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THE URGENCY OF THE EXECUTION INSTITUTION IN THE STATE ADMINISTRATIVE COURT

(Normative Review of Article 116 paragraph (3) of Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning The State Administrative Court)

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Abstract

One of the legal issues that often arises in the State Administrative Court (PTUN) is related to the implementation of the PTUN decision which has permanent legal force. Execution of Administrative Court Decisions tends to face obstacles, to the detriment of justice seekers. The cause in abstracto lies in the regulatory norms for implementing decisions that are still not firm, while in concreto the cause is the disobedience of government bodies and/or officials to the law. In substance (legal substance), the execution arrangements in the State Administrative Court regulated in the TUN Judicial Law are not sufficient, and so is the legal structure of the execution institution in the Administrative Court which is only guided by the supervision of the PTUN chairman, cannot run as it should. so that the execution cannot run effectively and efficiently. To answer these problems, the author conducted this legal research. Based on the concept of National Law Development, the purpose of establishing PTUN is related to the philosophy of the rule of law based on Pancasila and the 1945 Constitution, therefore the rights and interests of individuals are protected and upheld as well as the rights of the community. One form of legal protection is the implementation of every decision of the Administrative Court that has permanent force. For this reason, it is necessary to regulate the formation of a new legal institution that specifically carries out the executive function of the judiciary or what is called the State Execution Agency (LEN).

Keywords*: Execution Agency, State Administrative Court Decision*

INTRODUCTION

It is undeniable that the State of The Republic of Indonesia is one of the countries with very complex legal problems. This is emphasized in article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which confirms that "Indonesia is a state of law" (rechstaat). One of the logical consequences of the State of law is the existence of a judicial body which is the main pillar in upholding justice for society by upholding the principle of due process of law.[1]

Within the framework of the state of mind (rechtsstaaats gedachte), the existence of an administrative judiciary is essentially a logical consequence or consequence of the principle that government should be based on legislation (wetmatigheid van bestuur) even in a broader sense, that is, it must be based on law (rechtmatigheid)[2]. However, if we rely on the formal understanding of rechstaat (State of law), as stated by Friedrich Julius Stahl who wants the existence of 4 elements in the State of law (rechstaat) namely (1) Recognition of basic human rights, (2) the division of Power (scheiding vanmacht), (3) Government based on legal and statutory regulations (wetmatigheid van bestuur) and (4) the existence of an administrative judiciary[3]. The administrative judiciary is one of the pillars and important elements of the characteristics of the State of law (rechstaat) As a logical consequence of the existence of the third element. The administrative judiciary clearly has a prominent role, namely as a control or supervisory institution so that legal actions from the government (bestuur) remain on the rails of the law, in addition to protecting the rights of citizens to abuse of authority or arbitrariness by government officials.[4]

The state administrative court aims to supervise the running of government administration (control on administration)[5]. However, what happened as a result of the PTUN decision that had not been or was not executed resulted in a sense of dissatisfaction with the performance of TUN Officials in the community. The existing reality is very unfortunate because the establishment of the PTUN has not been able to provide justice for the community regarding services in the field of government administration. Therefore, to run the wheels of government in accordance with the applicable laws and regulations, the decision of the TUN Court must have executory power, because the current legal provisions have not been able to work optimally in supervising the government carried out by officials who are authorized by laws and regulations to issue State Administrative Decrees (KTUN).

