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GOVERNMENT OFFICIALS SANCTIONS NOT IMPLEMENT THE DECISIONS OF *THE STATE ADMINISTRATIVE COURT*

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Abstract

This study aims to analyze the imposition of sanctions on government officials who do not implement The State Administrative Court Decision. The research method used is normative juridical. The results showed that Government Officials who did not carry out their obligations as ordered in The State Administrative Court Decision which had permanent legal force (in kracht van gewijsde), according to the provisions of Article 116 paragraph (4) of Law Number 51 of 2009 concerning the Second Amendment to the Law -Law Number 5 Year 1986 regarding State Administration Judiciary as previously described, State Administration Officials may be subject to administrative sanctions. Administrative sanctions as regulated in Article 4 of Government Regulation Number 48 of 2016 concerning Procedures for Imposing Administrative Sanctions on Government Officials are a) Minor administrative sanctions; b) Medium administrative sanctions; and c) Heavy administrative sanctions. Each official may be subject to light, medium and heavy administrative sanctions depending on the severity of the offense from the official concerned.

Keywords: Legal Sanctions, Judicial Decisions, State Administration, Government Officials.

A. INTRODUCTION

Indonesia is a country based on law (rechtsstaat*) not a state based on mere power (*machtsstaat), so it can be concluded that all aspects of the life of the nation and state must be guided by the laws in force in Indonesia. This is in accordance with the Explanation of Article 1 paragraph (3) of the Constitution of the Republic of Indonesia Year 1945 Fourth Amendment. Because the Indonesian state is a state based on law, one of the principles of the rule of law is the guarantee of the implementation of the power of an independent judicial institution, free from all interference from extrajudicial power to administer justice in order to uphold order, justice, truth and legal certainty that is able to provide protection to the community.

The principle of freedom of judicial power in the Law on the Principles of Judicial Power, namely free from interference by other state powers and free from coercion, directives or recommendations from extra-judicial parties, except in cases permitted by law.[1] In connection with the above, in order for development in the field of law to be categorized as successful, there must be a guarantee of legal certainty (*law enforcement*), so that all levels of Indonesian society can trust, respect and not a priori the process of law implementation in Indonesia. Development in the field of law should not only focus on making laws and regulations (legal drafter), but also pay attention to the quality (skill) and mentality of law enforcement officers.[2]

The Seybold REPORT
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As a democratic country, Indonesia has a constitutional system with executive, legislative and judicial institutions. Of the three institutions, the executive has the largest portion of roles and authority when compared to other institutions, therefore there needs to be control over the government for checks and balances. To control the executive power, a judicial or judicial institution is needed. With regard to judicial power in Article 24 of the 1945 Constitution jo. Law No. 4 of 2004 states that judicial power is exercised by a Supreme Court and subordinate judicial bodies within the general court, religious court, military court, state administrative court and by a Constitutional Court.[3]

The birth of *The State Administrative Court* can be concluded as a demand of the Indonesian people who feel their rights as citizens are violated by the government, in addition to preventing maladministration, as well as all forms of abuse of authority by the government. As a country based on law (rechtsstaat), of course, the actions of the government must be based on applicable legal provisions.[4] A juridical examination of government actions is required and tests carried out on government actions must result in protection of the interests of the people. If the action is contrary to the interests of the people, then the interests of the people cannot be arbitrarily sacrificed. With large and broad authority, it raises the potential for abuses such as "*abuse of power"* and "*excessive power*" so serious supervision is needed in this matter.[5]

The State Administrative Court was established based on Article 47 of Law No. 5 of 1986 concerning *The State Administrative Court* which states that the court has the duty and authority to examine, decide, and resolve State Administrative disputes. The purpose of the establishment of *The State Administrative Court* is as a juridical control over the actions of state administrative bodies/officials, both preventively and repressively. In addition, the purpose of *The State Administrative Court* is also to provide legal protection for the state administrative body/official itself if it has acted correctly in accordance with applicable legal regulations.[6]

The State Administrative Court 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 with the aim of providing legal protection to the people. The establishment of a judicial body that is given the power to prosecute government officials who use their governmental authority by violating the rights of citizens in order to provide legal protection to their citizens is a step forward in order to realize the rule of law. *The State Administrative Court*, serves the justice-seeking community in the field of State Administrative, especially against Government decisions that violate the law and harm the community as stipulated in Article 1 point 4 of Law Number 5 of 1986 as last amended by Law Number 51 of 2009 concerning State Administrative Court. *The State Administrative Court* is aimed at creating *good* government, with the general principles of good government (*algemene beginselen van behoorlijk bestuur*) functioning to test the validity of a government action in addition to applicable laws and regulations.

