



The Influence of Legal Culture on Government Officials on the Implementation of the Decision of the State Administrative Court

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<http://dx.doi.org/10.18415/ijmmu.v9i3.3630>

Abstract

The public views the State Administrative Court, hereinafter referred to as the State Administrative Court, as a Toothless Tiger due to the absence of an Executorial Institution or a strong legal basis, resulting in executions not going well and completely. The reason for all of this is because of the existence of a legal culture that affects the level of legal compliance of government officials which is still very weak. The execution of decisions with legal force should still be carried out automatically by Government Officials (defendant) themselves, and a consistent attitude of Government Officials in enforcing administrative law is required. Government Officials who do not carry out court decisions that have permanent legal force are the same as Government Officials who fail to carry out their roles as state organs who have violated the orders of their positions and this becomes a bad legal culture. The purpose of this study was to determine the extent of the influence of legal culture on government officials in implementing the Administrative Court Decisions. This study uses a normative juridical legal research method, with a statute approach and a conceptual approach. The results of this study indicate that the legal culture of government officials greatly influences the implementation of court decisions. Therefore, to form a legal culture for government officials to carry out state administrative court decisions, it must be supported by three factors, namely legal factors with clear sanctions, law enforcement factors, namely the existence of executable decisions and implementation of decisions, and finally the official factor, namely the willingness and the will of the official as a tribute to himself. These three factors are cumulative factors that work together to form a legal culture.

Keywords: *Legal Culture; Government Officials; The State Administrative Court*

Introduction

Indonesia as a state of law has been stated in Article 1 paragraph (3) of the 1945 Constitution. While the characteristics as a state of law are contained in the explanation of the 1945 Constitution before being amended which explains that Indonesia is a state of law (*rechtsstaat*) and not a state based on sheer power (*machtstaat*). Indonesia as a state of law emphasizes the existence of national, state and government activities which are carried out in accordance with the provisions of Article 1 paragraph (3) of the 1945 Constitution, that sovereignty is in the hands of the people and carried out according to the

Constitution.¹ This means that the system of administering the Government of the Republic of Indonesia must be based on the principle of people's sovereignty and the principle of the rule of law.² However, theoretically and factually the conception of the Indonesian rule of law as referred to in article 1 paragraph (3) of the 1945 Constitution, is not the same and congruent with the concept of countries with a Continental European or Anglo Saxon legal system, because of the principal differences between the Indonesian rule of law. from other legal countries is the stipulation of Pancasila as the forerunner and filter (filtering instrument) in managing the life of the nation, state, and government³. According to Frederick Julius Stahl that a country can be said to be a state of law, it must meet at least 4 conditions. The conditions in question are as follows:

- a. Legal reasons
- b. Power sharing
- c. Protection of Human Rights
- d. The existence of a State Administrative Court

Therefore, according to Frederick Julius Stahl, Indonesia has fulfilled as a state of law since the promulgation of Law no. 5 of 1986 concerning the State Administrative Court. The duties and authorities of the State Administrative Court are to examine, decide, and resolve state administrative disputes, namely disputes arising in the field of state administration between persons or civil legal entities and state administrative bodies or officials, both at the center and in the regions as as a result of the issuance of state administrative decisions, including employment disputes based on applicable laws and regulations, in accordance with Article 47 of Law No. 5 of 1986 concerning State Administrative Courts in conjunction with Article 1 No. 12 of Law No. 9 of 2004 concerning Amendments to Law No. 5 Year 1986.

The term civil law person or entity in Article 1 No. 15 of Law No. 30 of 2014 concerning Government Administration is referred to as "Citizens of the Community". Citizens who file lawsuits and/or applications to the state administrative court in both general state administrative disputes and special state administrative disputes are in order to obtain a complete dispute resolution of the cases they face through the instrument of state administrative court decisions. There are so many products of legislation in the field of administration, as research conducted by Philipus M. Hadjon on the Association of Legislations of the Republic of Indonesia. Based on the composition according to the Engelbrech system,⁴ Philipus M. Hadjon found that a number of 88 (eighty eight) products of legislation were administrative law regulations.⁵ To date, the Engelbrecht system has compiled 4 (four) comprehensive books, which include Constitutional Law, Civil, Commercial, Criminal, Immigration/Population, Agrarian, Transportation, Labor, Taxation, and Administrative Law.⁶ At the legislative level, there is a tendency for laws and regulations in various fields to be administrative rules that contain criminal sanctions or commonly referred to as administrative penal laws or *verwaltungs strafrecht*.⁷ Indeed, the

¹ Setiadi, W., Sadiawati, D., Meliala, A. J., Bakhtiar, H. S., & Harefa, B. (2021). The Role of Indonesia Constitutional Court Decision in the Process of Establishing the Law: A Case Study in the Process of Establishing the Law on General Elections. *Journal of Legal, Ethical and Regulatory Issues*, 24.