Based on the description above, it can be said that the fundamental problem that occurs in the State administrative court, namely in the process of executing the TUN Decision which has permanent legal force. In line with Article 97 paragraph (8) and paragraph (9) of the PTUN Law, it can basically be[6]:

a. Void or invalid State Administrative Decree ("KTUN") that gives rise to a dispute and establishes the TUN Agency/Official who issued the decision to revoke the KTUN. If the TUN's decision is not complied with then the KTUN has no legal force anymore, there is no need for other actions or efforts from the court such as warning letters;

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1 *Tukiran Taniredja, Tiga Undang-Undang Dasar Di Indonesia (Alfabeta, 2012).*

2 Ahmad Sukardja, *Laporan Hasil Study Banding Ke Peradilan Administrasi Thailand Di Bangkok* (Jakarta, 2009).

3 Bagir Manan, *Pembinaan Hukum Nasional* (Bandung: Alumni, 1990).

4 *Taniredja. Ibid. 7*

5 Bintan Regen Saragih, *Politik Hukum* (Bandung: Utomo, 2006).

6 Mochtar Kusumaatmadja, *Konsep-Konsep Hukum Dalam Pembangunan* (Bandung: Alumni, 2002).

b. Implementation of the court decision referred to in Article 97 paragraph (9) point b, which requires TUN officials not only to revoke but also to issue new KTUN;

c. In addition, there is also a ruling that requires TUN officials to issue KTUN as referred to in Article 3 of the PTUN Law. Article 3 provides for negative fictitious decisions.[7]

The framers of the Act expect the TUN Agency/Officer to carry out the decision voluntarily. However, the successful implementation of the ruling largely depends on the authority of the courts and the legal awareness of the officials. If a decision that has legal force is still not implemented, then the PTUN Law provides a mechanism in the form of administrative sanctions from the superior of the relevant TUN Agency/Official. Through the threat of sanctions, the superiors of the officials who issued the KTUN basically sanctions in the form of fines/compensation did not provide a guarantee of the restoration of the rights of legal subjects due to the issuance of KTUN[8].

Another mechanism referred to in the PTUN Law is the imposition of forced money and announcements through the mass media. Article 116 paragraph (5) of the PTUN Law states that officials who do not carry out the Court's decision are announced in the local printed mass media by the registrar since the non-fulfillment of the 90 working day deadline. As soon as the deadline passed, the plaintiff applied to the chief justice for the defendant to carry out the judgment. Article 116 paragraph (6) of the PTUN Law further confirms that the chief justice submitted this non-compliance to the President as the holder of the highest government power and to the DPR to carry out supervisory functions.

From this formulation, it is clear that the President has the authority to force TUN officials to carry out decisions, but in practice it is always constrained because in fact these provisions do not give full authority to the judicial body that decides the case, in this case it is the state administrative court so that the decision requires the role of other organs to order the official who issued the KTUN to carry out the decision of the administrative court. the efforts of the State itself[9].

The root of the dispute over theimplementation of the PTUN decision by TUN officials is article 116 paragraph (3) of law number 51 of 2009 concerning the second amendment to law number 5 of 1986 concerning state administrative courts which reads as follows[10]:

"In the event that the defendant is determined to have performed the obligations 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 were not carried out, then the plaintiff submits an application to the chief justice as referred to in paragraph (1), for the court to order the defendant to carry out the judgment of the court".

From the subject matter above, the problem can be formulated as follows:

1. Why the framers of the law do not hold an execution institution in the state administrative court?
2. What are the legal consequences for TUN officials who do not carry out the decision of the state administrative court?

RESEARCH METHODS

[7] *Pemerintah Republik Indonesia, Penjelasan Undang-Undang Nomor 51 Tahun 2009 (Lembaran Negara Republik Indonesia, 2009).*
[8] Jimly Asshiddiqie, *Perihal Undang-Undang* (Rajawali Press, 2010).
[9] Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara* (Jakarta: Raja Grafindo Persada, 2014).
[10] Pemerintah Republik Indonesia.

A. Research Type

The type of research used in this study is the empirical legal approach, as this research studies the mechanisms that can be carried out by the police as mandated by the law, concerning legal protection for crime victims[6]. Do the actions carried out by the police following what is mandated by the law or inversely, what is expected by the law and whether or not it is in line with the expected goals.

