution is an execution institution that carries out the execution of court decisions. The Religious Court as the executor of the decision is the bailiff of the religious court. The district court in criminal cases as the executor of the decision is the prosecutor. The state administrative court as the executor of the decision is the superior of the official who lost the dispute at the State Administrative Court. Executors in judicial institutions such as prosecutors, bailiffs in religious courts further increase the level of compliance with judicial institution decisions. The absence of a decision executor institution has made several Administrative courts decisions not implemented voluntarily by government officials. Amendments to Law Number 5 of 1986 jo. Law Number. 48 of 2004 jo. Law Number 51 of 2009 concerning the State Administrative Court needs to be

implemented by strengthening the State Administrative Court bailiff as the executor of the State Administrative Court's decision.(Yulius, 2018)

The degradation of compliance of government officials is something that needs to be followed up immediately. Non-compliance with the law will have an impact on law enforcement. Moreover, government officials are an example for the community in obeying the rules of law made by the government. The verdict of Administrative courts Surabaya which requires the Regent of Pamekasan to restore the original position of the Regional Secretary of Pamekasan who was transferred from his position. Data from the Directorate General of Public Information shows that only 5% of Administrative courts decisions are carried out voluntarily by government officials. The reluctance of government officials to carry out decisions that have permanent legal force is something that needs to be solved so that law enforcement institutions are respected by all Indonesian people..(Suhariyanto, 2019)

The factor of non-implementation of judicial decisions from several previous studies emphasizes the low awareness of government officials. This low awareness of government officials requires sanctions that have a deterrent effect as well as executors as the implementation of decisions against these government officials. Administrative sanctions that are reparatory in nature have not been able to have a deterrent effect on government officials who do not implement Administrative courts decisions. Administrative courts decisions will be obeyed by government officials, when there are sanctions that provide a deterrent effect and executors of decisions (executors) against government officials who do not implement Administrative courts decisions.(Veronica et al., 1978)

Many studies have discussed the implementation of state administrative court decisions, but have not yet reached the stage of sanctions that provide a deterrent effect and the executor of the decision of the sanction (executor) which has not been studied in previous studies. The existence of sanctions such as hostage-taking against non-compliant officials and implemented by the bailiff of the state administrative court will strengthen the system of execution of state administrative court decisions. Religious courts execute their decisions by the bailiffs of religious courts, while state courts execute decisions by the prosecutor's office. Strengthening sanctions in the Administrative Court such as temporary hostage sanctions when not implementing decisions and implemented by bailiffs will make administrative court decisions more authoritative..(Dani, n.d.)

Temporary hostage sanctions when officials do not comply with state administrative court decisions will make government officials worried if they do not implement the decision. The temporary hostage sanction will strengthen the legal system in Indonesia because socially the official will be followed by other communities. The concept of the rule of law which emphasizes the importance of legal certainty will be created if the law can be obeyed by the entire community. The beginning of the emergence of Law Number 5-year 1986 concerning state administrative courts until the second amendment, namely Law Number 9-year 2004 and Law Number 51-year 2009, still did not provide strict sanctions against the executor of the decision including the executor of the decision. temporary hostage sanctions carried out by state administrative court bailiffs can increase legal certainty.(Sujianto, n.d.)

The result of the decline in compliance of government officials in implementing Administrative courts decisions is the dysfunction of Indonesian law. Legal dysfunction occurs because the rule of law is not implemented properly. Government officials as defeated parties in administrative disputes in the State Administrative Court should implement court orders. Court decisions that have legal force must be respected by all parties, this is a form of respect for the rule of law. The result of the decline in awareness in complying with the law is the dysfunction of law in Indonesia.(Aulia, 2021)

Regulatory changes in Article 116 of Law Number 51 year 2009 concerning the second amendment to Law Number 5-year 1986 concerning state administrative courts are urgently needed to improve compliance of officials in implementing Administrative courts decisions. Regulatory changes regarding execution originating from officials' own awareness have not been maximized, administrative sanctions are needed that have a deterrent effect on government officials and also the executor of the decision. Forced money sanctions and administrative sanctions that exist in the implementation of Administrative courts decisions still do not provide firmness against government officials. The sanction of reporting to the superior of the official is also still

considered weak. Sanctions in administrative law need to be strengthened with other sanctions that can provide a deterrent effect, including strengthening the Administrative courts Institution as the executor of Administrative courts decisions, not just as a supervisor of execution.(Rosiana Pattipawae, n.d.)

CONCLUSION

Taking a state administrative body or official hostage is an attempt to force them to implement a administrative courts decision that has permanent legal force. The decision is the personal fault of the state administrative official concerned. The application of hostage-taking as a means of coercion in implementing Administrative courts decisions is an important step towards creating a government that is fair, transparent and in accordance with the law. Thus, hostage-taking is expected to encourage the compliance of state administrative agencies or officials with Administrative courts decisions, which in turn will increase legal certainty and justice for the community. As such, hostage taking is an important part of an effective administrative justice system and serves to ensure compliance with the law.

This study provides a perspective in state administrative law that sanctions in the State Administrative Justice Law still do not provide a deterrent effect, so administrative sanctions are needed that provide a deterrent effect on government officials. Administrative sanctions that provide a deterrent effect are needed as a form of increasing compliance of government officials who do not comply with Administrative courts decisions. Administrative sanctions as well as those applied in tax law, namely *gijzeling*, which increases compliance with tax law. Forced summons applied in the ombudsman can also increase compliance with the law. This paper emphasizes a perspective that administrative sanctions that provide a deterrent effect are needed to increase compliance with the implementation of Administrative courts decisions.

This paper has limitations in data sources that only focus on the implementation of Administrative courts decisions. The limitations of data sources on which officials have not implemented the decision cannot be shown due to lack of data. The limited source of data on which officials have not implemented the decision is due to not all data disclosing this information.

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