Dispute resolution "Government Administration" does not have executory power even though it has undergone 2 (two) changes in law, namely, Law No. 9 of 2004 concerning Amendments to Law No. 5 of 1986 concerning State Administrative Court. Promulgated on March 29, 2004 State Gazette of the Republic of Indonesia of 2004 Number 35 and Law No. 51 of 2009

The Seybold REPORT
ISSN 1533-9211
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concerning the Second Amendment to Law No. 5 of 1986 concerning State Administrative Court. Promulgated on October 29, 2009 State Gazette of the Republic of Indonesia Year 2009 Number 160. This condition is a concerning fact that the existence of *The State Administrative Court* has not been able to bring justice to the community within the administrative scope of government. The principle of the existence of the State Administrative judiciary, to place judicial control in the administration of good governance is biased in the Indonesian constitutional system. If a *The State Administrative Court* decision does not have executory power, how can the law and the public supervise the running of the government carried out by State Administrative officials.[7]

The reality that exists is very much echoed where the establishment of *The State Administrative Court* has not been able to provide justice for the community related to services in the field of government administration. Therefore, to centralize judicial supervision in running the wheels of government in accordance with applicable regulations, the decision of *The State Administrative Court* must have executory power, because legal provisions and the public cannot supervise the government run by officials who have authority.[8]

This is a problem that is still a question. The explanation contained in Article 116 of Law Number 9 of 2004, which is expected to comply with the fundamental weaknesses of Law Number 5 of 1986, especially in the implementation of State Administrative Court decisions, cannot be a guide and is still unable to be used as a guide in implementing State Administrative Court decisions that have been incracht. This situation can be an inhibiting factor for development in order to improve and improve the quality of Indonesian law, which in this case is the State Administration Law

B. DISCUSSION

1. Application of Administrative Sanctions for Government Officials Who Do Not Implement the PeraState Administrative Decision

State Administrative Decree is one form of action of the State Administrative Agency or Officer in the field of public law. The State Administration Agency or Officer in order to carry out its duties to achieve the objectives of the Republic of Indonesia as mandated in Paragraph IV of the Preamble to the 1945 Constitution requires legal instruments as a means to regulate public life, to control and as a means of control over community life activities in order to create security, order, and peace in the life of the state and nation.

In addition to the non-compliance of officials, Supandi also saw from the weak side of the execution system regulated in Law Number 5 of 1986 concerning State Administrative Court, causing the public to still be pessimistic about the existence of *The State Administrative Court* institution.[9] Arifin Marpaung sees that the constraints of execution are also related to inter-time problems as a result of the change in the system of implementing decisions from a voluntary system and hierarchy of positions to a system of forced efforts. This problem arises because there is no transitional provision governing the event.[10]

The Seybold REPORT
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The problem of execution of decisions of *The State Administrative Court* is a general legal phenomenon, as said by Paulus Effendie Lotulung, that the issue of execution in various countries, even though it is regulated by various regulations and mechanisms, there is still no effective juridical coercive effort to force the agency or official concerned to obey the contents of the decision.[11] The judge's decision in terms of ontology has its own object of study, namely the application of law to facts that contain a definitive solution to a dispute arising from these facts or facts.[12] Therefore, in order for a verdict to provide a definitive resolution to a dispute, it must be able to ensure that the verdict is a decision produced through an impartial, objective, fair, and humane decision-making process so that it can be accepted or accepted by the parties concerned and by the general public.

A judge's decision that has the force of law remains if it is not implemented by the defendant, means that it is not useful and has no legal certainty. Even though the judge's decision is a law or law that binds between the parties concerned. Therefore, it is natural for the defendant to voluntarily implement the decision of *The State Administrative Court*. Given that in a judge's decision has contained 3 things that are legal arguments in the following judge's decision:

1) law as a ruling that has authority (positivity); law as order (coherence).
2) Law as the proper regulation of human relations (justice); and
3) These legal arguments essentially all demand a claim to the judge's decision.