B. Research Location

The location of the research was at the Sula Islands Police Resort Office. By conducting research in this location, the authors hope to obtain accurate data to obtain objective and comprehensive research results.

The authors chose this research location as these two agencies handed cases of livestock theft.

C. Types of Data and Data Sources

The types of data used are:

a. Primary Data, namely the data obtained through interviews or from field research. The research was carried out directly with the parties who have been determined as respondents.euiop Secondary Data, namely the data obtained through a literature study of various kinds of literature related to the research objectives such as documents, articles, books, andother sources.

D. Data Collection Techniques

The data collection procedure was carried out by:

1. For primary data, the authors interviewed related parties, namely: Officers at the Waitina and Sula Islands Police Forces. For this study, the authors conducted interviews and observations with the Waitina and Sula Islands Police Forces and the victims of livestock theft.
2. For secondary data, literature research is carried out by collecting, reading, and reviewing library material, legislation books, print media, articles, etc. related to the object of research.

E. Data Analysis Techniques

The data that has been obtained (both primary data and secondary data) were processed and analyzed to produce conclusions. Then it is presented descriptively to provide a clear and focused understanding of the research results. The data analysis seeks to provide a clear and concrete description of the research problems discussed qualitatively. The data is then presented descriptively, by explaining and describing the problems that are closely related to this research.

ANALYSIS

The Framers of the Law Do Not Hold Execution Institutions within the PTUN

Based on the content of Articleqw 116 paragraph (3) of the PTUN Law, it can be seen that the legal politics of the establishment of the PTUN law itself in this case, namely at the Special Committee Meeting on November 27, 1986 and the Decision-Making Meeting on the Bill-PTUN on December 19, 1986, have been approved for editorial changes that were previously regulated in the provisions of articles 113 to 115, became a provision of articles 116 to 119. This execution arrangement later became the legal norm in Law Number 5 of 1986 concerning TUN Justice. Based on the process of forming the execution norms, it can be concluded, concerns about the non-implementation of the PTUN decision have been anticipated by the framers of the TUN Judicial Law, namely by creating an execution

system as follows:

a. Executions are tiered according to the office of the defendant to his superiors up to the president as the highest holder of governmental power.
b. There is compensation if the decision cannot be implemented, with the deliberation route of the parties facilitated by the PTUN.
c. Legal remedies for third parties who are harmed due to the ptun ruling which has permanent legal force.
d. Supervision by the chairman of the PTUN on the implementation of executions.[11]

Since the normalization of executions in the PTUN in Law Number 5 of 1986, there are still many executioqwruir3po4n problems that have not been completed and effectively can be applied. Therefore, the framers of the law in its development revised the specific provisions for implementing executions in the PTUN. Thus, in the meeting there was a proposal that the provisions of article 116 be revised there is an additional paragraph stating "If the defendant is still unwilling to carry out the contents of the judgment which has permanent legal force, then the official concerned is subject to forced efforts in the form of forced payment of money and by not ruling out the possibility of administrative sanctions". Thus, if there is a new provision regarding the payment of forced money, it requires an officer who can carry out the execution, for example, a bailiff as in the General Court. Because coupled with the payment of this forced money, it gives rise to the services of a bailiff.[12]

In addition to the addition of the force effort article, in this meeting it was also agreed to abolish article 118 regarding third party resistance efforts, which made the execution of the execution no legal certainty. This provision of third-party resistance is indeed possible in civil procedural law, since in civil judgments it is known that there is a real execution, and its implementation is possible resistance. In contrast to the procedural law of TUN, which has a different nature from civil disputes.[13]

Based on this new provision, it can be concluded that the provisions of article 116 of Law Number 9 of 2004 and then revised again in law number 51 of 2009, have abolished hierarchical executions because they were deemed ineffective in their implementation, namely many PTUN decisions that had been reported through the defendant's superiors, but still not implemented. Not only the threat of forced effort sanctions in the form of forced money and/or administrative sanctions, but also suppressed by news through the mass media, the purpose of which is to provide a deterrent effect in the form of moral and social or political sanctions[14].

