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Binding Force of Judgment of State Administrative Court Decisions against Government Agencies

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ABSTRACT

Court decisions in the State Administration (PTUN) essentially have binding legal force on the parties, including government agencies as defendants. This research examines how the binding legal force of PTUN decisions applies to government agencies and the legal consequences that arise if the decision is not implemented. The research method used is normative juridical with a statutory approach and case studies of several PTUN decisions that were not executed. The results showed that PTUN decisions with permanent legal force (*inkracht van gewijsde*) have a final nature and must be implemented by government agencies as a form of respect for the rule of law and the principles of the rule of law. However, in practice, there is still a lot of non-compliance from the government to the contents of the decision, which creates legal uncertainty for justice seekers. Such non-compliance not only undermines the principle of due process of law, but can also lead to administrative and criminal legal consequences for authorized officials. Therefore, more effective monitoring mechanisms and sanction instruments are needed to ensure consistent and equitable implementation of PTUN decisions.

KEYWORDS

State Administrative Court; Binding Force; *Inkracht*; Government Agencies; Legal Effects



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INTRODUCTION

In the Indonesian administrative law system, the existence of the State Administrative Court (PTUN) has a central role as a concrete manifestation of the principle of the rule of law (*rechtsstaat*), where all government actions are subject to legal supervision and can be tested for legality through a judicial mechanism. PTUN was born based on Law Number 5 of 1986 concerning State Administrative Courts, which was later updated through Law Number 9 of 2004 and Law Number 51 of 2009. The main function of the State Administrative Court is to exercise judicial control over State Administrative Decisions (KTUN) that are concrete, individual, and final, and have legal consequences for citizens or civil legal entities.¹ This mechanism provides legal space for citizens to challenge administrative decisions of government officials that are considered contrary to the general principles of good governance, such as the principle of legality, the principle of legal certainty, and the principle of protecting human rights. In this context, the legal force of PTUN decisions that have permanent legal force (*inkracht van gewijsde*) is final, binding, and must be implemented by the parties, including government agencies as defendants.²

However, in practice, not all PTUN decisions are obeyed and implemented voluntarily by government agencies, even though legal norms have mandated such obligations. Such non-compliance is a form of resistance to valid court decisions and has the potential to violate the fundamental principle of due process of law, which guarantees that the legal process must be carried out fairly, openly, and must be respected by all parties, including by public officials as representatives of the state.³

Furthermore, provisions regarding the implementation of PTUN decisions are explicitly regulated in Article 116 of the State Administrative Court Law (Law No. 5 of 1986 as amended), which states that if the official who is the defendant does not implement the contents of the decision, the court can order certain administrative actions or impose sanctions in the form of forced money (*dwangsom*). This sanction is intended as a means of legal pressure for public officials to submit and comply with judicial decisions that have obtained permanent legal force.⁴ However, the reality on the ground shows that the existence of these normative provisions does not necessarily guarantee the effective implementation of court decisions. The absence of an independent executive body capable of taking coercive action against defiant public officials is one of the main reasons for the weak implementation of PTUN decisions in Indonesia. In the criminal or civil justice system, there are specialized officials or institutions, such as prosecutors or bailiffs, who have the authority to enforce. However, in administrative law, the court can only order, but has no structural coercive tools to ensure the order is carried out, especially when dealing with the arrogance of power or institutional political interests protected by a rigid and hierarchical bureaucratic structure. This indicates that the

¹ Indroharto, *Usaha Memahami Undang-Undang tentang Peradilan Tata Usaha Negara* (Jakarta: Pustaka Sinar Harapan, 1993).

² P M Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia* (Surabaya: Peradaban, 2007).

³ H Yodi Martono Wahyudi, "Kompetensi Pengadilan Tata Usaha Negara dalam Sistem Peradilan di Indonesia" (2007) 5 Hukum 1-11.

⁴ M Prodjohamidjojo, *Hukum Acara Pengadilan Tata Usaha Negara* (Jakarta: Ghalia Indonesia, 2005).



implementation of the PTUN's decision is still highly dependent on the legal awareness and goodwill of the official being sued, so that if the official chooses to ignore the decision, then, substantively, the law loses its moral force and justice towards the people seeking justice.⁵

In addition to having a direct impact on justice seekers who lose their substantial rights due to official non-compliance, failure to execute PTUN decisions also creates a bad precedent that undermines the principle of legal certainty and weakens the legitimacy of state administrative justice as a whole. When government officials do not implement court orders without facing real consequences, the public sees that the rule of law is not working effectively, and is even subject to administrative power. As a result, the public becomes skeptical of the legal process and administrative justice, because the reality shows that even if the court decides a case legally and reasonably, the result is still meaningless if it is not implemented. Therefore, structural and normative reforms are needed for the system of implementing PTUN decisions in Indonesia, either by regulating the role of the prosecutor's office as executor, expanding the meaning of contempt of court to the realm of state administration, or reaffirming the principle of official liability for acts of ignoring the law. In the context of the rule of law, the implementation of court decisions is the backbone of substantive justice, and therefore, should not be left to depend on the voluntarism of government administration actors, but must be strengthened through legal instruments that are coercive, firm, and politically and legally accountable before the constitution.

