

Administrative Sanctions for Officials for Not Implementing the Decision of the State Administrative Court

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Abstract: This research is based on the fact that there are no regulations or provisions that specifically regulate coercion for superior officials who do not want to impose administrative sanctions on their subordinates, such as the types of administrative sanctions that will be applied, how to implement forced payments, even the amount of forced money itself. This is a form of disobedience by Government Officials to implement the Decision of the State Administrative Court as stated in Article 80 paragraph (2) and Article 72 paragraph (1) of Law Number 30 of 2014 concerning Government Administration. However, in the perspective of the rule of law, it can be considered that the legality principle which requires written regulation and its application is not appropriate.

The methods used in this study are normative juridical type and a statute approach, conceptual approach, and case approach. This research uses the 1945 Constitution, the State Administrative Court Law, and the Government Administration Law. This research is related to administrative sanctions for officials who do not implement the State Administrative Court Decisions and the concept of imposing sanctions for officials who do not implement the State Administrative Court Decisions. The Amendments to the Law on State Administrative Courts explain the consequences of the law submitted to State Administration officials who do not carry out court decisions, namely Compensation or payment of an amount of money (forcibly) regulated in Article 3 paragraph (1) Government Regulation of the Republic of Indonesia Number 43 years 1991 regarding Compensation, besides that there are Administrative Sanctions which are divided into 3 types, namely in the form of mild sanctions: verbal or written warnings, promotion postponed class, and rights of office.

Keywords: administrative sanctions, State Administrative Court, juridical type, Government Administration Law.

1. INTRODUCTION

The state of Indonesia is a state based on law in accordance with Article 1 paragraph (3) of the Constitution of the Republic of Indonesia, which has the principle of guaranteeing the exercise of the power of an independent judiciary, free from all interference by extra-judicial powers to administer the judiciary to enforce order, justice, truth and legal certainty that are able to provide protection to the community. At this time, statutory regulations have not been issued in the form of guarantees on the procedures for implementing forced payments / administrative witnesses, types of sanctions, and the amount of forced money. As a result, there is a vacuum in legal norms and the result is that the current State Administrative Court Decision is not clear and the implementation of the decision has never been realized. Based on Article 116 paragraph (4), (5), and paragraph (6) of Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts, sanctions imposed on Entities and / or Officials have been regulated. Governments that are not willing to implement Court decisions that have permanent legal force, in the form of payment of forced money and / or administrative sanctions, are announced in the printed mass media, submitted to the President and to the people's representative institutions. However, the legality principle and its application are not appropriate. By affirming and implementing the decision of the State Administrative Court as an obligation for the

Official, the non-compliance of the Agency and / or Official in carrying out its obligation to implement the Decision of the State Administrative Court as referred to in Article 72 paragraph (1) shall qualify as an offense and subject to administrative sanctions. as stipulated in Article 80 paragraph (2) of Law Number 30 of 2014 concerning Government Administrations.

2. DISCUSSION

1. Administrative Sanctions for Officials Not Implementing the Decision of the State Administrative Court

In term of Administrative law, the implementation of administrative sanctions is the implementation of government authority, where this authority comes from written and unwritten administrative law rules. Generally, giving the government the authority to set certain administrative law norms should also be followed by giving the authority to enforce the norms through the application of sanctions for those who violate the administrative law norms.

Administrative sanctions related to government officials who do not implement the State Administrative Court Decision have been regulated in several provisions, namely as follows: in Article 116 paragraph (4) of Law Number 5 of 2009 concerning Second Amendment to Law Number 5 of 1986 concerning Administrative Courts The State effort reads: "In the event that the defendant is unwilling to implement a court decision that has obtained permanent legal force, the official concerned is subject to forced attempts in the form of forced payments and / or administrative sanctions." Regardless of the existence of regulations regarding administrative sanctions government officials who do not implement the Decision of the State Administrative Regulations, the verdict on State Administration cases at the State Administrative Court cannot be implemented optimally / optimally because there is no statutory apparatus regarding State Administrative Courts which is compelling against the Agency / Official state administration to implement the decision which has permanent legal force (inkracht van gewisde), so that the implementation seems not running, so based on Article 116 of Law No. 51 of 2009 concerning Second Amendment to Law Number 5 of 1986 concerning Administrative Courts The State, the Chairperson of the State Administrative Court where submitting a written application to the President as the Head of the Highest Government to exert pressure (pressure) on the defendant to implement a decision which has permanent legal force. The second amendment to the State Administrative Court Law explains the consequences of the law submitted to State Administration officials who do not carry out court decisions, namely Compensation or payment of an amount of money (forcibly) regulated in Article 3 paragraph (1) of Government Regulation of the Republic of Indonesia Number 43 1991 concerning Compensation, besides that there are Administrative Sanctions which are divided into 3 types, namely in the form of light sanctions: verbal or written warnings, promotion postponed class, and rights of office. Medium administrative sanctions, namely payment of forced money and compensation payments, dismissal with office rights, heavy administrative sanctions namely permanent dismissal by obtaining financial rights and facilities, permanent dismissal without receiving financial rights and other facilities and being published in the mass media . The legal consequences, both compensation and administrative sanctions for State Administration officials, cannot be implemented simultaneously because there are stages that must be passed.