Although it has regulated so many execution arrangements, some of which impose sanctions on government agencies and/or officials who do not carry out the contents of the PTUN decision[15], this does not guarantee that the implementation of executions in the new provisions can be effective[16]. Many contents of this provision need to be criticized further, such as the unclear arrangements for the application of forced efforts in the form of forced

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[11] *Rapat Panja Sekjen DPR-RI, 'Proses Pembahasan RUU Tentang Peradilan Umum Dan Tata Usaha Negara' (Jakarta, 2004). 669*
[12] *Rapat Panja Sekjen DPR-RI.ibid. 670*
[13] *Rapat Panja Sekjen DPR-RI.ibid. 674-675*
[14] Lilik Mulyadi, *Kompilasi Hukum Pidana Dalam Prespektif Teoritis Dan Prakter Pradilan* (Bandung: Mandar Maju, 2007).
[15] Abdulkadir Muhammad, *Hukum Dan Penelitian Hukum* (Bandung: Citra Aditya Bakti, 2004).
[16] Mahfud MD, *Membangun Politik Hukum, Menegakkan Konstitusi* (Jakarta: Raja Grafindo Persada, 2017).

money aimed at government agencies and / or officials as individuals or because of their positions so that they are imposed using APBN / APBD / APBDes funds, who are the authorized officials who provide administrative sanctions and these types of sanctions fall into the category of light, medium or severe, not to mention that it has been proven that tiered executions from 1991 to 2004 cannot be implemented as they should be[17]. On the other hand, the mechanism through the legislature is still unclear how it will take its form and further legal basis[18], and the most core one to be criticized is the provisions of article 116 paragraph (3) which essentially regulates the authority to execute the judgment returned to the TUN official himself which In many ptun decisions cannot be effectively implemented[19].

For this reason, the policy directions are as follows; First, philosophically, the policy direction for the formation of laws is not in accordance with the fifth principle of Pancasila, namely "social justice for all Indonesian people".[20] The reason is that the authority to implement/execute the PTUN decision is given to the TUN Official, of course, it does not reflect the value of justice because how is it possible for the litigating party before the court with the same status as the litigating party, in fact, the defendant, in this case, is the TUN official who is given the authority to implement the decision. This is despite the fact that TUN office

ls are also part of the citizens who are obliged to submit and properly to the decisions of the judiciary. Second, sociologically the social life of the Indonesian people has different characteristics, be it ethnicity, religion, race, and between groups which also have different legal cultures[21]. For this reason, the enactment of the law in this case is a law that will be applied to all Indonesian people, it must accommodate all the interests of the Indonesian people in society, nation and state. so that people do not feel there is a difference in treatment between social communities resulting from the enactment of a law. So with the enactment of the provisions of Article 116 paragraph (3) of the Administrative Court Law, of course it is very supportive of the TUN official as the defendant and not in favor of the community as the legal subject or object of the TUN decision itself. Third, juridically the enactment of a law must be in accordance with the constitutional mandate which is the basic norm (grundnorm) for the enactment of laws and regulations in Indonesia. In the preamble to the 1945 Constitution, Alenia fourth stated that one of the goals of the state in Indonesia is to protect the entire Indonesian nation and the entire homeland of Indonesia. Therefore, with the enactment of Article 116 paragraph (3) of the Administrative Court Law, it can be seen that the policy direction of the legislators does not at all reflect the constitutional mandate of protecting the entire Indonesian nation and the entire homeland of Indonesia, but only protecting TUN officials who occupy their positions.