Previous research has also shown that the weakness of the implementation of PTUN decisions is due to the absence of an independent executive institution with coercive powers, such as those found in the criminal and civil law systems.⁶ In the Indonesian administrative law system, court decisions depend more on the awareness and good faith of public officials. When this legal awareness does not arise, then the PTUN's decision becomes practically meaningless, even though it has obtained permanent legal force.⁷

Within this framework, the concept of contempt of court becomes an important discourse that should be considered as a means of coercion to ensure compliance with PTUN decisions. In some countries, non-compliance with court decisions, including in the administrative sphere, can be subject to criminal sanctions because it is considered a form of contempt of court.⁸ Although not yet explicitly regulated in Indonesian administrative law, this discourse is relevant to encourage to upholding of the rule of law and maintain the authority of the judiciary.

In addition, the effectiveness of supervision over the implementation of PTUN decisions is also still weak. The Supreme Court, as the highest judicial institution, has issued technical guidelines for the implementation of decisions, but in practice, supervision of the implementation of decisions has not been carried out optimally.

⁵ M Lubis, "Tantangan Eksekusi Putusan PTUN" (2019) 5:2 J Huk Peratun 134-145.

⁶ D Gusman, "Efektivitas Pelaksanaan Upaya Paksa Putusan Pengadilan TUN" (2010) 39:3 Masal Huk 225-234.

⁷ H A Tumpa, "Memahami Eksistensi Uang Paksa (Dwangsom)" (2010) 2:1 J Huk dan Peradil 45-60.

⁸ M Afifudin, "Eksekusi terhadap Putusan Pengadilan TUN yang Berkekuatan Hukum Tetap" (2018) 5:2 J Mimb Keadilan 87-102.



Many cases show that there is stagnation in the execution of decisions due to the lack of synergy between institutions and the absence of concrete sanctions imposed on officials who disobey.⁹

Non-compliance with PTUN decisions also has a systemic impact. In addition to harming individual justice seekers, this phenomenon creates a negative precedent in the legal system and lowers public confidence in judicial institutions. This is contrary to the principle of *pacta sunt servanda* and the principle of the rule of law, which is the foundation of a modern legal state.¹⁰ When the government itself, as a lawmaker, does not comply with court decisions, the integrity of the law as a whole is jeopardized.¹¹

Based on these problems, this study aims to examine the binding legal force of PTUN decisions against government agencies and examine the legal consequences that arise if the decisions are not implemented. By using normative juridical methods and case studies of several unexecuted PTUN decisions, it is hoped that the results of this study can contribute to the development of administrative law doctrine and institutional reform to ensure consistent and equitable implementation of PTUN decisions.¹²

The problem formulations that will be discussed in this study are as follows:

1. What is the binding legal force of the PTUN Decision against the Government Agency as the Defendant Party?
2. What are the legal consequences for government agencies that do not implement PTUN decisions that have permanent legal force?

METHOD

This research uses a normative juridical method, which is an approach that focuses on analyzing legal norms written in laws and court decisions.¹³ This method was chosen because the research aims to examine the binding legal force of the State Administrative Court (PTUN) decision and the legal consequences that arise if the decision is not implemented by government agencies. The statutory approach is used to examine the legal provisions governing the implementation of PTUN decisions, such as those contained in Law Number 5 of 1986 concerning State Administrative Courts and its amendments, as well as other implementing regulations. In addition, a conceptual approach is used to understand the legal principles underlying the obligation to implement court decisions by government agencies.

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⁹ K Ladju & others, "Sanksi Terhadap Pejabat yang Tidak Menjalankan Putusan PTUN" (2018) 25:2 J Huk Ius Quia Iustum 321–340.

¹⁰ Subekti, *Hukum Perjanjian* (Intermasa, 2001).

¹¹ U Dani, *Konsep Sanksi dalam RUU-AP: Suatu Upaya Penguatan Pelaksanaan Putusan PTUN* (Palembang: Pengadilan TUN Palembang, 2018).

¹² L Usman, "Penjatuhan Sanksi terhadap Pejabat Pemerintahan yang Tidak Melaksanakan Putusan Peratun" (2021) 9:2 J Huk Progresif 99–110.