² Imran, I., Bakhtiar, H. S., & Achmad, D. (2020). Legal Standing and Authority of the Regional Representative Council in the Indonesia Constitutional System. *Amsir Law Journal*, 1(2), 54-60.

³ Margono. (2019). *Asas keadilan, kemanfaatan & kepastian hukum dalam putusan hakim*. Jakarta: Sinar Grafika. p. 31

⁴ The Engelbrecht system is a system of collecting laws and regulations which were first compiled by Mr. W.A. Engelbrecht and Mr. E.M.L. Engelbrecht. This system is considered to make it easier for users, because it is systematic, very complete and has a wide scope covering various laws and regulations in all fields of national and state life. Hutabarat, R. (2006). *Himpunan Peraturan Perundang-Undangan Republik Indonesia Menurut Sistem Engelbrecht*, Jakarta: PT. Ichtar Baru Van Hoeve. p. vi-vii

⁵ Hadjon, P. M. (2002). *Pengantar Hukum Administrasi Indonesia (Introduction to the Indonesian Administrative Law)*, Yogyakarta: Gadjah Mada University Press, p. 35

⁶ Hutabarat. *Op.Cit.* p. v

⁷ Adji, I. S. (2007, July). Kendala Administrative Penal Law Sebagai Tindak Pidana Korupsi dan Pencucian Uang. In *Makalah Seminar Nasional Penanganan Tindak Pidana Kehutanan dan Tindak Pidana Pencucian Uang dalam Perspektif Tindak Pidana*

existence of criminal sanctions in the law in the field of administration is a supporting facility and has a functional role to enforce norms in other legal fields within the framework of public welfare offenses.⁸

The public perceives the State Administrative Court, hereinafter referred to as the State Administrative Court, as a Toothless Tiger due to the absence of an Executive Board or a strong legal basis, resulting in executions not going well and completely. The cause of all this is the level of legal compliance of our State Administrative Officers which is still very concerning.⁹ The execution of the decision of the State Administrative Court which has legal force should still be carried out automatically by the Government Official (defendant) himself, and a consistent attitude of Government Officials in enforcing administrative law is required. Government Officials who do not carry out court decisions that have permanent legal force are the same as Government Officials who fail to carry out their roles as state organs of law who have violated the orders of their positions.¹⁰

Based on the results of the research conducted by Supandi, it shows that the level of compliance of officials is still concerning in implementing the decisions of the state administrative court. This shows that the legal culture of our government officials is still low. Basically, Civil Cases and State Administrative Cases can be carried out or carried out if after the court's decision has permanent legal force, as stipulated in Article 54 paragraph (2) of Law no. 48 of 2009 concerning Judicial Power, and Article 15 of Law no. 5 of 1986 concerning the State Administrative Court.

However, in civil cases, the implementation of a court decision (execution) is carried out by the clerk and the bailiff led by the head of the court, as stipulated in article 54 paragraph (2) of Law no. 48 of 2009 concerning Judicial Power. Meanwhile, in the case of state administration, it is the State Administration Agency and/or Official that carries out the Decision of the State Administrative Court (execution), as stipulated in Article 116 of Law no. 5 of 1986 concerning the State Administrative Court, as amended by Law no. 9 of 2004 concerning Amendments to Law No. 5 of 1986 concerning the State Administrative Court and the last amended by Law no. 51 of 2009 concerning the Second Amendment to Law No. 5 of 1986 concerning the State Administrative Court. Complete settlement is intended to be the execution of matters requested by the Plaintiff or Petitioner in the petitum (demand) of the lawsuit and/or application, after the decision of the state administrative court has permanent legal force, therefore the decision should be guaranteed to be implemented with good and complete, meaning not only formally on paper, but the decision is fulfilled and implemented by the Defendant and/or the Respondent.