The judge's decision or commonly referred to as a court decision is something that is highly desired or anticipated by the litigants in order to resolve the dispute between them as well as possible.[22]

The implementation/execution of judgments in criminal cases is carried out by the prosecutor's office. Thus, the Prosecutor's Office is a legal instrument and part of the

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17 Moh. Taufik Makarao, *Pokok-Pokok Hukum Acara Perdata* (Jakarta: Rineka Cipta, 2004).
18 Mahfud MD, *Politik Hukum Di Indonesia* (Jakarta: Rajawali Press, 2009).
19 Makmur, *Efektivitas Kebijakan Kelembagaan Pengawasan* (Bandung: PT. Refika Aditama, 2011).
20 Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia* (Surabaya: Bina Ilmu, 1987).
21 Philipus M Hadjon, Sri Soemantri Martosoewignyo, and Sjachran Basah, *Pengantar Hukum Administrasi Indonesia* (Yogyakarta: Gadjah Mada University Press, 2008).
22 Makarao.

judicial system as an institution that has the authority to execute judges' decisions[23]. The case decided by the judge, must have permanent legal force and there is no longer any legal remedy for the convict who in his judgment contains a judgment containing a criminal conviction. The duties of implementing the decision of the judge or court are assigned to the prosecutor in accordance with what is regulated in article 1 point 1 of Law number 14 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia[24].

The execution / execution of judgments in civil cases is carried out by the clerk and bailiff. In Law No. 48 of 2009 concerning Judicial Power, the implementation of court decisions is regulated in Article 54, and Article 55. According to the provisions of Article 54 paragraph (2), paragraph (3) states that the execution of the judgment of the court in a civil case is carried out by the clerk and the bailiff is headed by the chief justice. Furthermore, the chief justice shall supervise the implementation of court decisions that have permanent legal force (Article 56).[25]

The decision function of a judicial body should be carried out properly as it should be. On the other hand, we can see that there are still many PTUN decisions that cannot be implemented/executed properly because the legal instruments provided by the law do not guarantee in full that the decisions will be carried out effectively. The legal instrument referred to in this case, namely the existence of a institution that has special authority to carry out / execute decisions as in the judicial system within the scope of the general judiciary, namely in criminal law cases, institutions whose authority to carry out decisions are carried out by the prosecutor's office, while in civil law cases the decision is carried out / executed by the Bailiff[26].

Article 116 paragraph (3) of the PTUN law reads as follows;

"*In the event that the defendant is determined to have performed the obligations 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 were not carried out, then the plaintiff submits an application to the chief justice as referred to in paragraph (1), for the court to order the defendant to carry out the judgment of the court*".

The substance of article 116 paragraph (3) of the law (PTUN), namely the execution of PTUN decisions carried out before the revision of law number 5 of 1986 is more influenced by the principle of self respect / self obidance and floating execution system, namely the authority to carry out court decisions that have permanent legal force, is fully handed over to the authorized body or official, without the authority of the PTUN to carry out / execute its decisions.[27] There is no special institution within the PTUN that is authorized to execute the judgment but rather returned to the TUN official concerned[28].

As stipulated in article 116 paragraph (3), the obligations that must be carried out against the decision of the PTUN by the TUN body or official are to implement / execute the decision in the form of;

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[23] Paulus Efendi Lotulung, *Hukum Tata Usaha Negara Dan Kekuasaan* (Salemba Humanika, 2013).

[24] 'No Title', *Jurnal Preferensi Hukum*, 1.2 (2020), 155 <http://repository.umyac.id/bitstream/handle/123456789/6918/8.BAB III. >.

[25] *Djamanat Samosir, Hukum Acara Perdata Tahap-Tahap Penyelesaian Perkara Perdata (Bandung: Nuansa Aulia, 2011).*

[26] Sjachran Basah., *Mengenal Peradilan Di Indonesia* (Jakarta: Raja Grafindo Persada, 1995).

[27] *W. Riawan Tjandra, Peradilan Tata Usaha Negara Mendorong Terwujudnya Pemerintah Yang Bersih Dan Berwibawa (Yogyakarta: Universitas Atma Jaya, 2009).*

[28] Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia* (Yogyakarta, 1993).