¹³ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2012).



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RESULT & DISCUSSION

I. The Binding Legal Force of the PTUN Decision on Government Agencies as Defendants

Court decisions are statements by judges as officials authorized to resolve disputes, and these decisions are expected to provide legal certainty and justice to the parties. In Indonesian law, a court decision that has permanent legal force (*inkracht van gewijsde*) has three kinds of legal force, namely: (1) binding force, (2) evidentiary force, and (3) executorial force. Binding force means that what the judge decides applies and binds the parties (*res judicata principle*) and must be obeyed; evidentiary power means that the decision is an authentic deed that has perfect evidentiary value regarding the matter decided; while the power of execution means that the decision can be implemented forcibly by the state if the losing party does not voluntarily comply with it. Thus, a final decision (*inkracht*) closes the possibility of ordinary legal remedies such as appeal or cassation, so that the decision becomes definitive and must be implemented by the parties to the dispute.¹⁴ Court decisions that have been in force are automatically binding; what the judge decides is considered correct, and the parties are obliged to obey the decision.

Theoretically, the doctrine of the binding force of decisions is also differentiated in its reach: for civil cases it is generally *inter partes* (binding only for the litigants), while for certain cases including state administration, decisions can have a broader effect approaching *erga omnes* (binding on other parties outside the dispute). According to Paulus Effendi Lotulung,¹⁵ A state administrative court decision that has been *inkracht* has juridical consequences that the dispute that has been decided ends and there are no more ordinary legal remedies, the decision binds the parties and even binds everyone (*erga omnes*) as far as the object of public dispute is concerned, the decision is an authentic deed with evidentiary power, and the decision has executorial power so that it can be implemented by force. Thus, in the context of state administrative disputes, the binding force of decisions tends to be broader than ordinary civil disputes, considering that the object of dispute is the product of government officials that apply to the public (PTUN decisions can cancel state administrative decisions that have a general impact). The legal force of the judge's decision is in line with the principle of legal certainty in a state of law, where court decisions must be respected and executed so that the judicial authority is meaningful.¹⁶

The State Administrative Court (PTUN) is one of the pillars of the four judicial circles under the Supreme Court in the Indonesian judicial system, in addition to the

¹⁴ Sudikno Mertokusumo, *Penemuan Hukum* (Bandung: Citra Aditya Bakti, 2009).

¹⁵ Philipus M Hadjon, *Perlindungan Hukum Bagi Rakyat di Indonesia* (Surabaya: Bina Ilmu, 1987).

¹⁶ S F Marbun, *Peradilan Administrasi Negara dan Upaya Administratif di Indonesia* (Yogyakarta: FH UII Press, 2011).



General Court, Religious Court, and Military Court. The position of PTUN has been mandated since Law No. 14/1970 on the Principles of Judicial Power and is now affirmed in Article 10 paragraph (2) of Law No. 48/2009 on Judicial Power.¹⁷ PTUN functions to provide legal protection and legal certainty for both the people and the state administration.¹⁸ The main purpose of the establishment of PTUN is to keep government administrative actions within the corridors of the law, as well as to protect the people from the arbitrary actions of administrative officials. With the existence of judicial control through the PTUN, it is hoped that a balance will be created between the interests of the government and the rights of citizens, so that government administration can take place in an orderly, reasonable manner and does not deviate from legal provisions.

Sociologically, the existence of PTUN provides a check and balance mechanism on executive power. Philipus M. Hadjon emphasized that administrative justice is a concrete manifestation of the principle of the rule of law (*rechtsstaat*): every government action can be tested for legality so as not to harm the people. PTUN is a means of legal protection for the people against abuse of government authority.¹⁹ In addition, the PTUN also provides legal certainty for administrative officials, because through court decisions, administrative disputes are resolved definitively, so that officials get clarity on whether or not the decisions they issue are valid.²⁰ Sjachran Basah calls the PTUN a legal protection for the community and the government: the community is protected, while the public administration is helped to adhere to legal principles in carrying out its duties. Thus, the position of PTUN in the justice system is not only as a forum for dispute resolution, but also as an instrument for upholding the principles of good governance and clean and strong government.

