

THE ENFORCEMENT OF FINAL ADMINISTRATIVE COURT JUDGMENTS: A COMPARATIVE STUDY BETWEEN INDONESIA AND JAPAN

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Abstract

The principle of fair law enforcement is a manifestation of the state adhering to the conception of the rule of law (*rechtsstaat*) as the ideal of the nation. This makes the Indonesian judiciary have an important role and the principles of simplicity, quick and low cost as mandated by the 1945 Constitution and Act no 48 of 2009 concerning Judicial Power. Enforcement of material law cannot be separated from enforcement of formal law, because both run with the aim of realizing a sense of justice for the community. Likewise, the enforcement of judicial decisions: which is a law that must be implemented by the Parties in dispute in it; must be realized for the sake of justice for the entitled Parties. Statistical data reveals that administrative court decisions are often not implemented by administrative agencies/officials. A comparison of the decision execution system between Indonesia and Japan provides an interesting insight into how the two countries, which have different historical backgrounds and judicial systems, enforce the law and execute decisions. This journal focuses on how the policies of the Administrative Court in Indonesia and the Japanese judiciary in executing *Inkracht* judgments. This analytical comparative study is expected to be a vehicle for scientific and practical exploration related to the fulfillment of rights and obligations for Parties in court disputes. The method used in this research is normative research method with conceptual approach and statutory approach. Some data and statistics from reliable sources are presented as facts that will be analyzed in this journal article..

Keywords: *Execution, State Administrative Court, Administrative Sanctions.*

INTRODUCTION

A German constitutional and political philosopher, F. Julius Stahl, introduced the concept of '*Rechtsstaat*'. This idea emerged following the rise of the notion of a sovereign state and the development of contract theories regarding state formation. In his 1878 work titled '*Philosophie des Rechts*,' Julius Stahl posited that the concept of a rule-of-law state, which he termed '*Rechtsstaat*,' encompasses four key elements:

- Protection of human rights
- Separation of powers
- Government based on law
- Administrative Justice (or Administrative Courts)

The presence of Administrative Justice serves as an effort to realize good governance, ensuring legal protection for the public in accordance with the principle of '*rechtsmatigheid van bestuur*'—which signifies legality or lawfulness based on legal grounds. The Republic of Indonesia, in its state affairs, adheres to the concept of a rule of law or '*rechtsstaat*'. This is clearly and explicitly stated in Article 1, paragraph (3) of the 1945 Constitution, which declares: "The State of Indonesia is a state based on the rule of law." In this concept, the ideal is that law, not politics or economics, should be the ultimate authority in the dynamics of state life. The idea of a rule of law is built by developing the legal framework itself as a functional and just system. It is also developed by organizing the political, economic, and social institutional superstructure and infrastructure in an orderly and systematic manner. Furthermore, it is fostered by building a rational and impersonal legal culture and awareness in the life of

society, nation, and state. As one of the indicators of the '*rechtsstaat*' concept, the existence of the State Administrative Court (PTUN) is a central and important element in resolving State Administrative disputes. The PTUN was established in response to the demands of Indonesian citizens who felt their rights were violated by the government, and also to prevent maladministration and all forms of abuse of authority by the government. The PTUN has become a crucial pillar in upholding the rule of law as mandated by the constitution. However, in practice, there is often a lack of alignment between the State Administrative Court and the government bodies or officials who are tasked with executing court decisions. Many obstacles arise in enforcing administrative sanctions and compelling government bodies/officials, as the losing party in administrative court proceedings, to pay financial penalties. This phenomenon is considered to be non-compliance by government bodies and officials with the judiciary, which also shows a lack of respect for the mandates of the constitution and relevant laws and regulations.

It is these State Administrative Decisions (KTUN) that can then be challenged in the State Administrative Court (PTUN). These KTUNs are subsequently examined and decided upon by a judge. However, in practice, the implementation of State Administrative Court (PTUN) decisions that have obtained permanent legal force often encounters obstacles. This means that even though the PTUN has issued a legally unappealable decision, its application on the ground frequently faces difficulties. It is not uncommon for PTUN judges' decisions to be ignored by the defendant, particularly by government bodies or officials, with judgments being rendered without any tangible enforcement action. This situation is reflected in the large number of execution requests filed by plaintiffs who have won their cases. This phenomenon is a cause for concern, as the administrative judiciary (Peratun) is fundamentally meant to function as an external juridical control mechanism to uphold justice in government administration. It is natural for those seeking justice to have high hopes that once their victory is legally decided, the state will guarantee its actual implementation. Fourteen days after a decision is read, it becomes legally binding (*inkracht van gewisde*). The losing party must then immediately execute and comply with the decision, so that the winner can obtain their rights from the judicial process they have undergone.