The claim in question is that every judge's decision must contain three things that constitute the ideal of law, namely: positivity, coherence, justice.[13]

The application of administrative sanctions in the decision of state administrative cases in *The State Administrative Court* has not been implemented optimally because there is no legislation regarding *The State Administrative Court* that is coercive on state administrative bodies / officials to implement decisions that have permanent legal force (*inkracht van gewijsde* Therefore, so that the implementation of the judgment seems barren, then based on Article 116 of Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning *The State Administrative Court*, the Chairman of *The State Administrative Court* can submit a written request to the President as the Head of the Supreme Government to give pressure to the Defendant to implement the decision that has permanent legal force (*inkracht van gewijsde*).[14] Obstacles faced in connection with the Application of Administrative Sanctions in State Administrative Case Decisions include the following:

a. There is still low awareness of State Administrative Officials in implementing decisions with permanent legal force.
b. The absence of active participation of the Defendant and the lack of supervision over the implementation of the PeraState Administrative's judgment.
c. There are no laws and regulations regarding *The State Administrative Court* and a special budget in the implementation of administrative sanctions in *The State Administrative Court*.[15]

The Seybold REPORT
ISSN 1533-9211
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State Administrative Officials who do not carry out their obligations as instructed in *The State Administrative Court* Decision with permanent legal force (*in kracht van gewijsde*), then according to the provisions of Article 116 paragraph (4) of Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts as previously described, State Administrative Officials may be subject to administrative sanctions.

Administrative sanctions as stipulated in Article 4 of Government Regulation Number 48 of 2016 concerning Procedures for Imposing Administrative Sanctions on Government Officials are a) Light administrative sanctions; b) Moderate administrative sanctions; and c) Severe administrative sanctions. Each official may be subject to light, moderate and severe administrative sanctions depending on the severity of the violation of the official concerned.

The provisions requiring officials to carry out court decisions with legal force are still regulated in Article 72 paragraph (1) of Law 30 of 2014 concerning Government Administration. Meanwhile, Article 80 paragraph (2) of Law Number 30 of 2014 concerning Government Administration regulates the imposition of moderate administrative sanctions, if they do not implement court decisions with permanent legal force (*in kracht van gewijsde*).

The constraint of the mechanism for imposing administrative sanctions is still voluntary, because there is no compulsion for superior officials to implement court decisions in granting administrative sanctions to subordinate officials. For example, if a superior official such as the President does not want to impose administrative sanctions on his subordinates, then there is no provision governing these sanctions. This voluntary exercise relates to public objects that theoretically constitute state wealth that cannot be put under bail on it. An official may not be detained for failing to carry out the decision of *The State Administrative Court*, in accordance with the principle that the freedoms of government officials should not be deprived.

To implement a decision there are 2 efforts that can be used, namely:[16]

a. Direct coercive effort (*directe middelen*), that is, in accordance with what has been determined or sentenced by the judge. There are two ways in this effort, namely:
    1) Real execution: the defendant is forced to fulfill the order of what was handed down by the judge directly,
    2) pay a sum of money to fulfill the performance, by first confiscating movable or immovable property belonging to the plaintiff, then an auction is carried out so that the proceeds can be used to pay the money to be paid by the defendant (*verhaal executive*).
b. Indirect coercive efforts (*indirecte middelen*), by applying physical pressure to the defendant to fulfill performance with Free or Voluntary. There are two ways in this article, namely:
    1) taking hostages (*gijzeling*).
    2) The application *of Dwangsom* is an effort made by the judge through additional punishment against the convicted person by paying a sum of money to the plaintiff.[17]

The Seybold REPORT
ISSN 1533-9211
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The practice of applying forced executions in the State Administrative judicial process is considered ineffective, in this case changes to Article 116 have been useful, especially with the inclusion of reporting to the President. Such improvements in legal practice have given the force or coercive effort for the Court to carry out the decision. The decision is only a basic principle, since the method of regulation does not yet give certainty. This situation depends on the government's willingness to issue provisions on the procedures and mechanisms for the payment of forced money and/or administrative sanctions.

