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EFFORTS TO REALIZE EXECUTORIAL STATE ADMINISTRATION JUDGE DECISIONS AND ITS IMPACT ON STATE ADMINISTRATION AGENCY/OFFICERS COMPLIANCE

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Abstract

The State Administrative Court (PTUN) was established to resolve disputes between the government and its citizens as a result of government actions (bestuurshandelingen) that were considered to violate the rights of citizens. The problem in this study is that many PTUN decisions that have obtained permanent legal force (inkracht) are not executory and are not obeyed by the TUN Officials. This research is legal research with a typology of normative legal research or doctrinal research. The nature of the research used in this study is descriptive analytically. The method used in this study is a normative juridical approach, namely testing and reviewing secondary data. The results of the study concluded that the effort thatcan be taken to realize the decision of an executory PTUN judge to be obeyed by the TUN Official is carried out in 2 (two) ways, namely optimizing the use of Administrative Law instruments and the use of Criminal Law instruments. Both efforts are made in order to realize justice and legal certainty in handling TUN cases in Indonesia and to avoid public distrust in PTUN.

Keywords: Decision, Executory, Compliance

INTRODUCTION

The Constitution of the Republic of Indonesia Year 1945 (UUD 1945) affirms that Indonesia is a state of law.[1] One of the important principles of the rule of law ((rechtsstaat) is the guarantee of the independent exercise of judicial power, free from the influence of other powers to administer justice in order to uphold law and justice.[2]

The constitutional basis for guaranteeing the exercise of judicial power has been contained in Article 24 of the 1945 Constitution, which states that:

(1) Judicial power is an independent power to administer justice in order to uphold law and justice.

(2) Judicial power is exercised by a Supreme Court and subordinate judicial bodies within the general court, religious court, military court, administrative court, and by a Constitutional Court.

(3) Other bodies whose functions relate to judicial power are provided for in law.

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Further regulations regarding the exercise of judicial power are specifically regulated in Law Number 48 of 2009 concerning Judicial Power (Law on Judicial Power). Judicial power in Indonesia is exercised by judicial institutions culminating in the Supreme Court and a Constitutional Court.

The State Administrative Court (PTUN) is a judicial environment under the Supreme Court as an independent judicial power actor, to administer justice to uphold law and justice. The TUN Court is a special type of court, having a position as one of the actors of judicial power for the people seeking justice in State Administration disputes. This is as stipulated in Article 4 of the Law on Judicial Power. Thus, the existence of the TUN Court as a judicial institution that exercises control over the actions of executive institutions is a manifestation of Indonesia as a state of law.

In countries that adhere to legal systems Common Law (rule of law), does not recognize the existence of the TUN Judiciary which is structurally and organizationally separate from the general judiciary (unity of jurisdiction), As for countries that adhere to the legal system Civil Law (rechtsstaat), instead, there is known to be a separation between the general judiciary and the TUN Court (duality of jurisdiction), for example in France, the Netherlands, Germany, Italy and its former colonies in Africa, Latin America, and Asia, including Indonesia. But even though they both apply the system Civil Law, There are still differences between these countries regarding variations in their organizational structures and legal procedures.[3]

Historically, P TUN in Indonesia has existed since 1986, namely with the promulgation of Law Number 5 of 1986 concerning the State Administrative Court on December 29, 1986 and on the basis of Government Regulation Number 7 of 1991, the government established the effective enactment of the State Administrative Court on January 14, 1991. Currently, Law Number 5 of 1986 has been amended by Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning State Administrative Court and amended again by Law Number 51 of 2009 concerning Second Amendment to Law Number 5 of 1986 concerning State Administrative Court (Law PTUN). However, the ambition or desire to form PTUN has actually been pioneered since 1946. This is evidenced by the establishment of the Draft Law on Case Procedures in Matters of Governance initiated by Wirjono Prodjodikoro.[4]