A judge's decision that has become legally binding (*inkracht*) is only valuable if it is actually carried out by the defendant. A decision that can be implemented is one with executive power, whereas a non-executable decision is considered to be imperfectly executed and requires a different approach. In this journal, the author uses Japan as a comparative study for the implementation of legally binding court decisions in State Administrative Courts. Broadly speaking, Japan uses a civil law system, meaning the primary source of law is statutes. Similar to Indonesia, Japan also has an administrative justice system that handles state administrative cases between the public and government policies or actions. To broaden the scope of comparison, this journal examines the implementation of court decisions not only within the State Administrative Court (PTUN) but across all judicial bodies and types of courts in Japan. We hope that Indonesia's PTUN will gain new references and perspectives to minimize the number of stalled decisions and create decisions that are both obeyed and executable. An executable decision is a court judgment that can be implemented, while a non-executable one cannot.

Furthermore, a comparative study of the two countries' judicial systems will provide interesting insights into how both nations, with their differing historical backgrounds and legal enforcement systems, handle the implementation and execution of legally binding court decisions (*inkracht*). This comparative study of Indonesia's PTUN and Japan's judiciary, with a focus on the execution of *inkracht* decisions, offers a picture of the proper and optimal methods for carrying out judges' rulings. From this, we can draw important conclusions and take significant steps to develop the legal system and overcome the obstacles that prevent government bodies and officials in Indonesia from implementing PTUN decisions. The incompleteness of existing norms needs to be a priority for the government to ensure maximum execution of court decisions. Regulations for executing these judgments must be drafted immediately so that the court has a clear regulatory system regarding the procedures and mechanisms for executing State Administrative Court (PTUN) decisions and applying administrative sanctions. This is an urgent need that cannot be postponed. Given that these regulations will involve various agencies or institutions outside the Supreme Court, it is crucial to determine the most suitable legal form for them. A comparative study with Japan on how to implement this execution mechanism can provide us with a clearer picture to find the right method. With clear technical guidance on execution and the implementation of strict administrative sanctions, it is hoped that the problems surrounding the implementation of PTUN decisions can be resolved.

LITERATURE REVIEW

Similar research has also been conducted previously, published in a journal written by Bambang Heriyanto titled "Legal Overview In The Implementation Of Dwangsom (Force Money) In Administrative Court" which was

published in the *Puslitbang Hukum dan Peradilan Journal*, 2021 Journal (Bambang Heriyanto, 2023). This research provides the problem in its implementation is that there are no laws and regulations that regulate the procedure for imposing forced money and regarding the amount so that in practice there are still very few courts that apply forced money as an effort to force the implementation of state administrative court decisions. This paper attempts to provide an overview and solutions to these problems, including providing a comparative picture of the regulation of forced money in several countries. The writing method used is a legal-normative method, namely by using library data related to forced money in state administrative courts, and related laws and regulations.. The existing gaps in legal norms must be addressed by the government to maximize the execution of court decisions. Regulations for the implementation of these decisions need to be drafted immediately so that the court has a clear regulatory system regarding the procedures and mechanisms for executing State Administrative Court (PTUN) decisions and imposing administrative sanctions. This is an urgent need. Given that these regulations will involve various agencies or institutions outside the Supreme Court, the most suitable legal form is a Government Regulation. With clear technical guidance on execution and the implementation of strict administrative sanctions, it is hoped that the problems surrounding the implementation of PTUN decisions can be resolved.

METHOD

This research is normative legal research, by conducting an in-depth critical analysis of legal concepts, legal principles, and legislation relevant to the issues being resolved. The approaches used in this study are the statutory approach and the analytical and conceptual approach. In this study, primary legal materials are obtained through library research and legislation, while secondary legal materials are derived from previous studies. Qualitative data analysis is used as a data analysis technique in this study.

