



Disobedience of State Administrative Officers in Implementing State  
Administrative Court Decisions  
(Study of Decisions of the Jayapura State Administrative Court)

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**Abstract**

Because the State Administrative Agency/Officers do not want to implement PTUN decisions that have permanent legal force, awareness in implementing PTUN decisions often becomes an obstacle. Unlike the others in civil and criminal case decisions, where in the execution of decisions, for example civil lawsuit decisions request police assistance and criminal case decisions are carried out by the Attorney General's Office, the weakness of PTUN decisions generally depends on awareness or good ethics from State Administration Agencies/Officials. In order for the parties who have won a TUN case and made a positive contribution to the government to take firm action against state administration officials who are not subject to a court decision that has permanent legal force, the purpose of this research is to identify the causes of the non-implementation of the PTUN decision by the administrative body, or state administration officials. This research methodology, which combines statutory, legal context, and case approaches, is an example of normative legal research. According to research findings, disobedience to PTUN decisions by state administrative bodies or officials is an act against the law by the government (*onrechtmatige overheidsdaad*). By not complying with these provisions, state administration bodies or officials commit acts against the law, uncertainty for the plaintiff, neglect of the AAUPB, a tiered executive structure and executorial institutions have not yet been formed at the Administrative Court.

**Keywords:** *Disobedience; State Administrative Officials; Administrative Court Decisions*

**Introduction**

The verdict is a judicial fact that contains the settlement of issues that have bothered the parties since the process began. It is the focal point and objective of all judicial activities or processes. The rights of a party and the obligations imposed on other parties can only be determined through a series of judicial procedures. Out-of-court decisions are not a legal act and cannot impose obligations on the parties involved in the case. Only the decision process in court has a major impact on the parties. In fact, there are several obstacles in the implementation of PTUN decisions. These obstacles may be caused by legal provisions which do not explicitly regulate their implementation.

Indonesia is a constitutional state, according to Article 1 point 3 of the 1945 Constitution of the Republic of Indonesia. It is explained that everyone in a legal state is obliged to pay the law, including state administration bodies and officials.

According to Indroharto,<sup>1</sup> emphasizing that regarding the execution of this state administrative court decision we would be wrong if we argued that the notion of execution in this case is interpreted as a real execution such as a decision on a civil case which can be forced with the help of outside parties rather than the party itself, because real execution against the government it is impossible to happen. It is impossible for the government to apply coercive measures to personally carry out something that has been decided in a court decision. The completeness or not or the effectiveness or failure of the implementation of court duties basically still depends on the awareness, voluntarism, responsibility, attitude and behavior of all levels of the government itself.

The decision is usually generally described as the conclusion of a lawsuit in the state administrative court. The state administrative court procedural law distinguishes between preliminary decisions and definitive decisions. Court decisions that are not made as independent decisions, even though they are announced in court, are only recorded in the minutes of proceedings, according to Law Number 51 of 2009 amendment to Article 113 of Law Number 5 of 1986. The Court's State Administrative Decisions are powerless permanent law can only file a cassation submitted simultaneously with the final decision, according to Article 124 of the same Law. Before the State Administrative Examination is considered completed, the judge may issue a decision that is not final.

Researchers can describe several PTUN decisions that the KPUD cannot comply with or comply with in the table format below :<sup>2</sup>

| No | Candidate Pair                  | Regency/ City          | election year | PTUN Decision No         | PTUN Decision No            | MA Decision No |
|----|---------------------------------|------------------------|---------------|--------------------------|-----------------------------|----------------|
| 1  | Ones Jakob Ramandey-Zeth Tanati | Waropen Papua          | 2010          | 27/G/2010/PTUN.JPR       |                             |                |
| 2  | Hendrik Worumi-Pene Ifi Kogoya  | Kota Jayapura Papua    | 2010          | 31/G/2010/PTUN.JPR       |                             |                |
| 3. | Demi Wanimbo                    | Mamberamo Tengah Papua | 2012          | 36/ G.TUN/2012/PTUN. JPR |                             |                |
| 4. | Marius Yeimo-Anselmus P. Youw   | Paniai Papua           | 2012          | 23/G.TUN/2012 /PTUN.JPR  | 118/B.TUN/2012/PT. TUN. MKS | 56K/ TUN/2013  |

In addition to being against the law, non-compliance by a state administration agency or official, such as the KPUD against the PTUN decision as shown in the table above, may also violate human rights (HAM) related to the right to equal opportunity in government, also known as the right to become head of state, regional and deputy regional heads.