In line with this, Paulus Efendi Lotulung stated that, if it is required from the basic idea of its formation, according to the government's explanation before the plenary session of the House of Representatives (DPR) when delivering its draft law on April 29, 1986, the TUN Court was formed in resolving disputes between the government and its citizens as a result of government actions (bestuurshandelingen) which is considered to violate the rights of citizens with the aim of providing legal protection to the people (both regarding individual or individual rights and community rights).[5] Thus, the establishment of PTUN aims to uphold justice, truth, order, and legal certainty, so as to provide protection to the community, especially in the relationship between the State Administration Officer and the community.[6]

Based on Article 47 of the Law on State Administrative Affairs, the PTUN has the duty and authority to examine, decide, and resolve State Administration disputes. The meaning of state

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administrative disputes (TUN Disputes) is disputes arising in the field of state administration between persons or civil law entities and State Administrative Agencies/Officials, both at the central and regional levels, as a result of the issuance of state administrative decisions, including personnel disputes based on applicable laws and regulations. (Article 1 number 10 of the Law PTUN)

From the definition of a TUN dispute above, the object of the TUN dispute that is tried by the PTUN is a decision issued by the State Administration Officer. According to Article 1 number 9 of the Law on PTUN, that:

"A State Administrative Decree is a written determination issued by a State Administrative Agency or Officer containing State Administrative Law Actions based on applicable laws and regulations, which are concrete, individual, and final, which cause legal consequences for a person or civil law entity".

Based on Article 115 of the Law on PTUN ,that only PTUN decisions have obtained permanent legal force (inkracht) that can be implemented. The provisions regarding the execution of PTUN decisions are regulated in Articles 116 to d. Article 119 of the Law on the Judiciary of TUN. As stated in the previous section, with the birth of Law Number 51 of 2009, namely the Second Amendment of the Law on the Rule of the Republic of Indonesia, the decision of the Law has had force executable. This is due to sanctions in the form of dwangsom and administrative and publication sanctions against TUN officials (defendants) who do not want to implement the PTUN decision.

The provisions regarding administrative sanctions that will be received by TUN agencies/officials are specifically regulated in Article 81 of Law Number 30 of 2014 concerning Government Administration (UUAP), which consists of light, moderate and severe administrative sanctions.

Although normatively, the settlement of government administrative disputes through PTUN is considered "ideal", marked by two amendments to the P TUN Law, including the inclusion of sanctions in the form of coercive efforts (dwangsom) and/or administrative sanctions for TUN officials who do not want to implement the judge's decision. But in reality on the ground, many decisions of judge PTUN have obtained permanent legal force (inkracht van gewijsde) tNot executory. The executory decision of judge P TUN is a decision that is final and binding and is obeyed by the relevant TUN official.

The practice of implementing non-executory PTUN rulings has occurred in lawsuit cases Partai Golongan Karya (Partai Golkar) Aburizal Bakrie stronghold and Partai Persatuan Pembangunan (Partai PPP) Djan Faridz's camp, which challenged the decision of the Minister of Law and Human Rights of the Republic of Indonesia (Menkumham), Yasonna H. Laoly. Finally, the lawsuit was granted to the level of cassation in the Supreme Court (inkracht) with Judge Number: 490K/TUN/2015 to Partai Golkar stronghold Aburizal Bakrie and Judgment Number: 610/TUN/2015 to Partai PPP stronghold Djan Faridz. Nevertheless, Yasonna H. Laoly as the losing party (defendant) does not want to obey and implement the judgment.[7]

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Non-compliance with the decision of judge P TUN which has been inkracht by the TUN body/official, may occur because of the absence of an executory institution, as well as a strong legal basis resulting in the decision of the PTUN has no force . The TUN Law also does not regulate firmly and clearly the issue of coercive power of PTUN decisions, so that the implementation of the execution of decisions really depends on the compliance of TUN officials in obeying the judge's decision.

Departing from the above problems, the author intends to study more deeply related to the implementation of the execution of PTUN decisions and their influence on the compliance of TUN officials which will be poured into a study entitled: "Efforts to Realize the Decisions of Executory State Administrative Court Judges and Their Effects on the Compliance of State Administrative Officials."

RESEARCH METHODS

This research is a legal research with typologies of normative legal research or doctrinal research. The nature of the research used in the study is descriptive analytically.