As part of the judicial power, PTUN decisions have the same binding force in principle as other court decisions. Article 8, paragraph (1) of Law No. 5 of 1986 (PTUN Law) emphasizes that PTUN decisions are implemented “for the sake of justice based on God Almighty”, which indicates the final and binding nature of the decision, like other judicial decisions.²¹ This means that once the Administrative Court has rendered a legally binding decision, all relevant parties - including the state administrative body/official as the defendant - must respect and implement the decision accordingly. Bagir Manan emphasizes that the authority of the judiciary lies in the parties' compliance with its decisions; if the decision is ignored, the authority of the law and the court will be harmed. Therefore, in the Indonesian legal system, PTUN decisions are considered final, binding, and enforceable, although in the practice of execution, there are specificities that will be further elaborated.²²

The term *inkracht van gewijsde* means a decision that has obtained permanent legal force. In the context of Indonesian law, including PTUN procedural law, a decision is declared *inkracht* if there are no more ordinary legal remedies available (appeal or cassation) or if the period for filing such legal remedies has passed.²³

¹⁷ J Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara* (Jakarta: Konstitusi Press, 2010).

¹⁸ S Basah, *Eksistensi dan Tolok Ukur Peradilan Administrasi di Indonesia* (Bandung: Alumni, 1997).

¹⁹ Hadjon, *supra* note 2.

²⁰ Indroharto, *supra* note 1.

²¹ *Ibid.*

²² Bagir Manan, *Menyongsong Fajar Otonomi Daerah* (Yogyakarta: PSH Fakultas Hukum UII, 2002).

²³ Sudikno Mertokusumo, *Mengenal Hukum* (Yogyakarta: Liberty, 2006).



Abdul Kadir Muhammad defines a decision with permanent force as a decision that, according to statutory provisions, there is no longer an opportunity to use ordinary legal remedies against the decision. Similarly, Zairin Harahap explained that a PTUN decision becomes *inkracht* when the parties accept the decision or do not file an appeal/cassation within the specified deadline, or after the cassation effort is terminated and no judicial review (PK) is filed under the provisions. An *inkracht* decision is a guarantee of legal certainty, because with *inkracht* status, the case is considered complete and the result must be respected as definitive legal truth.²⁴

In the context of state administration, the enactment of a PTUN decision has special implications. According to Indroharto, an *inkracht* PTUN decision binds the parties and also binds the object of the state administrative dispute that was decided. If the decision declares the nullity of a State Administrative Decree (KTUN), then, since the *inkracht*, the KTUN is legally invalid (declared null) and the official who issued it is obliged to revoke it. In other words, *inkracht* status has the consequence that the object of dispute (for example, a decree) loses its binding force by the verdict. This is what distinguishes the nature of PTUN decisions from civil decisions: PTUN decisions can have *erga omnes* implications regarding the validity of a public decision. Philipus M. Hadjon also explained that a PTUN decision that has been *inkracht* has legal consequences: (1) the occurrence of legal certainty for the plaintiff and defendant that the dispute has been resolved, (2) for the plaintiff, getting protection of rights through the cancellation of unlawful decisions, (3) for the defendant (state administrative official), there is a legal obligation to implement the contents of the decision, including the obligation to issue a new state administrative decision if ordered (for example in employee rehabilitation decisions).²⁵ Thus, *inkracht van gewijsde* in state administrative disputes confirms the end of the dispute and the beginning of the real obligation of government agencies to comply with court decisions.

The concept of *inkracht* in PTUN is also related to the principle of *res judicata pro veritate habetur*, which means that a final judge's decision must be considered correct and fair, so it must be implemented. This principle applies generally, but in the context of state administration, it becomes very crucial because it concerns the authority of the government in respecting the law. Ridwan HR states that the government as a legal subject is also bound by this principle; when the court has ruled on an administrative dispute in a final manner, the state administrative agency or official must comply with the decision as a form of obedience to the law and a consequence of the rule of law.²⁶ This means that the inception of the PTUN decision is not merely a procedural status, but carries a normative message that the rule of law is in effect - the law (in this case, a court decision) must control the actions of the government.

Law No. 5 of 1986 jo. Law No. 9 of 2004 jo. Law No. 51/2009 (State Administrative Justice Law) explicitly regulates the legal consequences of an *inkracht* PTUN decision, including the obligation of government agencies (Defendants) to implement the decision. In general, Article 97 of Law No. 5 of 1986 (which after amendment became Article 107 of Law 51/2009) states that if the

²⁴ Z Harahap, *Hukum Acara Peradilan Tata Usaha Negara* (Jakarta: RajaGrafindo Persada, 2001).

²⁵ Indroharto, *supra* note 1.

²⁶ Ridwan HR, *Hukum Administrasi Negara* (Jakarta: Raja Grafindo Persada, 2011).



lawsuit is granted, the court may declare void the disputed state administrative decision and oblige the defendant state administrative official to revoke the decision, and may also be accompanied by an obligation to rehabilitate the plaintiff's rights or issue the necessary decision in the event of an employment dispute.²⁷ PTUN decisions are generally concrete and condemnatory, meaning that they not only state the law but also order a concrete action from state administrative officials. For example, in disputes over the dismissal of civil servants, PTUN decisions often contain orders to revoke the dismissal decree and restore the plaintiff's position as an employee (rehabilitation decisions). This means that legal norms have obliged authorized officials to take certain actions to comply with the court's decision.