All state powers and citizens are obliged to respect this right because it is a constitutional right, meaning that it has been incorporated into the constitution. In terms of political rights, the right to run for regional head and deputy regional head is a right that is protected by the constitution, and cannot be underestimated or ignored by anyone, including the KPU, both at the central and regional levels.

<sup>1</sup> Umar Dani, *Putusan Pengadilan Non-Executable Proses dan Dinamika Dalam Konteks PTUN*, Genta, Cetakan Pertama, Yogyakarta, 2015, h. 5.

<sup>2</sup> Sumber PTUN jayapura dan <http://putusan.mahkamahagung.go.id/pengadilan/ptun-samarinda/direktori/tun/pilkada/>

The “floating execution” model is used in the execution system outlined in Article 166 of Law Number 5 of 1986 which was amended by Law Number 51 of 2009. This model is also called the “execution model” because there is no coercive effort made by the Administrative Court that allows officials state administration to implement court decisions with its own legal awareness.

### **Method**

This research methodology, which combines statutory, legal context, and case approaches, is an example of normative legal research.

### **Result and Discussions**

Justice and legal certainty are the two main components of PTUN decisions. In essential justice, the concept of justice has two main interpretations: formal justice, which demands the universal application of law; and material justice, which demands the ideals of social justice demands in every law. However, when viewed in a broader context, the notion of justice takes a different form because it is impossible to discuss justice in many literary works without incorporating pre-existing moral, political, and legal theories. justice: the first is metaphysical justice, and the second is rational justice. Plato supports metaphysical justice, and Aristotle's ideas support rational justice.

According to Plato's metaphysical theory of justice, inspiration and intuition are the sources of justice. However, the general principle of rationality of justice as a whole forms the basis for rational justice. By trying to explain that justice in scientific terms or by requiring that everything must be supported by rational arguments, rational justice basically tries to answer questions about justice. Meanwhile, metaphysical justice considers the existence of justice as a quality or function above and beyond living things, so that it cannot be understood according to human consciousness. The word "certainty" itself means "provisions", when combined with the word "law", means the legal framework of a nation capable of guaranteeing the rights and obligations of every citizen.

Certainty (law) itself, according to history, the notion that with the separation of powers, the task of forming laws rests with the legislators, while judges (the judiciary) are only tasked with appeasing the contents of laws, emerged since the discourse on creating power, stated by Montesquieu.

Because the certainty above is always associated with law, the result is that it continues to raise legal issues regarding the relationship between citizens and the state. However, value and certainty (law) are not only associated with the state because it is primarily a matter of protection from arbitrary actions. As a result, there are a number of other parties outside the state or the state who are capable of acting arbitrarily. Therefore, it is necessary to realize that in order to fully understand the certainty of value (law) it is necessary to understand how effective legal instruments and the state play a role in turning it into positive law.

The responsibility of the state extends to implementing and enforcing laws. The problem of certainty (law) is no longer solely a concern of the state in the modern era, but the widely accepted concept of *rechtsstaat* has begun to be enriched with other ideas. Every party in every organization of life must respect this (legal) certainty, regardless of the state's role in administering legislative and judicial law.

Criminal acts cannot be carried out arbitrarily by any person or group. The author is of the opinion that the existence of PTUN in the Indonesian legal state which is based on Pancasila as a source of law or ideals of state law, speaks to the nature of PTUN in a legal state as before.