The approach method used to answer legal issues in this study is Normative Juridical using a statutory approach and conceptual approach[8] namely literature material related to the implementation of the execution of PTUN decisions and their effect on the compliance of TUN officials.

Research data were collected by document study techniques and interviews. The data obtained by this research data are analyzed in a qualitative juridical manner, namely qualifying and classifying problems systematically and then analyzed qualitatively.

DISSCUSION

A. The decision of the Judge of the State Administrative Court that has been inkracht is not obeyed by the State Administrative Officer

According to Sudikno Mertokusumo, the implementation of the judge's decision or execution is essentially nothing but the realization of the obligation of the party concerned to fulfill the achievements stated in the decision.[9] Implementing a decision means being willing to fulfill the obligation to perform imposed by the judge through his decision.[10] With the passing of a verdict by the judge examining the case, in practice it often happens that the verdict cannot be said to have been completed. The problem that arises is whether or not the decision can be implemented or executed. This is so that the plaintiff does not win formally only.

Basically, there are 3 (three) types of execution of judgments, which are:[11]

1 Executions regulated by Article 196 HIR or Article 208 Rbg are carrying out judges' rulings, in which people are sentenced to pay money.

2 The execution referred to in Article 225 HIR or Article 259 Rbg is to carry out a judge's decision in which people are sentenced to commit an act. This punishment cannot be carried out by force.

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3 Real execution not regulated in HIR.

In Article 115 of the PTUN Law that only decisions that have obtained permanent legal force can be implemented. Court decisions that have not yet acquired legal force still do not have the power of execution.

Based on the current reality, the existence of PTUN still does not meet the expectations of the justice-seeking community. Many PTUN rulings cannot be executed. This condition is a concerning fact that the existence of PTUN has not been able to guarantee the justice-seeking community in the administrative field of government. It is conceivable if a PTUN decision does not have executory power, how can the law and the public supervise the running of the government.

Based on the results of the author's research, it shows that there are several obstacles in the implementation of the execution of the decision of the PTUN judge, including:

1. The execution of the PTUN Decision is voluntary;
2. Weak administrative sanctions;
3. Forced money payment arrangements (dwangsom) remains unclear;
4. Announcements through the mass media are ineffective; and
5. Absence of Special Executory Institutions.

Of the several reasons/obstacles in the implementation of the execution of the decision of the PTUN judge above, considering that the execution of the TUN decision is only voluntary, resulting in non-compliance of the TUN Official in the process of executing the decision. The PTUN Law does not regulate firmly and clearly the issue of the coercive power of PTUN decisions, so that the implementation of decisions depends heavily on the good faith of the TUN Agency or Officials in obeying the law. The problem of non-compliance of the TUN Officials in implementing the decision of the PTUN can cause legal uncertainty in the implementation of government and development.[12]

Regulatory compliance has dimensions that refer to the compliance dimension. Septi Kusumadewi explained that a person can be said to be obedient to others if a person can be said to be obedient to others if a person has 3 (three) dimensions of obedience related to obedient attitudes and behavior. Here are the dimensions of compliance:[13]

1. Trust

Belief in the purpose of the rules concerned, regardless of their feelings or values towards the group or its power holders or oversight.

2. Receive

Accept norms or values. A person is said to obey if the person concerned accepts either the presence of norms or from a regulation whether written or unwritten. Acceptance is the tendency of people to be influenced by persuasive communication from knowledgeable people

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or liked, and it is also an act that is done happily because it believes in social pressures or norms in a group or society.

3. Act

Do something at the behest or behest of someone else. It means the application of those norms or values in life. A person is said to be path if the norms or values of a rule are embodied in deeds, if the norms or values are implemented then it can be said that he obeys. "Belief" and "accept" are dimensions of obedience related to attitudes, and "act" is a dimension of obedience related to aspects of obedient behavior in a person. The explanation above can be concluded that a person is said to be obedient if he has trusted, accepted, and done something ordered by others.