1. Revocation of the KTUN concerned;
2. Revocation of the relevant KTUN and issuing a new KTUN;
3. Issuance of KTUN if the lawsuit is based on article 3 of law number 5 of 1986.[29]

In other words, in the substation contained in article 116 paragraph (3), for the author, there is a weakness in the norm regarding the institution that is authorized to implement/execute the ptun decision itself.

According to Hans Kelsen, law belongs to the dynamic system of norms (nomodynamics), so that legal norms can be formed or deleted by the institutions or authorities authorized for it.[30] Thus, as a rule that has validity for its applicability, the legal norms established by the competent authorities have coercive power because many of them apply sanctions for those who violate them. Likewise with the legal norms of execution in the PTUN[31], which have the nature of the obligation for the parties (including government agencies and / or officials as defendants) to obey them. If it is not obeyed, it may be subject to legal sanctions as stipulated in the laws and regulations[32].

There is a dynamic in the discussion, it is clear that the problem of execution in the PTUN is not an easy thing to solve. This is proven by the regulation of norms of tiered executions and forced executions, even publication through the mass media in the previous two laws (Law Number 5 of 1986 and Law No. 9 of 2004) is still considered ineffective, because it turns out that there are still many government agencies and / or officials who do not want to carry out the contents of ptun decisions that have permanent legal force. For this reason, the government together with the DPR-RI are considered important and urgent to revise law number 9 of 2004 concerning PTUN by including the execution institution in the PTUN in the formulation of article 116 paragraph (3).

In practice, many PTUN rulings cannot be effectively implemented. Theoretically, the inability to carry out the execution can be influenced by several factors, including the existence of floating execution theory.[33] This concept gives the superior the authority to reprimand subordinates who do not comply with the content of the court's decision. Problems will arise, if the superior actually justifies the attitude or actions taken by his subordinates who do not carry out the content of the court decision[34].

There is not a single law that regulates the mechanism for implementing forced executions, in the form of forced money impositions or administrative sanctions, as a follow-up to the provisions of article 116 paragraphs (4) and (7) of the TUN Judicial Law, so that these provisions are completely unenforceable. The regulations in the Government Administration Law, especially articles 80 to 84, cannot be used yet, because they still require further arrangements, namely in the form of Government Regulations.

Likewise, the legal structure of the execution institution in the PTUN, whose arrangements have only been guided by the bailiff and supervision of the head of the PTUN, cannot run as it should. Bailiffs in the PTUN do not have the main duties and functions like bailiffs in

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[29] Tjandra, *Peradilan Tata Usaha Negara Mendorong Terwujudnya Pemerintah Yang Bersih Dan Berwibawa*. *Ibid. 208*

[30] *Maria Farida Indarti S, Ilmu Perundang-Undangan (Proses Dan Tekhnik Pembentukannya) (Kanisius, 2007).*

[31] Sondang P. Siagian, *Filsafat Administrasi* (Bumi Aksara, 2016).

[32] Taniredja.

[33] Suhrawardi K and Farid Wajdi., *Peradilan Agama Dan Kompilasi Hukum Islam Di Indonesia* (Sinar Grafika, 2012).

[34] Triyanto, *Negara Hukum Dan HAM* (Yogyakarta: Ombak, 2013).

the PN, because they only carry out administrative functions, without any authority to "force" so that the execution of forced attempts can be carried out. Similarly, the supervisory function of the chairman of the PTUN, which is only supervising in a passive sense, cannot impose any punishment (sanctions) if the body and/or government officials still do not carry out the contents of the PTUN decision.

RESULT

Legal Consequences for TUN Officials Who Do Not Implement PTUN Decisions

Basically, the administration of government must require authority. The authority of the TUN body or official is not only to grant rights, but also to impose obligations on the TUN body or officials themselves[35].