Furthermore, decisions that can be executed are only decisions that have permanent legal force as stipulated in Article 115 of Law no. 5 of 1986 and Article 54 of Law no. 48 of 2009 concerning Judicial Power. Meanwhile, the regulation regarding execution is regulated in Article 116 of Law no. 51 of 2009 concerning the second amendment to Law no. 5 of 1986 concerning the State Administrative Court. The execution mechanism based on Article 116 of the State Administrative Court Law, according to the author, goes through long and convoluted stages, so that it is not in accordance with the principles of justice which are simple, fast, and low cost. Not to mention there are government officials who do not comply with court decisions. This is a juridical technical weakness and obstacle in the practice of executing decisions at the State Administrative Court. The task of the Head of the State Administrative Court in carrying out executions is only as a supervisor, in contrast to civil executions, the Head of the District Court is the executor. Based on this description, this paper will describe what are the factors that

Korupsi, Jakarta: Sasana Pradana Kejaksaan Agung RI (Vol. 16), p. 2. See also, Lilik, M. (2007). *Tindak Pidana Korupsi Di Indonesia, Normatif, Teoritis, Praktik Dan Masalahnya*. Bandung: PT. Alumni. p. 45

⁸ Muladi. (1990). *Proyeksi Hukum Pidana Materiel Indonesia di Masa Datang*. Professor Inauguration Speech, Universitas Diponegoro. p. 148-149

⁸ Supandi, H. (2019). *Modernisasi Peradilan Tata Usaha Negara Di Era Revolusi Industri 4.0 Untuk Mendorong Kemajuan Peradaban Hukum Indonesia*. Professor Inauguration Speech. Universitas Diponegoro. p.6

¹⁰ *Ibid*, p.7

influence the legal culture of government officials on the execution of decisions of the State Administrative Court.

Method

This research uses a normative juridical legal research method, with a statute approach and a conceptual approach.

Discussion

According to Hilman Hadikusumo in his book *Anthropology of Indonesian Law*, legal culture is the same general response of certain people to legal phenomena. The response is a unified view of legal values and behavior. Legal culture is not a personal culture but the overall culture of a particular society as a unified attitude and behavior. Therefore, legal culture cannot be separated from the state of society, the system and the structure of society that adheres to that legal culture.

According to the author, the factors that influence the legal culture of government officials on the execution of state administrative decisions are:

- a. The legal factor itself
- b. Law enforcement factors
- c. The official factor itself is the environment in which the law applies and is enacted.

a) The legal factor itself

According to Bruggink, law is a conceptual system of legal rules and legal decisions (*rechtsbeslissingen*)¹¹. Meanwhile, the author on the legal factor only limits the aspects of the legislation. The law governing the implementation of state administrative court decisions is Article 116 of the State Administrative Court Law. Last amended by Law no. 51 of 2009. From the text and context of Article 116 of the State Administrative Court Law, it is clear that the mechanism and stages of execution are very long and convoluted, making it very difficult to implement. This is not in accordance with the principle of justice which is simple, fast, and low cost.

In addition to the long and convoluted stages, there is also no coercive tool against government officials to implement decisions that have permanent legal force. In the article, there is already available coercive measures in the form of paying a sum of money to officials who do not carry out the decision, but so far there is no implementing regulation that regulates the forced money (*dwangsom*), because the regulation regarding forced money to government officials is directly related to state finances (APBN), and arrangements regarding who is obliged to pay the forced money (*dwangsom*). So that until now the regulation regarding forced money (*dwangsom*) and administrative sanctions as stipulated in Article 116 paragraph (4) of the State Administrative Court Law has not been implemented. While the moral sanctions in the form of announcements in the printed mass media against officials who do not carry out court decisions according to the author, these sanctions are not effective, because the mentality of our government officials is not the same as the mentality of officials in developed countries who have obeyed the law.

¹¹ Sidharta, A. (2011). *Refleksi Tentang Hukum Pengertian-Pengertian Dasar Dalam Teori Hukum*. Bandung: Citra Aditya Bakti. p. 3

According to the author, the solution to the regulation of the implementation of the decision (execution) of the state administrative court is to accept the execution arrangements contained in Law no. 30 of 2014 concerning Government Administration. These rules include:

Article 7 paragraph (2), Article 53 paragraph (6), Article 64 paragraph (5), Article 66 paragraph (5), Article 70 paragraph (2), Article 71 paragraph (2), and Article 72 paragraph (1).