A just and dignified law enforcement system is necessary for a legal state based on Pancasila. Because Pancasila is a concrete, systemic effort to create and develop Indonesian law, it is necessary to adjust the notion of a rule-of-law state, which is often translated as *rechtsstaat*, to become a legal state based on the understood Pancasila. as a constitutional state that upholds the values of Pancasila.

The state administration body or official who makes decisions regarding state administration is obliged to fulfill the obligations in the following court decisions if the lawsuit is successful, namely the revocation of the TUN decision in question, the new TUN decision is issued after the relevant TUN decision is revoked and the relinquishment of the TUN decision relating to seduction based on Article 3 of the Administrative Court Law.

All government and/or community actions must be based on laws in countries that generally uphold the law, including the Republic of Indonesia. The existence of legal sanctions, namely punishments imposed by the state through law enforcement agencies, is one of the characteristics of a state that upholds the rule of law. Anyone who engages in unlawful behavior faces legal repercussions.

Disobedience to PTUN decisions will be discussed in this discussion and will be further classified as unlawful acts, disobedience to PTUN decisions, forms of AAUPB waiver, tiered and system-level executions, and the absence of an executorial institution at PTUN:

- a. Disgraceful behavior is not considered legal behavior, and dishonorable behavior is not considered legal behavior. Unlawful acts are actions that are unethical or prohibited by law; thus, law is written in nature. Before being declared illegal according to laws and regulations, an act is illegal. Therefore, it is clear that the Administrative Court's decision that will not be implemented is an act that can be classified as an unlawful act by the authorities.
- b. Uncertainty by state administration bodies or officials over PTUN decisions is a form of accountability for the Plaintiff and Defendant. Legal plaintiffs for plaintiffs affected by non-compliance with the decision because they naturally wish to be included in the Regional Head General Election but are not permitted to vote in the Regional Head Election. Regional heads who are appointed definitively actually in the election policy can be considered invalid or legally flawed because the Court's decision has permanent legal force, and the election must be repeated. In addition, the Defendant should also be legally illegitimate in running the machinery of government because the Court's decision regarding the Plaintiff's lawsuit already has permanent legal force.
- c. Ignoring the Principles of Good Governance (AAUPB) by TUN bodies or officials is a form of disobedience to PTUN decisions. The principles of good governance that are often used as guidelines in administering government include the principles of legal certainty, orderly administration of the state, the principle of public interest, and its making, so that a State Administrative Decision issued by a TUN Agency or official is deemed detrimental to a person or civil legal entity. , the decision can be challenged in court by the aggrieved party. Likewise, it will be considered as a form of neglecting good public administration standards if the KPUD ignores PTUN decisions.
- d. The hierarchical implementation system in work passages, the limitations that have so far been faced in carrying out PTUN decisions that have permanent legal force, especially in the case of the appointed defendant having to carry out the obligations referred to in Article 97 paragraph (9) letters b and c then after 90 (ninety) working days it turns out that these obligations have not been fulfilled, then the plaintiff can file a lawsuit against the defendant.
- e. The absence of an executorial institution in the Administrative Court in enforcing the State court's court decisions is one of the factors contributing to the inconsistency of its application. So far, the foundations and initiatives of state administration officials are very important to ensure that PTUN decisions are implemented.

## Conclusion

Considering that PTUN decisions are legal products that offer justice and legal certainty for justice seekers, the obligation to make state administration officials aware of how to implement PTUN decisions is one thing that can be done. Normatively, Article 116 of Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts can be used to regulate the implementation of decisions. In a constitutional state, such as the Republic of Indonesia, all government and/or social actions must be based on law. As a result, PTUN decisions are not implemented by state administrative bodies or officials. The existence of legal sanctions suspended by the government through law enforcement agencies is one of the characteristics of a country that upholds the rule of law. Everyone who commits an unlawful act faces legal consequences.

Disobedience to PTUN decisions by state administrative bodies or officials is an act against the law by the government (*onrechtmatige overheidsdaad*). By not complying with these provisions, state administration bodies or officials commit acts against the law, uncertainty for the plaintiff, neglect of the AAUPB, a tiered executive structure and executorial institutions have not yet been formed at the Administrative Court.

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