Acts or actions of TUN bodies or officials can be classified into material / real acts (feitelijk handeling) and legal acts (rechtshandeling). A material act is a seizure carried out by a TUN body or official to meet a real need that is not intended to cause legal consequences. Meanwhile, legal actions carried out by TUN entities or officials are based on public legal norms intended to cause certain legal consequences, namely in the form of arising or loss of rights and obligations for a person or civil legal entity to be addressed.[36]

The principles in making a decision by TUN officials as part of the administration of government or as a form of government compliance with AAUPB are as follows:

1. Principle of legal certainty (principle of legal security);
2. The principle of proportionality;
3. The principle of equality (in decision making) (principle of equality);
4. The principle of carefulness;
5. The principle of wisdom (spentia);
6. Principle of public service.[37]

Basically, the administration or implementation of government requires the existence of a responsibility from government administrators as a consequence of the adoption of a democratic rule of law or a democratic state based on law. This is clearly stated in the provisions of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states and confirms that Indonesia is a state of law.[38] Therefore, the logical consequence of the adoption of a rule of law is that all government actions in Indonesia must be based on law.

By prioritizing the concept of government based on law, the application of accountability for an action or government that is free or commonly referred to as discretion (ermesen, discretionary powers) can also be carried out using AAUPB as a means to be able to test the validity of actions or actions. the free government.[39]

A decision of the Administrative Court judge which has permanent legal force has the following juridical consequences.

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35 'No Title' <https://www.google.com/search?q=diskursus lembaga eksekusi negara dalam penegakan hukum di dindonesia&oq.>.

36 W. Riawan Tjandra, *Demokrasi Melawan Kekuasaan Melalui PTUN* (Yogyakarta: Universitas Atma Jaya, 2009).

37 Lotulung.

38 *Amiruddin Ilmar, Hukum Tata Pemerintahan (Prenadamedia Group, 2014).*

39 *Ilmar..ibid, 243*

1) With the relevant decision, it means that the dispute has ended and there are no other ordinary legal remedies that can be taken by the litigants;
2) The decision has binding power for everyone (in the nature of organ omnes), not only binding on the two litigants (as in civil cases);
3) The decision has executive power which means that the contents of the decision can be implemented. In fact, if necessary, with coercion if the losing defendant does not want to voluntarily implement the contents of the decision.[40]

In the implementation of Article 116, although changes have been made to the article, it can be said that it is progress in developing legal certainty for the implementation (execution) of a PTUN decision. In the old article 116, the implementation of the decision was more of a nature and relied on coercion by the hierarchical agency itself which largely depended on the level of legal awareness of the defendant. Meanwhile, article 116 only recognizes 2 (two) types of coercive measures that can be applied when the defendant (TUN officials) disobey and voluntarily implement court decisions that have permanent legal force, namely (1) coercive measures in the form of administrative sanctions and/or (2) forced efforts in the form of forced money payments (dwangsom), and it is still possible to apply for sanctions for announcements (publications) of decisions in the mass media and/or print media.

Meanwhile, the problem of forced payment of money, including:

1. There is a need for a legal product that regulates the procedures and mechanisms for the payment of forced money (such as PP Number 43 of 1991 concerning the mechanism for paying compensation in the Administrative Court);
2. When can be determined the amount of forced money to be paid;
3. To whom the forced money must be charged, whether to the finances of the relevant TUN official agency or to private officials who are reluctant to carry out the execution of the decision.

Meanwhile, the problems of applying administrative sanctions include:

1. What administrative sanctions can be applied;
2. Basic regulations on which administrative sanctions can be used as a reference; and
3. What are the forms of mechanisms and procedures for the application of administrative sanctions that must be applied.[41]

There is not a single statutory regulation that regulates the mechanism for implementing forced executions, in the form of imposition of forced money or administrative sanctions, as a follow-up to the provisions of Article 116 paragraphs (4) and (7) of the TUN Judicial Law, so that these provisions are completely cannot be applied. The regulations in the Government Administration Law, especially articles 80 to 84, cannot be used yet, because they still require further regulation, namely in the form of a Government Regulation.