Furthermore, regarding the role of the Chairperson of the State Administrative Court in implementing the decision, it is only as a supervisor, not as an executor as in civil courts. In the execution of the PTUN decision, the executor is the government official himself, so it is greatly influenced by the mentality and character of the official concerned. Regarding this problem, the writer is of the opinion that the regulation of Article 119 of Law no. 5 of 1986 is the time to be revised, because it is not in accordance with the current situation. At the time of the formation of the Law on State Administrative Courts at that time we imitated the Administrative Courts of European countries, especially the Netherlands, France, and Germany, even though in these countries there is no known execution of administrative court decisions, because all administrative court decisions are implemented by government officials, while our government officials are still many who do not obey the law. Therefore, the author is of the opinion that the Chairperson of the State Administrative Court should not be sufficient only as a supervisor, but also as an executor of execution so that if there are government officials who do not carry out court decisions. The Chairperson of the Court may recommend to the superior of the official concerned to be subject to administrative sanctions.

By accepting the rules in the Law on Government Administration, it will be possible to formulate legal norms for execution so that the arrangements for the execution of state administrative court decisions are clearer, firmer, uncomplicated, and obeyed by government agencies and/or officials. Thus, it is clear that legal factors, especially laws and regulations, greatly affect the legal culture of government officials, this is in accordance with the opinion of Laurence M. Friedman who states that the rule of law affects legal culture. Legal culture is not static but changes according to society.¹²

b) Law Enforcement Factor

What is meant by law enforcement here is specifically legal advisors and judges. The task of a legal advisor is to provide legal assistance, defend, and ensure that a client gets his rights in carrying out the legal process. A legal advisor must have qualified legal knowledge, so that in his duty to accompany or represent his client he can run successfully in accordance with the expectations desired by his client. Meanwhile, judges as law enforcers in carrying out their professions are required to be more than just qualified in legal knowledge, but a judge must have high integrity. A judge who is professional and has high integrity will be expected to make quality decisions that guarantee a sense of justice, certainty, and are beneficial for justice seekers. And it is hoped that there will be no more non-executable decisions, all decisions can be implemented properly. With the executable judge's decision supported by legal advisors who always fight for the rights of their clients, it is hoped that there will be awareness for government officials which will then become the legal culture of government officials to implement decisions.

c) The Official Factor

This official factor is very decisive, because no matter how good the law (regulations) and court decisions are, if the officials do not have good intentions, the court decisions will not be implemented, because in the execution of state administrative court decisions, the executor is the official himself. Without good faith and sincerity from government officials, the execution will not go well. Government officials as executors for themselves actually contain the meaning of self-respect in implementing the decisions of the State Administrative Court. Government officials should obey the law and voluntarily

¹² Friedman, L. M., & Hayden, G. M. (2017). *American law: An introduction*. Oxford University Press.

implement court decisions that have permanent legal force without any form of coercion. However, in reality there are still many government officials who for various reasons do not carry out court decisions that are their obligations, so that by itself this will harm the community. One of the impacts of this condition is the decline in public trust in government institutions and the judiciary in particular and the State Apparatus in general.

Government officials are obliged to realize good governance based on the Government Administration Act in order to take decisions and/or actions to meet the legal needs of the community in government. The Government Administration Law guarantees basic rights and provides protection to citizens and guarantees the implementation of state duties, including ensuring the execution of State Administrative Court Decisions. Based on the description above, the author argues that the legal culture of government officials greatly influences the implementation of court decisions, therefore to form a legal culture for government officials to carry out state administrative court decisions, it must be supported by three factors, namely legal factors, with sanctions. What is clear is the law enforcement factor, namely the existence of an executable decision and enforcement of its implementation, as well as the official factor itself, namely the willingness and will of the official as a tribute to himself. These three factors are cumulative factors that work together to form a legal culture.

Conclusion

Based on the explanation above, it can be concluded that the legal culture of government officials greatly influences the implementation of state administrative court decisions, because in implementing the decisions of the state administrative courts, government agencies and/or government officials are executor for themselves so that they are self-respect, which is very dependent on the will and the will of the government officials themselves. The factors that influence government officials are legal factors, law enforcement factors and the officials themselves, these three factors are cumulative factors that synergize with each other to form a legal culture. Government Administration Law, not only functions as a means of social engineering but is also directed as a means of empowerment for good and honest government officials. This draft law leaves no place for government officials with bad intentions and malicious motives.

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