2. Obstacles for Officials Due to Disobedience of State Administrative Court.

According to Supandi, the voluntary execution system based on the awareness of State Administration officials in his dissertation plays a very important role in obstructing the implementation of the decisions of the State Administration court. Regarding this, it was concluded that the Court's decision was not implemented due to several factors, including:

(1) Low compliance and legal awareness of officials;

(2) There is an official interest;

(3) There is a vision error in the use of the authority of his office, where the official acts or does not act not for the public interest, but acts as if the public institution is considered his private property.

3. Constraints Regarding the Understanding of State Administrative Officials Against Theory of Rule of Law and the General Principles of Good Governance abbreviated (AUPB)

An understanding of the theory of the rule of law and the system of state power balancing that develops dynamically, is likely to affect the position and function of the State Administrative Court in the state power system in encouraging the realization of a clean and authoritative government. With regard to clean government, it is said that: A clean government is a government that is relatively clean from corruption, collusion and nepotism practices. Efforts to establish a clean

government require 4 prerequisites. First, there is a balance of power in a democratic political system so as to create checks and balances in public decision making. This balance of power is not only related to the balance between the power of the government in power in the opposition, but also to the balance between the state and society. The imbalance of power between the ruling government and the opposition and the imbalance of power between the state and society will encourage abuse of power by the government, manipulation of people's aspirations, poor public services, and oppression of community groups that are not in line with the ideology and interests of the government. Second, the existence of state institutions and social institutions that function to carry out systemic and independent supervision. Systemic supervision means supervision that runs synergistically between supervision carried out by government institutions (for example the BPK and Ombudsman) and social institutions organized by the community (community organizations, mass media, NGOs) in order to achieve good governance (good governance). Third, the existence of an independent and impartial legal institution in conducting judiciary against general violations committed by citizens and the state. An independent and impartial legal institution (police, prosecutors and judiciary) can become a forum for fair and dignified dispute resolution between the state (government) and the people. So far, the existence of these law enforcement institutions, especially during the New Order era, was controlled and controlled by the government so that these legal institutions often became the government's political tool to tyrannize its political opponents and community groups that became development. Fourth, the existence of qualified human resources (HR) as the bearers of the tasks of executing supervisors and judicial duties. The quality of human resources is the most important factor that will determine the progress of a nation in all fields. Without reliable quality resources, a nation will not be able to compete openly with other nations. Understanding the theory of a democratic rule of law is necessary for the realization of a clean and authoritative government. A democratic rule of law can be realized through a balance of power within the framework of the distribution of state power. The obstacle that hinders the implementation of the supervisory function and the State Administrative Court is the failure to apply the theory of a democratic rule of law.

4. Juridical Constraints (Regarding Legislation)

Juridical obstacles concern the issue of statutory provisions which are used as the basis for implementing decisions, especially regarding the basis for the judge's authority to determine forced money and administrative sanctions as stipulated in Article 116 of the Law on State Administrative Courts. The implementation procedure also encountered obstacles due to the absence of implementing regulations regarding its implementation. Yos Johan Utama also highlighted juridical factors as obstacles to enforcing the PTUN decision. Some of these juridical factors can be summarized in the following details: (1) The system offered by the Administrative Court's procedural law in enforcing decisions is based on a pattern of "moral compliance or legal awareness" (law awarenees), not on a "juridical compliance" pattern. (2) The enforcement system for implementing decisions is not placed in a system that ends in or is supported by a penetration as appropriate in civil and criminal justice, which is equipped with instruments that can force the Defendant / Officer to comply or implement the decision. (3) The system for implementing the compensation regulated in PP. 43 of 1999 and Decree of the Minister of Finance of the Republic of Indonesia No. 1129 / KM.01 / 1991 concerning Procedures for Payment of Compensation, the implementation of the PTUN Decision is very complicated and is a rubber article because it is very possible to postpone the payment of compensation for several years. (4) Juridically, there is no balance between the plaintiff and the defendant, where the plaintiff's bargaining position is very weak when the defendant official does not comply with the decision. The 1945 Constitution before the amendment has not legally demonstrated the application of the distribution of power theory. The type of state of the Republic of Indonesia as a rechtsstaat, has not been fully emphasized in the articles of the 1945 Constitution and is only mentioned in the Elucidation of the Constitution. The unclear application of the theory of the distribution of state power causes mistakes in further regulation through various statutory regulations. Regulations that are incapable of placing the position of the judicial power as part of state power must be able to carry out the function of judicial oversight effectively.