Furthermore, the State Administrative Court Law (after amendments in 2004 and 2009) contains specific provisions regarding the execution of State Administrative Court decisions in Article 116. The amendment of the State Administrative Court Law through Law No. 51/2009 provides a more detailed regulation on the procedures for the execution of decisions and forced efforts if the decision is not implemented. In summary, the normative mechanism for the execution of PTUN decisions based on Article 116 of Law 51/2009 is as follows: after the verdict has become final, within 14 working days of the verdict, a copy of the verdict must be sent to the parties by the court clerk on the order of the Chief Justice. The state administrative official (defendant) is given 60 working days to carry out the obligations specified in the decision (e.g., revoke the decision, restore the plaintiff's rights). If within 60 working days from the notification of the *inkracht* decision, the Defendant does not carry out its obligations, the disputed state administrative decision will automatically cease to have legal force. This provision means that after 60 days, a state administrative decision that is annulled by the court is considered invalid without the need to wait for revocation action by the official (the judge's decision immediately gives the effect of final annulment). On the other hand, the Defendant (official) still must implement the contents of the decision. If, after 90 working days, the obligation has still not been implemented, the Plaintiff can submit a request to the President of the Court that decided for the first instance to order the Defendant to implement the decision. This order from the President of the Court is a form of official warning (*aanmaning*) so that officials comply with the decision.

If a state administrative official is still unwilling to implement an *inkracht* decision even though it has been ordered, then the law provides for coercive measures. According to Article 116 paragraphs (4) and (5) of Law 51/2009, a Defendant who fails to implement an *inkracht* decision may be subject to: (a) forced money (*dwangsom*) in the form of an obligation to pay a certain amount of money per day of delay, (b) administrative sanctions, and/or (c) announcement in the mass media about the official's non-compliance. The imposition of forced money and sanctions is imposed through a decision of the President of the Court, and the clerk will announce in the local print media that the relevant state administrative official has not complied with the decision. Furthermore, the President of the PTUN also reports to the President as the holder of the highest executive power, to request the President to order the state administrative official to implement the court's decision.

²⁷ Harahap, *supra* note 24.



This involvement of the President is regulated in Article 116, paragraph (6) of Law 51/2009, considering that the President has the highest hierarchy over state administration. Thus, normatively, the PTUN Law has regulated the stages of execution: starting from appeals, official orders, to financial and administrative sanctions, as well as escalation to the superior official (even to the President) to enforce the decision.

However, it should be noted that the implementation of these forced money provisions and administrative sanctions still faces a void in implementing regulations. Law 51/2009 mandates the establishment of government regulations to regulate the amount of forced money and the procedures for its implementation (Article 116 paragraph (7)), but several years later, the specific rules regarding forced money have not been issued. The government has indeed issued Government Regulation No. 48/2016 on Procedures for Imposing Administrative Sanctions on Government Officials, but this PP is general as the implementation of the Government Administration Law, and does not specifically regulate the procedure for executing PTUN decisions. As a result, the instruments of forced money and administrative sanctions in the context of the execution of PTUN decisions have not been effectively applied in the field. However, in formal law, the provisions of Article 116 of the PTUN Law have emphasized that PTUN decisions are binding and must be implemented by government agencies that are defendants, and provide a mechanism in the event of defiance.

II. Legal Consequences for Government Agencies that Do Not Implement PTUN Decisions that Have Permanent Legal Effect

Government agencies or state administrative officials who are defendants have a legal obligation to comply with and implement PTUN decisions that have permanent legal force. This obligation stems from the principle of the rule of law in a state of law (Article 1, paragraph (3) of the 1945 Constitution), which places court decisions as a concrete form of law that must be obeyed by all parties, including the government. From the perspective of administrative law, public officials are bound by the principle of *presumptio iustae causa*, namely that every government action is considered correct as long as it has not been declared otherwise by the court. However, if the court has decided that an official's action or decision is unlawful (for example, the KTUN is canceled), then since then the official must comply with the decision. Indroharto emphasized that the TUN body or official as the defendant must respect the PTUN decision, as a consequence that the dispute has been resolved through legal channels. This obligation includes taking the actions ordered in the verdict, as well as the prohibition to continue enforcing the canceled decision.