In law enforcement practice, there is a Principle Res Judicata Pro Veritate Habetur which means that the decision (in the broadest sense including determination) of the court is law, so that if there are parties who do not obey or are not willing to carry out the decision / court determination voluntarily for various reasons that are not in accordance with the The law is the same as against the law.[14] This principle is also adopted in the provisions of Article 18 paragraph (3) of the UUAP. The article stipulates that Government Agencies and/or Officials are categorized as acting arbitrarily if they contradict the decision of the Court which has permanent legal force.

The implementation of PTUN decisions essentially uses the principle Contrarius Actus which means that the state administrative officer who issued the permit has the right to also revoke the permit.[15] In connection with the use of this principle, against court decisions that have permanent legal force, there are 2 (two) possibilities that can be done, namely: (i) the defendant official carrying out the decision means voluntarily implementing the court decision that has permanent legal force, and (ii) the defendant official does not carry out the court decision that has permanent legal force which contains obligations that must be carried out according to the provisions of Article 97 paragraph (9) letter a, b, c Act P TUN .

Regarding the execution of PTUN decisions that have permanent legal force, the regulations in the Law on PTUN are influenced by the Floating Execution System. This means that the authority to implement court decisions that have legal force remains fully handed over to authorized bodies or officials, without the authority for the State Administrative Court to impose sanctions.[16]

In addition to regulating the implementation of automatic execution, the Law also regulates the implementation of PTUN decisions through "hierarchical execution" Article 116 paragraph (3) stipulates that if the defendant does not implement the court decision in the form of revocation or issuance of a new KTUN, then the plaintiff can apply to the Chief Justice to order the defendant to implement the decision. Then, if the defendant still does not carry out the order from the Chief Justice, then the defendant's superior officer must order that the defendant official implement the court decision, this is as stipulated in Article 116 paragraph (4) of the Law on PTUN. If the defendant official still refuses to implement the court decision, Article

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116 paragraph (6) of the Law on PTUN stipulates that the Chief Justice can apply to the President as the highest authority to order the official to implement the court decision.

Based on these arrangements, it can be said that the Law on the Administrative Court emphasizes the implementation of PTUN rulings on rasa self-respect and legal awareness from TUN officials of the content of the judge's decision to carry it out voluntarily without any coercive efforts (dwang middelen) which can be directly felt and imposed by the court against the TUN official concerned.[17]

The use of hierarchical execution based on self-self-respect this indicates a lack of power the judiciary is given laws and regulations, so in practice it is less able to exert pressure on officials or government bodies to implement decisions.

After the 2004 Law on the Administrative Court, the mechanism for implementing the PTUN decision began to use fixed execution system, That is, executions whose implementation can be forced by the court through coercive means regulated in laws and regulations. Article 116 paragraph (4) of the 2004 Law states that:

"In the event that the defendant is unwilling to carry out the decision of the Court that has obtained permanent legal force, the official concerned is subject to coercive efforts in the form of payment of a sum of forced money and/or administrative sanctions."

Based on this, it shows that the 2004 Law has imposed administrative sanctions and/or forced money as a form of coercive effort in implementing the PTUN decision.

After the enactment of the 2004 Law on the Republic of Indonesia, a second amendment was made through the Law on the 2009 Law. Article 116 paragraph (7) of the 2009 Law on PTUN has reaffirmed the imposition of coercive efforts for government officials to implement the decision of the PTUN, namely by stating that:

"Provisions regarding the amount of forced money, types of administrative sanctions, and procedures for implementing forced money payments and/or administrative sanctions are regulated by laws and regulations".

However, until now there have been no laws or regulations that specifically regulate the implementation of the provisions of Article 116 paragraph (7). Based on this type of execution, the question arises how is the legal culture of state administrative officials formed in the practice of implementing PTUN decisions? The existence of such legal defiance shows that government officials' compliance with the implementation of PTUN rulings is still low.