RESULTS AND DISCUSSION

A. The Implementation of the Execution of State Administrative Court Decisions in Indonesia

Before discussing the execution of State Administrative Court (TUN) decisions, it is important to understand that the Defendant is the state body or official who issued a decision based on their authority or delegated authority, and is being sued by a person or private legal entity as the Plaintiff. Meanwhile, the execution of a legally binding (*inkracht*) State Administrative Court decision is the implementation of a court ruling that has permanent legal force. An *inkracht* decision is one that can no longer be challenged through ordinary legal remedies. The legal framework for the execution of final and binding State Administrative Court (PTUN) decisions is actually regulated by Law No. 5 of 1986 concerning the State Administrative Judiciary (Peratun). The stages and mechanisms for implementing an *inkracht* decision are clearly outlined in Article 116 of this law. This positive legal provision is, of course, mandatory for the "losing" State Administrative Body or Official, who acts as the Defendant in a PTUN trial. However, in practice, this legal obligation is often not fulfilled, and the defendant appears to disregard and not comply with the judge's decision.

The court provides the Defendant with a period of three months to implement the verdict. If this obligation is not carried out after the allotted time, the Plaintiff (an individual or legal entity) can submit a request to the Head of the PTUN for the court to order the defendant to implement the decision. This law has been amended twice, by Law No. 9 of 2004 and Law No. 51 of 2009. Based on the data the author found and analyzed through the Jakarta State Administrative Court (PTUN) Case Search Information System, from 2020 to 2025, the Jakarta PTUN Case Registry received a total of 139 cases for which execution was requested. On a national level, a total of 825 execution requests were filed during this same period across all State Administrative Courts in Indonesia. The reasons for these requests are varied, ranging from the Defendant/State Administrative Official Body completely failing to execute the verdict, executing it incorrectly, or only executing it partially. Ironically, it is not uncommon for these execution requests to remain unfulfilled by the Defendant, even after receiving warnings and reprimands from the court. The data indicates that several cases from as far back as 2020 have yet to be resolved.

This high number of execution requests suggests that the government is not complying with the constitutional mandate of Article 1, paragraph (3) of the 1945 Constitution. The declaration that Indonesia is a state based on the rule of law has not been fully realized in the bureaucratic sphere. Government bodies or officials who fail to implement court decisions demonstrate a lack of seriousness in law enforcement, which undermines the spirit of justice and prevents Plaintiffs from obtaining their rights through court verdicts, which should be upheld by the Defendant. On July 2, 2024, the Supreme Court of the Republic of Indonesia (MA RI) made an effort to address this issue by issuing Letter No. "01/KM.TUN/HK2.7/Juklak/VII/2024". This letter, titled "Guidelines for the Implementation, Supervision, and Execution of Final and Binding State Administrative Court Decisions," was an attempt to resolve the conflicting interpretations surrounding the execution of rulings.

The letter provided some certainty and an overview of the execution stages. However, the authority of this Supreme Court circular letter is unfortunately insufficient to enforce legal certainty. It effectively serves only as an internal guideline for the Heads and Registrars of both first-level and appellate State Administrative Courts (PTUN/PTTUN). The letter lacks the power to issue a conclusive ultimatum to the parties, especially government bodies/officials, to comply with the final and binding decisions of the administrative judiciary. This is because the problem of execution involves and implicates other institutions and agencies beyond the jurisdiction of the Supreme Court. Therefore, a reconceptualization of the existing execution techniques is necessary, transforming them into a more effective, cross-institutional approach. This reconceptualization should be more than a minor adjustment; it must be a deeper and more comprehensive effort concerning the implementation of execution and the application of sanctions within the State Administrative Judiciary.

B. Implementation of Administrative Court Decisions in Japan

As a country that also adheres to a civil law system, Japan shares similarities with Indonesia in both its legal system and the organizational structure of its judiciary. Japan uses a three-tiered court system, and in most cases, a summary, family, or district court serves as the court of first instance, depending on the nature of the issue.