Normatively, Article 116 of Law 51/2009 (jo. Article 119 of PERMA No. 2/2011 on Procedures for Settling State Administrative Disputes) outlines that the defendant is obliged to implement the PTUN decision no later than 60 days after the decision becomes legally binding. This obligation is a concrete form of administrative obedience to judicial decisions. In much of the literature, it is stated that official obedience to court decisions is an important test for the rule of law: "the proof of the rule of law is compliance with court decisions".²⁸ Thus, government

²⁸ Hadjon, *supra* note 2.



agencies must consider the final PTUN decision as a binding legal order. If the verdict orders the revocation of a KTUN, the official must issue a revocation decision; if the verdict orders the rehabilitation of a position or the payment of arrears of salary, the agency must realize it in real administrative action.²⁹ Failure to fulfill this obligation not only violates the Administrative Court Law, but also violates the rights of citizens that have been restored through court decisions.

From the point of view of material administrative law, a PTUN decision that grants a lawsuit means that the disputed KTUN is declared invalid/void by law. Therefore, the official issuing the KTUN may not continue to defend the decision. Even without waiting 60 days, ethically and legally, officials should implement the verdict immediately after the *inkracht*. Supandi, in his research, highlighted that official compliance with PTUN decisions is part of obedience to law that must be carried out by government officials. Officials cannot argue with any reason not to carry out the decision, because the decision order is a legal order (*rechtspraak is wetgeving in concreto*) that binds them. In addition, based on the latest Constitutional Court Decision, state administrative agencies or officials no longer have the right to file a judicial review (PK) of an *inkracht* PTUN decision. The Constitutional Court, through Decision No. 24/PUU-XXII/2024, interpreted Article 132 paragraph (1) of the State Administrative Court Law that PK can only be submitted by citizens or civil legal entities, excluding state administrative bodies/officials. The implication of the Constitutional Court's decision is to strengthen the finality and legal certainty of the PTUN decision; the losing government agency can no longer delay its obligations by filing a PK. Therefore, the only legal option for government agencies after an *inkracht* verdict is to implement the verdict by complying with the law.³⁰

Doctrinally, the principle of the rule of law (*Rechtsstaat*) contains the element that the government is bound by law and the courts. Jimly Asshiddiqie mentioned that one of the characteristics of the Pancasila state of law is the existence of judicial control over government actions and the existence of apparatus compliance with court decisions as an elaboration of the principle of legal sovereignty over power. Therefore, it can be said that the obligation of government agencies to implement *inkracht* PTUN decisions is not only a demand of the PTUN Law, but also a constitutional and ethical demand in the context of a government that is subject to the law. Government agencies that do not implement these decisions are denying the principles of the rule of law and can be seen as violating the law.

The phenomenon of obeying or ignoring PTUN decisions by government officials can be analyzed with the theory of legal compliance (compliance theory). According to legal sociology theory,³¹ the level of obedience to the law is influenced by several factors: factors of the rule of law itself (clarity and sanctions), law enforcement factors (officials who enforce), factors of legal awareness of the community/actors, and the legal culture that develops. In the context of government officials, legal awareness and bureaucratic legal culture determine whether court

²⁹ A Marpaung, *Eksekusi Putusan PTUN dalam Perspektif Hukum Administrasi* (Medan: Fakultas Hukum USU, 2010).

³⁰ HR, *supra* note 26.

³¹ Soerjono Soekanto, *Faktor-faktor yang Mempengaruhi Penegakan Hukum* (Jakarta: Rajawali Pers, 2011).



decisions will be obeyed. Dani argues that compliance arises when a person realizes their intrinsic obligations, while Alf Ross adds that compliance is also influenced by the presence or absence of sanctions that will be imposed if they violate. Both views are relevant: officials should ideally comply because they are aware of their oath of office to obey the law, but reality shows that sometimes it takes the threat of sanctions for them to comply with decisions (compliance by deterrence).

Administrative law compliance theory also recognizes the concept of *Fautes de service* vs *Fautes personnelles*, especially in France, which is adopted by some Indonesian experts.³² *Fautes de service* refer to errors arising in the course of service (e.g., the mistake of issuing a decision), while *fautes personnelles* are personal errors of the official, for example, deliberately not complying with a court decision even though it is not his authority. Not implementing a PTUN decision can be categorized as an official's *fautes personnelles*, because he failed to carry out the legal obligations imposed on him. This means that the official personally violated the law by disobeying the decision. This theory asserts that even though the KTUN is issued in the name of the office, when the court decision is not complied with, the responsibility shifts to the personal responsibility of the official. This is consistent with the concept that no one is above the law (even the king is subject to law); officials cannot hide behind their positions to avoid legal compliance.