Prildy Nataniel explained that the reason for the low level of compliance of officials with the implementation of the PTUN decision was because there were no sanctions imposed if there was a violation of the decision. In addition, the low level of compliance is also due to the absence of guarantees of interest if they obey the law.[18] In this case, the losing party in the dispute will certainly feel that his interests are not guaranteed if he obeys the decision of the TUN court, so he prefers not to obey the court decision. These things then form a bad legal culture in the implementation of PTUN decisions in Indonesia, so that law enforcement of the implementation of PTUN decisions cannot run optimally.

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If the TUN official carries out his duties not because of state duty, then the responsibility is imposed personally on the TUN official concerned. This is in accordance with the Error Theory developed from Yurisprudensi Counsil d'Etat what distinguishes service errors (Faute de serve) and personal mistakes (Faute de personelle). The steps that have been taken by the government to revise the PTUN Law are one of the advances in the development of legal certainty in the field of State Administration. In essence, the rule of law can only be achieved if the decision of the PTUN judge can be executed.

As a comparison regarding compliance with a court decision, the author compares the Constitutional Court Decision (Constitutional Court Decision) which in fact is currently obeyed by all litigants without exception (including the Government and the DPR obeying it), even though the Constitutional Court Decision has no coercive power and to enforce its decision, the Constitutional Court does not need the assistance of the National Police.

The decision of the Constitutional Court since it was pronounced in a plenary session open to the public juridically has binding power, evidentiary power and executory power. These three ruling powers have long been known in Civil Procedure Law in general.[19] However, the powers of this ruling are also applied in the Constitutional Court Procedural Law to test the law requested.[20] the following is a description of the three powers of the judgment:

1. Binding Strength

Based on Article 10 paragraph (1) letter a of Law Number 24 of 2003 concerning the Constitutional Court (Law of the Constitutional Court) states that:

"The Constitutional Court has the authority to adjudicate at the first and last instance whose decisions are final to test the law against the 1945 Constitution".

Furthermore, this Constitutional Court decision is also stated in the provisions of Article 47 of the Constitutional Court Law which states that:

"The Constitutional Court's decision acquires permanent legal force since it has been pronounced in a plenary session open to the public".

Based on the provisions of Article 47, it means that no legal remedy can be taken or utilized by the petitioners to respond to the decision of the Constitutional Court, if the decision is not in accordance with their application. Technically juridical, the petitioners or parties to the case of the application for judicial review are bound by the Constitutional Court Decision. Judgment as a legal act of state officials causes the parties in the case to be bound by the decision in question which has established what becomes law, both by changing the old legal state and at the same time creating a new legal state. The parties are bound by the judgment, it can also be interpreted that they will comply with the change in legal circumstances created through the judgment and carry it out.[21]

The binding force of Constitutional Court rulings is theoretically different from ordinary court rulings. Ordinary court decisions are only binding on litigants according to the application filed. On the contrary, the decision of the Constitutional Court is not only binding on the applicants,

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the government and the DPR, but also all persons, state institutions and legal entities within the jurisdiction of Indonesia.

2. The Power of Proof

The evidentiary power of the Constitutional Court Decision is contained in Article 60 of the Constitutional Court Law which states that:

"Charge materials, paragraphs, articles, and/or sections in laws that have been tested, cannot be requested for retesting".

This means that the Constitutional Court's decision on the law that has been requested to be tested can be used as evidence, because in accordance with the provisions of the article, the Constitutional Court is juridically prohibited from deciding cases of applications that have previously been decided.

The decision of the Constitutional Court that has the force of law can still be used as evidence with positive definite force, that what is decided by the judge is considered correct. Proof to the contrary is not allowed.[22] that what has been decided by the judge should be considered correct (resjudicata proveritate habetur) is a fundamental principle in the Constitutional Court Decision testing the law.

3. Executory Power

A judgment that has only the force of binding law is not sufficient and meaningless if it cannot be realized or executed. Thus, a judgment that has ecutory power is a judgment that expressly establishes its rights and laws to then be realized through execution by state instruments.[23]

This executory power is prevalent in ordinary court practice in the country. On the contrary, the executory power of the Constitutional Court Decision is considered to have manifested in the form of an announcement contained in the state gazette within a period of no later than 30 days from the time the decision was pronounced in a plenary session open to the public.[24] There is no need for a special apparatus to carry out (execute) the decision, because the nature of the decision is declaratoir.[25]

Referring to Article 47 and Article 57 paragraph (3) of the Constitutional Court Law, it can be underlined that the decision of the Constitutional Court has obtained permanent legal force since it has been pronounced in a plenary session open to the public, while its executory power has been published in the "State Gazette of the Republic of Indonesia".