The second amendment to the *The State Administrative Court* Law explains the legal consequences handed over to State Administrative officials who do not carry out court decisions, namely compensation or payment of a sum of money (forcibly) regulated in Article 3 paragraph (1) of the Government Regulation of the Republic of Indonesia Number 43 of 1991 concerning compensation, besides that there are Administrative Sanctions which are divided into 3 types, namely in the form of light sanctions: verbal or written reprimands, pending promotions, classes, and office rights. Moderate administrative sanctions are: payment of forced money and payment of damages, dismissal with the rights of office. Severe administrative sanctions are permanent removal by obtaining financial rights and facilities, permanent termination without receiving financial rights and other facilities and published in the mass media. The legal consequences of both compensation and administrative sanctions for State Administration officials cannot be implemented simultaneously because there are stages that must be passed.[18]

Inhibiting factors in the application of administrative sanctions are caused by several things, including; Amar ruling, State Administrative officials who are sued are regional heads whose positions as political officials and officials who receive quasi-delegation authority are often sued. In addition, the weak executory power of State Administration decisions. In that provision, it has not been regulated about the implementation of dwangsom in Law Number. 51 of 2009 concerning *The State Administrative Court* article 7 explains that provisions regarding the amount of dwagsom, administrative sanctions, and mechanisms for implementing dwangsom payments and administrative sanctions are regulated in regulations per law but until now this certainty does not exist. There has been no active participation from the defendants and limited supervision of the implementation of the *The State Administrative Court* ruling. Even though it has been regulated in Article 116 of the *The State Administrative Court* Law, to carry it out, implementing regulations are still needed to run effectively.

2. The concept of imposing administrative sanctions for government officials who do not implement the decision of the government

The concept of administrative sanctions with criminal sanctions is different, criminal sanctions are imposed always based on court decisions, while administrative sanctions are not based on court decisions but from government agencies themselves, *The State Administrative Court* is only authorized to assess in terms of law (*rechmatigheid*) official decrees, the court is only authorized to affirm and / or declare that the decision of the official concerned is void or invalid and therefore legally the decision must be revoked, the obligation to revoke the canceled decision is not a real form of sanction but a consequence of a cacad decision, in that position

The Seybold REPORT
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the official concerned is not in a disadvantaged capacity or held hostage to his freedom to perform his duties and functions as a public servant, the concept of sanctions is born when the State Administrative body / official does not implement the court decision, The threat and type of sanction are also independent of the content of the court decision but are new sanctions that will be imposed internally by the institution itself.[19]

Administrative Law Sanctions, according to J.B.J.M. ten Berge, "sanctions are at the core of administrative law enforcement. Sanctions are necessary to ensure the enforcement of administrative law". According to P de Haan et al, "in HAN, the use of administrative sanctions is the application of government authority, where this authority comes from written and unwritten administrative law rules". JJ. Oosternbrink argues "administrative sanctions are sanctions that arise from the government–citizen relationship and that are implemented without the intermediary of a third party (judicial power), but can be directly implemented by the administration itself".[20]

The type of Administrative Sanctions can be seen in terms of its targets, namely repartoir sanctions meaning sanctions applied as a reaction to violations of norms, which are aimed at returning to their original condition before the violation, for example *bestuursdwang*, *dwangsom*, punitive sanctions mean sanctions aimed at imposing punishment on someone, for example in the form of administrative fines, while Regressive Sanctions are sanctions that applied in reaction to non-compliance with the provisions contained in the published provisions.[21]

Another problem related to the mechanism of applying forced money in relation to the execution of the decision of *The State Administrative Court*, namely against whom is the forced money (*dwangsom*) charged? Is it on the finances of the relevant State Administrative Officer or on the finances/personal assets of the State Administrative Officer (defendant) who does not want to implement the decision of *The State Administrative Court*? Regarding this issue, Law Number 9 of 2004 also does not expressly determine to whom the financial burden of forced money payments is imposed, including how much forced money must be paid by the defendant (State Administrative Official) who does not obey the decision of the *The State Administrative Court*.