5. The Urgency of Establishing a Government Regulation Concerning Imposition of Administrative Sanctions for Government Officials

In general, Administrative sanctions are a tool of power that is public law that can be used by the government as a reaction to non-compliance with the obligations contained in legal norms. To give the authority to the government to determine the norms of state administrative law is also accompanied by giving the authority to enforce norms. In the State Administrative Law, the use of administrative sanctions is the application of governmental authority, where this authority comes from written and unwritten rules of State Administrative Law. When citizens neglect obligations that arise in

administrative law relations, the government can impose sanctions without the mediation of judges. The words without the mediation of judges need to be underlined, meaning that the application of administrative sanctions is basically (in begins) without the intercession of judges, but in some cases there are also administrative sanctions that must go through judicial processing. Thus, it is not only the sanctions imposed by the government itself, but also the sanctions imposed by the administrative judge or administrative appeals agency. Administrative sanctions are a means of power that is public law, which can be applied by the authorities as a reaction against those who do not comply with administrative law norms. Adhering to the above definition, administrative sanctions have the following characteristics: 1) Facilities or instruments of public legal power that are determined based on statutory regulations. 2) Imposition and implementation by government agencies / officials without the intervention of the public prosecutor or judge. 3) Subject to administrative law violators. According to Carolyn Abbot, because administrative sanctions are imposed, and by government official bodies, law enforcement with administrative instruments has two advantages compared to other sanctions, such as criminal sanctions. First, the process of setting and enforcing sanctions does not take a long time, and therefore requires fewer resources than enforcement of the criminal law. Mechanisms with law enforcement with administrative sanctions represent a cost-effective law enforcement option. Second, administrative sanctions are not imposed through the judicial process, but by those who are more familiar with the regulatory framework, technological processes and scientific approaches relevant to the operational arrangements by the entity and the circumstances of the offender.

The formation of regulations or provisions that specifically regulate in the future the concept of imposition of Administrative sanctions against government officials who do not carry out the decisions of the State Administrative Regulations as described above in the perspective of legal protection theory, provide more legal protection, especially related to guarantee and protection of rights. The right of the plaintiff as justice seeker won by the State Administration Court. The concept of imposition of Administrative sanctions against government officials who do not carry out the administrative decisions as described above is very important to be regulated in writing in the form of regulatory regulations. With the establishment of written regulations related to the concept of imposing administrative sanctions on government officials who do not carry out the decision of the district administrator in the perspective of Legal Purpose Theory will provide aspects of legal certainty, legal justice and legal expediency for the plaintiff as justice seekers who have been won in a case at the State Administrative Court, so that justice seekers can really feel what they hope and the aspirated legal objectives can be achieved.

3. CONCLUSION

This research is related to administrative sanctions arrangements for government officials who do not carry out the decisions of the State Administration Regulations that have been regulated in several provisions consisting of; (a). In Law Number 51 of 2009 concerning Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts, in Article 116 paragraph 4. (b) In Law Number 30 of 2014 concerning Government Administration, in Article 7 Paragraph 2 letter k, I and Article 71 Paragraph 3, 4 and Article 72 Paragraph I (c). In Government Regulation Number 48 of 2016 concerning Procedures for Imposing Administrative Sanctions on Government Officials, in Article 3 Paragraph (2) letters k and I However, until now administrative impositions still encounter juridical obstacles related to the mechanism for imposing voluntary administrative sanctions, where There are no regulations or provisions that specifically regulate coercion for superior officials who do not want to impose administrative sanctions on their subordinates, so that in the perspective of the rule of law theory it is not in accordance with the principle of legality, which requires written and consistent arrangements in its application. The concept of implementing administrative sanctions in the future against the Government which does not implement the decision of the Administrative Court in an effective State Administration dispute, namely; (a). There is a need for regulations governing government officials who do not carry out the Administrative Court's decision which is interpreted as an arbitrary action subject to severe administrative sanctions in the form of provisions in Article 81 Paragraph 3 of the Government Administration Law (b) The PTUN institution is not only a supervisor in the implementation of Court decisions TUN, who already has legal qualifications, but is also the executor of the State Administration Court's decision must play an active role in the same way as the *dominis* and *Litis* principle (c). As an *ultimum remedium* or a last resort if an administrative sanction has been imposed on a government official, but the government official concerned still does not want to implement the Administrative Court's decision, the imposition of criminal sanctions can be imposed on government officials who do not want to carry out the obligations ordered in the TUN Court decision which has legal force permanent.

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