The Constitutional Court's decision in examining the law is technically juridical in nature declaratoir-constitutive. This means that the decision of the Constitutional Court in addition to stating or explaining something that becomes law, as well as negating or creating a new legal situation. The Constitutional Court's decision in the review of the law, although it carries certain legal consequences, but the provisions of Article 58 of the Constitutional Court Law state that:

"The law tested by the Constitutional Court remained in effect before a ruling declared it contrary to the 1945 Constitution"

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If the government or state institutions do not comply with the Constitutional Court Decision, but still enforce laws that have been declared by the Constitutional Court to have no binding legal force, it is an unlawful act whose supervision is in the mechanism of constitutional law.[26]

B. Efforts that can be taken to realize the decision of the executory judge of the State Administrative Court to be obeyed by the State Administrative Officer

The existence of PTUN in the judicial system in Indonesia is a manifestation of the state's commitment to provide legal protection for individual rights and community rights, so as to achieve harmony, harmony, balance, as well as dynamism and harmonization of relations between citizens and the State.

The establishment of PTUN is an advanced idea in order to realize the principle of the rechtsstaat. However, the problem for almost 36 (thirty-six) years of existence of the PTUN is that the execution of the PTUN decision that has permanent legal force by TUN officials is not fully effective, even though the mechanisms and stages of execution have been carried out.

Based on the author's findings that there are several efforts that can be taken so that a decision of the PTUN judge is obeyed by the TUN Official, including:

1. Optimization of the use of Administrative Law instruments

The use of Administrative Law instruments in implementing PTUN decisions is regulated in Article 116 of the PTUN Law, which states that:

(1). A copy of the judgment of the court that has obtained permanent legal force, shall be sent to the parties by registered letter by the clerk of the local court by order of the chief justice who tried it in the first instance no later than within 14 (fourteen) working days.

(2). If after 60 (sixty) working days the court decision that has obtained permanent legal force as referred to in paragraph (1) is accepted that the defendant does not carry out its obligations as referred to in Article 97 paragraph (9) point a, the disputed state administrative decision has no legal force anymore.

(3). In the event that the defendant is determined to have to carry out the obligations as referred to in Article 97 paragraph (9) point b and letter c, and then after 90 (ninety) working days it turns out that the obligations are not carried out, then the plaintiff submits an application to the chief justice as referred to in paragraph (1), so that the court orders the defendant to implement the court decision.

(4). In the event that the defendant is unwilling to carry out a court decision that has obtained permanent legal force, the official concerned is subject to coercive efforts in the form of payment of a sum of forced money and/or administrative sanctions.

(5). Officials who do not implement the court decision as referred to in paragraph (4) are announced in the local print mass media by the clerk since the non-fulfillment of the provisions referred to in paragraph (3).

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(6). In addition to being announced in the local print mass media as referred to in paragraph (5), the chief justice must submit this matter to the President as the holder of the highest government power to order the official to carry out court decisions, and to the people's representative institution to carry out supervisory functions.

(7). Provisions regarding the amount of forced money, types of administrative sanctions, and procedures for implementing forced money payments and/or administrative sanctions are regulated by laws and regulations.

In the provisions above, several administrative efforts are regulated in implementing the PTUN decision as follows:

1. Use of coercive measures in the form of payment of forced amounts of money and/or administrative sanctions;
2. Announcements in the local print mass media and submissions to the President as the holder of the highest government power to order the official to carry out court decisions, and to the People's Representative Institution to carry out supervisory functions.