Government Regulations are statutory regulations stipulated by the President to carry out the Act as it should. The content of the Government Regulation contains material for carrying out the Act as it should. What is meant by "implementing the law as it should be" is the stipulation of a Government Regulation to carry out the orders of the law or to carry out the law as long as it is necessary without deviating from the material regulated in the

[40] *Ilmar.Op.cit.137*
[41] *Ilmar. Ibid. 139*

law concerned.[42] Thus, in the absence of such government regulations, the implementation of several sanctions norms against TUN officials cannot be implemented.

The weakness of the sanctions norm and also the problem of the extent to which the legal implications or consequences are received by TUN officials who do not implement the PTUN decisions. In addition, we can find out what steps must be taken as a solution to the problems related to the application of these sanctions.

One of the principles of the rule of law is the principle of legality, which means that every government legal action must be based on the applicable laws and regulations. Based on the jurisprudence of the Conseil d'Etat, the government or the state is burdened with paying compensation to a person or citizen who is a victim of the implementation of administrative tasks. In the perspective of public law, the government's legal actions are then used by several legal and policy instruments such as regulations, decisions, policy regulations, and statutes. Bothlingk gives three examples of onbevoegd (unauthorized officials), namely: First, using a method that is not in line with the authority given to him. Second, he acts by means of the authority given to him, but outside the execution of his duties.[43]

Based on the information above, it appears that the legal action carried out by the official in the context of exercising the authority of the position or for and on behalf of the position, then the action is categorized as a legal action of the position. In the writings of Kranenburg & Vegting, there are two theories regarding the issue of official accountability. First, fautes personalles, namely the theory which states that losses to third parties are borne by officials who because of their actions have caused losses. Second, fautes de services, namely the theory which states that losses to third parties are borne by the official agency concerned.[44] With regard to the issues mentioned above, namely regarding accountability and the application of sanctions against officials, it is necessary not only to explain article 116, but also to determine the procedures and mechanisms for resolving them. In this case, the theory of administrative law cannot be used as a solution, but rather the maker of implementi
ng regulations or determinations in positive law. Administrative law theory can only be used as a frame of reference in making implementing regulations and as a guide for determining the contents of positive law

CONCLUSION

The legislators did not review comprehensively and were also unable to properly identify the root causes of why the PTUN decision was difficult to implement in its execution. If the TUN agency or official does not carry out the execution of the Administrative Court decision, then 60 (sixty) working days after the court decision that has obtained permanent legal force as referred to in Article 116 paragraph (1) is received, the defendant does not carry out his obligations, the disputed State Administrative Decision no longer has legal force. The absence of an execution agency that implements the PTUN decisions is the main and fundamental problem in this research.

SUGGESTIONS

The legislators are required to review and re-identify the problems that make the PTUN decisions difficult to implement in practice. There are two ways or mechanisms that can be taken, namely:

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[42] *Marida Farida Indrati Soeprapto, Legislation Science: Fundamentals and Its Formation (Jakarta: Kanisius, 1998).*

[43] 'No Title' <https://e-journal.uajy.ac.id/453/3/2MIH01437.pdf>.

[44] *'No Title'. Ibid. 2*

First, Legislative review, namely the DPR-RI as the holder of the legislative power can submit a bill to amend the PTUN law and then discuss it with the government according to the mechanism regulated in law number 12 of 2011 concerning establishment of laws and regulations. Second, a Judicial Review can be submitted by parties who can directly harm their interests due to the enactment of Article 116 paragraph (3). Because in submitting a petition for judicial review to the Constitutional Court, hereinafter referred to as (MK) according to law number 24 of 2003 concerning the Constitutional Court, it must have legal standing.

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