The regulatory vacuum regarding the mechanism for implementing forced money payments (*dwangsom*) in the provisions of Law Number 9 of 2004 is clearly a juridical obstacle that will arise in practice at *The State Administrative Court* in relation to the execution of decisions of *The State Administrative Court*. To fill the regulatory void regarding the mechanism for applying forced money (dwangsom) in practice in *The State Administrative Court, it is better to use the assistance (borrowing) of existing juridical instruments, namely laws and regulations on the provisions of the civil procedure law during the regulation regarding the mechanism for forced money payment (*dwangsom*) in Law Number 5 of 1986 jo. Law Number 9 of 2004 as long as it has not specifically regulated.*

The Seybold REPORT
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If you only adhere to the provisions of Article 116 paragraph (4) of Law Number 9 of 2004 in applying forced money payments (dwangsom) to defendants (State Administrative Officials) who do not obey the decision in the practice of executing the decision of *The State Administrative Court*, it is clearly not sufficient. Because the provisions for the execution of decisions in Article 116 of Law Number 9 of 2004 still contain many weaknesses, especially only mentioning the application of forced efforts in the form of payment of forced money and/or administrative sanctions against State Administrative Officials who do not want to implement the decisions of *The State Administrative Court* without any regulation regarding the mechanism for implementing such forced efforts, according to the author, regulations specifically governing the application are needed The forced effort is to regulate *the mechanism for the application of forced money (dwangsom*) and the minimum and maximum amount of money to be charged, the mechanism for applying administrative sanctions, types of administrative sanctions and maximum sanctions that can be imposed on the State Administrative Officer concerned.

The concept or model of the Application of Administrative Sanctions in an effective State Administrative Case Decision so as to ensure legal certainty for the Plaintiff, including the following:

a. There is a legal basis for *The State Administrative Court* to include administrative sanctions in the ruling. In order for the judicial function and supervisory function by *The State Administrative Court* to be in accordance with the Government Administration Law, it is necessary to draft a new law regarding *The State Administrative Court*. Harmonization efforts need to be carried out, to provide legal certainty for the community.[22]
b. Revise the provisions of Article 116 paragraph 4 of Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Court.
c. There needs to be a clear commitment from the State Administrative Agency or Officer along with the Supervisor of the State Administrative Agency or Officer in the decision process of *The State Administrative Court* that has permanent legal force.
d. The need to supervise the implementation of the decision of *The State Administrative Court* by limiting the grace period for the Defendant to implement the contents of the Decision with permanent legal force after a summons is made by the Chairman of *The State Administrative Court*

C. CONCLUSION

The decision of *The State Administrative Court* has no coercive power, because the Law on *The State Administrative Court* does not regulate firmly and clearly the issue of coercion of the decision of *The State Administrative Court*, so that the implementation of the Decision really depends on the good faith of the State Administrative Agency or Officer in obeying the law. This situation is quite concerning, because the principle of the existence of a State

The Seybold REPORT
ISSN 1533-9211
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Administrative Court, to place juridical control in the government has lost meaning in the Indonesian constitutional bureaucratic system.

The application of administrative sanctions in the decision of state administrative cases at the Semarang State Administrative Court has not been implemented optimally because there is no legislation regarding *The State Administrative Court* that is coercive on state administrative bodies / officials to implement the decision that has permanent legal force (inkracht van gewijsde), so that the implementation of the judgment seems barren, Therefore, based on Article 116 of Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning *The State Administrative Court*, the Chairman of *The State Administrative Court* can submit a written request to the President as the Head of the Supreme Government to apply pressure to the Defendant to implement the decision that has permanent legal force (inkracht van gewijsde).

The second amendment to the *THE STATE ADMINISTRATIVE COURT* Law explains the legal consequences handed over to STATE ADMINISTRATIVE officials who do not carry out court decisions, namely compensation or payment of a sum of money (forcibly) regulated in Article 3 paragraph (1) of the Government Regulation of the Republic of Indonesia Number 43 of 1991 concerning compensation, besides that there are Administrative Sanctions which are divided into 3 types, namely in the form of light sanctions: verbal or written reprimands, pending promotions, classes, and office rights. Moderate administrative sanctions are: payment of forced money and payment of damages, dismissal with the rights of office. Severe administrative sanctions are permanent removal by obtaining financial rights and facilities, permanent termination without receiving financial rights and other facilities and published in the mass media.

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The Seybold REPORT
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