The above administrative efforts, in their implementation, are still ineffective considering that until now there have been no regulations, especially those regulating the amount of forced money, types of administrative sanctions, and procedures for implementing forced money payments and / or administrative sanctions as mandated in Article 116 paragraph (7) of the PTUN Law. This causes a legal vacuum in the implementation of PTUN decisions in Indonesia, so it is very natural that TUN Officials rarely comply with PTUN decisions. Therefore, in the future in order for the PTUN decision to be complied with by the TUN Officials, it is necessary to optimize the use of Administrative Law instruments, namely by establishing regulations regulating the amount of forced money, types of administrative sanctions, and procedures for implementing forced money payments and / or administrative sanctions, so that future TUN decisions have legal certainty and meet the community's sense of justice. In addition, superior officials (President) and people's representative institutions (DPR / DPRD) in accordance with their authority to participate in realizing executory PTUN decisions.

2. Use of Criminal Law Instruments

In order for the PTUN decision to be accountable and obeyed by government officials, according to the author, there is no other choice, namely by borrowing the concept of Criminal Law based on the Theory of Legal Transplantation. According to Alan Watson that Legal Transplants is transfer of the rule of law from one country to another, or from one society to another.[27] More simply, legal transplantation can also be interpreted as a process of transferring or borrowing legal concepts between existing legal systems.[28] In other words, as the process by which the laws and legal institutions of one country are adopted by another state.[29] The transplantation of law in terms of ideas, conceptions, solutions, or institutional structures and methods from one country to another has become a tendency or even a habit in the framework of the process of legal development in various countries around the world.[30]

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The use of legal transplantation has also been carried out in criminal law enforcement practice, where the concept of Administrative Law is "borrowed" or adopted by the Criminal Law. For example, the concept of Discretion and Abuse of Authority (as the concept of HAN) was adopted by criminal law into the formulation of norms contained in the National Police Law, the Prosecutor's Law, and the Corruption Law.

Based on the Legal Transplant Theory above, according to the author, one of the appropriate efforts so that the PTUN decision is obeyed by the TUN Official, namely in the implementation of the execution of the PTUN Decision must be carried out forcibly through the use of Criminal Law. The use of criminal law in the process of enforcing TUN case law as the last step (ultimum remedium). This is because in practice in the field as the author has described above, that most PTUN decisions are not obeyed by the TUN Officials based on good faith, even though there have been administrative sanctions and forced money charges (dwangsom).

Although in the criminal law there are provisions regarding criminal sanctions for everyone deliberately disobeying orders or requests made according to law by officials as stipulated in Article 216 paragraph (1) of the Criminal Code. However, the provision does not specifically regulate criminal threats for anyone who does not implement court decisions, including in this case the decision of the PTUN. Therefore, in the future in order to realize a legal certainty in handling TUN cases in Indonesia and to avoid distrust to the judiciary, it is necessary to provide criminal sanctions in the TUN Justice Law as a deterrent effect for non-compliant TUN Officials to implement PTUN decisions in good faith.

CONCLUSION

The fundamental reason for the decision of the PTUN judge who already has permanent legal force (inkracht van gewijsde) not obeyed by the TUN Official, because the decision is only voluntary, resulting in non-compliance of the TUN Official in the decision execution process. In addition, the cause of the PTUN decision not being obeyed by the TUN Official is because Law Number 5 of 1986 concerning the State Administrative Court as last amended Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning the State Administrative Court and its implementing regulations do not regulate firmly and clearly on the issue of forced attempts by the decision of the TUN Court, so that the implementation of the decision depends very much on the good faith of the TUN Officer in obeying the law.

Efforts that can be taken to realize the decision of the executory PTUN judge to be obeyed by the TUN Officer, including: a) Optimization of the use of Administrative Law instruments, be it the use of forced efforts in the form of forced money payments (dwangsom) and/or administrative sanctions, as well as the role of superior officials (President) or people's representative institutions in accordance with their authority in realizing executory PTUN decisions, so that in the future PTUN decisions have legal certainty and meet the sense of justice of the community. b) The use of criminal legal instruments as a result of legal transplantation is a last (ultimum remedium) when the use of administrative legal instruments such as forced payment of money (dwangsom) and/or administrative sanctions are not

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implemented by the TUN Officer in implementing the PTUN decision. This is done in order to realize justice and legal certainty in handling TUN cases in Indonesia and to avoid distrust to PTUN.