In the practice of state administration in Indonesia, the level of compliance of officials with PTUN decisions is also influenced by the ethos of the bureaucracy. The hierarchical bureaucratic culture sometimes makes officials reluctant to admit mistakes, especially if the case they lose is related to policy. Supandi noted that there is often a sectoral ego, where officials feel that court decisions “interfere” with the authority of their institutions, so that there is internal resistance to implementing the decision. This shows an element of bureaucratic legal culture that needs to be changed: from power-oriented to law-oriented. Legal obedience in administration means that officials view compliance with court decisions as part of their noble official duties to uphold law and justice, not just a burden. Soerjono Soekanto also mentioned the importance of leadership role models: if agency leaders show commitment to obeying the law, subordinates will be more obedient; conversely, if leaders tend to ignore decisions, subordinates do not feel obliged. Therefore, cultivating legal awareness among the state civil apparatus is the key to increasing compliance with PTUN decisions.³³

Obedience theory also underscores the role of sanctions. The PTUN Law has provided the threat of administrative and financial sanctions (forced money) for non-compliant officials. According to the utilitarian view, officials will consider cost and benefit; if the threat of sanctions is real (e.g., publication of names in the media, monetary fines, or disciplinary punishment), then the propensity to comply increases.³⁴ Unfortunately, because the implementation of these sanctions has not

³² Kyagus Ramadhani, I Gede Widhiana & Fiska Maulidian Nugroho, “Analisis Pertimbangan Hakim dalam Tindak Pidana Pajak (Studi Putusan No. 3839/Pid. Sus/2020/PN Mdn)” (2022) 12:1 J Anti Korupsi 21–37.

³³ Supandi, *Kepatuhan Pejabat dalam Menaati Putusan PTUN* Universitas Sumatera Utara, 2005) [unpublished].

³⁴ B L Tanya & others, *Teori Hukum: Strategi Tertib Manusia Lintas Ruang dan Generasi* (Yogyakarta: Genta Publishing, 2010).



been optimal (because the implementing regulations are not clear), the deterrent effect for recalcitrant officials has not been felt. Arifin Marpaung emphasized the need for coercive measures to be applied so that officials do not take PTUN decisions lightly. Otherwise, officials may consider that there are no serious consequences when they ignore the decision, especially since sometimes the officials' superiors do not sanction them internally. So, from a theoretical perspective, a combination of legal awareness and enforcement of sanctions is needed so that legal compliance of officials in implementing PTUN decisions can be realized.

Although normatively PTUN decisions are binding and must be implemented, in practice in Indonesia, there are several cases where government agencies (Defendants) do not implement PTUN decisions that have been *inkracht*. This creates a paradox in administrative law enforcement. Supandi found in his dissertation that it often happens that PTUN decisions are not implemented/obeyed by the relevant State Administrative Officials, resulting in legal uncertainty for the people and for the state administration itself. A concrete example is the case of an employment dispute in North Sumatra (which Supandi researched) where a civil servant who was illegally dismissed won a lawsuit at the PTUN and PT TUN until *inkracht*, but the relevant government agency delayed the rehabilitation of the employee. For months and even years, the employee had not been reinstated despite the verdict, until a reprimand was issued by the Court and reported to the superior officer. Cases like this show that without an effective coercive mechanism, officials may ignore the judgment, leaving the plaintiff's rights in limbo.

Another example that has surfaced nationally is the dispute between KPU and Oesman Sapta Odang (OSO) in 2018. The Jakarta Administrative Court granted OSO's lawsuit and ordered the KPU to include his name as a DPD candidate, even though the KPU had previously crossed him out for holding concurrent positions. The PTUN verdict is *inkracht*, but KPU is reluctant to implement it because it argues that it contradicts the decision of the Constitutional Court. Finally, the Court sent a letter to the President under Article 116 of the PTUN Law to ask the President to reprimand KPU. The President, through the Minister of State Secretary, issued a letter to the KPU to comply with the PTUN decision. This case shows the mechanism of Article 116 at work: the media also highlighted that the President's letter was not an intervention, but a normal procedure to enforce the PTUN decision. Although the KPU finally implemented the decision with conditions, the time lag and tug-of-war indicate the agency's resistance to the PTUN decision, which is considered not in line with their interests.