References

Books

1. Abdul Kadir Muhamad, Hukum Perdata Indonesia, Citra Aditya Bakti, Bandung, 2000.
2. Alan Watson, Legal Transplants an Approach to Comparative Law, Scottish Academic Press, America, 1974.
3. Iriyanto A. Baso Ence, Negara Hukum dan Hak Uji Konstitusionalitas Mahkamah Konstitusi (Telaah Terhadap Kewenangan Mahkamah Konstitusi), Alumni, Bandung, 2008.
4. M.Nasir, Hukum Acara Perdata, Djambatan, Jakarta, 2003.
5. Maruarar Siahaan, Hukum Acara Mahkamah Konstitusi Republik Indonesia, Sinar Grafika, Jakarta, 2012.
6. Paulus Efendi Lotulung, Lintasan Sejarah dan Gerak Dinamika Peradilan Tata Usaha Negara (PERATUN) Di Mata Paulus Effendi Lotulung, Salemba Humanika, Jakarta, 2013.
7. Hukum Tata Usaha Negara dan Kekuasaan, Salemba Humanika, Jakarta, 2013.
8. Peter Mahmud Marzuki, Penelitian Hukum, Interpratama Offset, Jakarta, 2005.
9. Philipus M Hadjon dan Tatiek Sri Djatmiati, Argumentasi Hukum, Gadjah Mada University Press, Yogyakarta, 2009.
10. Roger Cottorell, Law, Culture, and Society, Ashgate, England, 2006.
11. Sudikno Mertokusumo, Mengenal Hukum, Universitas Atma Jaya Press, Yogyakarta, 2010.
12. W Riawan Tjandra, Hukum Acara Peradilan Tata Usaha Negara, Universitas Atma Jaya, Yogyakarta, 2005.
13. Wirjono Projodikoro, Asas-asas Ilmu Negara dan Politik, Eresco, Bandung, 1971.
14. Zairin Harahap, Hukum Acara Peradilan Tata Usaha Negara, RajaGrafindo Persada, Jakarta, 2005.

Laws and Regulations

1. Constitution of 1945 4th Amendment;
2. Law Number 48 of 2009 concerning Judicial Power
3. Law Number 5 of 1986 concerning State Administrative Court as last amended Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Court;
4. Law Number 5 of 2014 concerning State Civil Apparatus.
5. Law Number 30 of 2014 concerning Government Administration.
6. Government Regulation Number 7 of 1991 concerning the Application of Law Number 5 of 1986 concerning State Administrative Court.

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Others

1. Frederick Schauer, "The Politics and Incentive of Legal Transplantations", Working Paper, Center for International at Harvard University No. 44, 2000.
2. Hari Purwadi dan Adriana Grahani Firdausy, "Konsekuensi Transplantasi Hukum terhadap Pancasila Sebagai Norma Dasar dan Hukum Lokal", Jurnal Yustisia, Vol. 4 No.1, 2015.
3. Prildy Nataniel Boneka, "Tinjauan Hukum Putusan PTUN Dalam Rangka Eksekusi Putusan Yang Telah Memperoleh Kekuatan Hukum Tetap", Lex Administratum Vol. 2, No. 2 2014.
4. Septi Kusuma Dewi, dkk. "Hubungan Antara Dukungan Sosial Peer Grup Dan Control Diri Dengan Kepatuhan Terhadap Peraturan Pada Remaja Putri Di Pondok Pesantren Modern Islam Assalaam Sukoharjo", Jurnal Ilmiah Psikologi Candrajiwa, 1(2), 2012.
5. Supandi, "Kepatuhan Pejabat Dalam Menaati Putusan Pengadilan Tata Usaha Negara", Universitas Sumatera Utara, Medan, 2005.
6. Untoro, "Self-Rescpect Dan Kesadaran Hukum Pejabat Tata Usaha Negara Menuju Keadilan", Pandecta: Research Law Journal Vol. 13, No. 1, 2018.