In addition, there are cases in the post-autonomy era where regional heads ignore PTUN decisions. For example, the 2016 Makassar State Administrative Court Decision that overturned the Mayor's removal of a sub-district head. The mayor did not implement the decision to reinstate the sub-district head, citing "the authority of the regional head is prerogative". It was only after the plaintiff complained to the Governor as a superior and received the attention of the Ombudsman that the Mayor finally gave in and implemented the decision two years later. Analysis of this case shows the problem of local power egos that are reluctant to submit to the courts. Arifin Marpaung mentions that the phenomenon of regional heads unwilling to implement PTUN decisions often occurs because regents/mayors feel that they are not subordinate to the Governor, so that execution orders through the Governor are



ineffective. This is related to the structure of regional autonomy: regional heads are directly elected and feel independent, even though, administratively, the Governor is the representative of the central government in the region. Due to the emptiness of the decisive mechanism, it takes a long time and political negotiations for the decision to be carried out.

From these examples, it appears that the gap between rules and practices is quite wide. PTUN decisions, which should be final and binding, can be ignored by officials for various reasons, such as norm conflicts (KPU vs OSO case, under the pretext of another Constitutional Court decision), ego (regional head case), or simply negligence and lack of will. As a result, legal certainty for citizens is undermined. Plaintiffs who have won still do not get their rights on time, and may even need additional struggles. For the legal system, this tarnishes the authority of the judiciary. Ismail Rumadan notes that the problem of executing PTUN decisions creates an impression in the community that it is useless to sue if the decision is “ignored” by officials.³⁵ Long-term impact, public trust in the PTUN mechanism may decline.

The Supreme Court (MA), as the apex of the judiciary, has issued several important jurisprudences to ensure that PTUN decisions are complied with. In several State Administrative cassation decisions, the Supreme Court emphasized that government officials should not take actions that contradict an *inkracht* PTUN decision. For example, the Supreme Court once invalidated an official's attempt to issue a new decision with similar substance as a way to avoid a previous PTUN decision; the Supreme Court considered that the action violated the principle of *res judicata* and the principle of *ne bis in idem*.³⁶ This means that the Supreme Court, through its decision, confirms that state administrative officials are bound to stop/cancel the object of dispute by the ruling, and are prohibited from repeating actions that have been declared unlawful by the court. This kind of jurisprudence strengthens the binding effect of PTUN decisions on government agencies.

In addition, the Supreme Court also supports the use of other legal instruments to enforce PTUN decisions. There are opinions in judicial practice that allow plaintiffs to pursue civil suits against officials who do not implement PTUN decisions, based on unlawful acts by the authorities (*onrechtmatige overheidsdaad*), by Article 1365 of the Civil Code.³⁷ This route is possible when, as a result of an official's negligence, the plaintiff suffers a loss that can be claimed civilly. Although not the mainstream, the existence of jurisprudence that opens up opportunities for compensation claims shows the commitment of the judiciary to provide remediation to citizens when state administrative decisions are ignored. Likewise, criminally, there is the basis of Article 216 of the Criminal Code, which can be used if there is an element of deliberate disregard by officials of a valid court order. Several cases have reported recalcitrant officials to law enforcement officials using this article, although the resolution is mostly ethical and administrative. In essence, the signal from the Supreme Court and law enforcement officials is clear: ignoring a PTUN decision

³⁵ I Rumadan, “Dilema Pelaksanaan Putusan PTUN dalam Praktek” (2010) 2:1 J Huk Progresif 91–105.

³⁶ Indroharto, *supra* note 1.

³⁷ Yahya Harahap, *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian dan Putusan Pengadilan* (Jakarta: Sinar Grafika, 2008).



cannot be justified and can have legal implications. With the umbrella of existing jurisprudence and regulations, it is hoped that government agencies will realize the serious consequences of disobeying a final decision.

CONCLUSION

State Administrative Court (PTUN) decisions that have permanent legal force have full binding legal force against government agencies as defendants. This is a manifestation of the principle of the rule of law (*rechtstaat*), which places the rule of law as the foundation of the Indonesian government system. The legal force of PTUN decisions is not only declaratory, but condemnatory - containing concrete legal obligations for state administrative officials to carry out the ruling, including revocation of KTUN, rehabilitation, or restoration of citizens' administrative rights. In the context of administrative law, non-compliance with PTUN decisions is a serious violation of the principle of due process of law and creates legal uncertainty that erodes public confidence in administrative justice.

Although normatively Article 116 of the PTUN Law has contained an execution mechanism including the threat of administrative sanctions, *dwangsom*, and the involvement of the President, the practice in the field shows the weak effectiveness of the implementation of decisions, mainly due to the absence of adequate executorial devices, low legal awareness of officials, and not optimal implementing regulations. Therefore, it is necessary to reform the institutional and technical regulations for execution, including strengthening the coercive power of the decision through the application of the contempt of court principle in administrative law. Compliance with PTUN decisions is a key indicator of the quality of law enforcement in a democratic state of law. Without real implementation, the rule of law will remain a normative slogan.

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The authors state that there is no conflict of interest in the publication of this article.

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