There are five types of general courts in Japan:

1. **Summary Courts:** Handle civil cases up to a certain value and simple criminal cases. Summary Courts handle civil lawsuits involving claims up to 1.4 million yen, small claims, and civil mediation. They also deal with minor criminal cases and cases specified by law, such as theft and embezzlement.
2. **Family Courts:** Deal with cases related to family and children. Family Courts have jurisdiction over domestic relations and juvenile cases, including family conciliation, personal status, and adoption.
3. **District Courts:** Serve as the court of first instance for more complex cases and criminal cases not handled by Summary Courts. District Courts serve as the courts of first instance for civil, administrative, and criminal cases, except for those specifically assigned to other courts. They also have appellate jurisdiction over first-instance civil decisions from Summary Courts. While most cases are handled by a single judge, a panel of three judges is responsible for appeals from Summary Courts, more serious criminal cases, and certain other matters.
4. **High Courts:** Function as the appellate court for decisions made by District Courts. High Courts hear appeals from lower courts (i.e., district, family, and summary courts), unless otherwise provided by law. Criminal decisions are appealed directly to a High Court, while civil decisions from a Summary Court must first be heard by a District Court before they can be appealed to a High Court. High Courts also have jurisdiction over cases involving public elections, criminal insurrections, and decisions issued by quasi-judicial bodies. The Japanese High Court of Intellectual Property has exclusive jurisdiction over patent cases and appeals from the Japan Patent Office. High Courts are typically composed of a three-judge panel, though a five-judge panel is designated for cases involving insurrections, disciplinary cases, and some patent cases.
5. **Supreme Court:** The highest court, serving as the court of last resort in the Japanese judicial system. The Supreme Court is the highest court in Japan, hearing final appeals from the High Courts, District Courts, Family Courts, and Summary Courts, as well as correcting erroneous interpretations of the constitution. The Supreme Court has limited original jurisdiction. There are fifteen Justices on the court. A judicial panel consisting of five Justices, each called a "Grand Assembly" is assigned to handle civil, criminal, or administrative cases. The "Grand Assembly" comprising all fifteen Justices, hears cases involving constitutional interpretation and referrals from the Grand Assembly if there are conflicting Grand Bench decisions.

In Japan, disputes concerning state administration (decisions and actions of government bodies and officials) are resolved within the same judicial framework as civil disputes. If an individual is dissatisfied with a decision made by the central or local government, they can file a case for administrative litigation in the District Court and also file an appeal to an administrative body. This category of cases is referred to as "administrative cases." Examples include lawsuits for the cancellation of taxes imposed by tax authorities or the annulment of an election. The outcome of each stage of these proceedings will, of course, result in a decision that must be implemented by both the Plaintiff and the Defendant. The Japanese judicial system has specific instruments to monitor the implementation of these court decisions. The Administrative Case Litigation Act No. 139 of 1962 (latest version: Act No. 109 of 2007) is the fundamental law governing administrative justice in Japan. The Administrative Case Litigation Act (行政事件訴訟法, *Gyōsei jiken soshō-hō*) is a Japanese law enacted in 1962 that regulates lawsuits involving the Japanese government. This act is part of the Code of Civil Procedure, and the

Code governs these cases to the extent that the act does not.

This fundamental law meticulously details how courts in Japan ensure that judges' decisions are carried out by the parties involved. These execution measures can certainly serve as a new reference and guideline for implementation in Indonesia. The following is a summary of the implementation of Japanese administrative court decisions under **Act No. 139 of 1962**:

- **Administrative Regulations and Legal Basis**

The implementation of administrative sanctions is governed by the Administrative Case Litigation Act and specific laws related to certain sectors, such as taxation, the environment, and health. Coercive fines or administrative sanctions are intended to ensure compliance with administrative regulations and orders,

- **Implementation of Coercive Fines**

Coercive fines can be imposed if an individual or legal entity fails to comply with an administrative court order. The authorities may impose these fines as a sanction. This procedure typically involves a written notification from the administrative authority to the infringing party, which details the nature of the violation, the amount of the fine, and the deadline for payment. If the violator fails to pay within the specified period, the authority can initiate administrative execution procedures, including the seizure of assets to cover the cost of the sanction.

- **The Administrative Execution Process**

The Administrative Execution Process is carried out through administrative actions without the need for court intervention. In some cases, the authorities may take legal action to enforce sanctions through civil courts if necessary. This process also includes the option for an appeal if the sanctioned party feels that the action was unjust. Appeals are typically filed with an administrative court or a relevant appeals commission.

- **Compliance and Law Enforcement**

Japan has a strict system for overseeing the execution of court decisions, enforcing administrative sanctions and collecting coercive fines to ensure parties comply with a judge's ruling. This enforcement can include asset freezes or other legal actions. Administrative authorities can collaborate with state financial institutions to ensure that payments are made according to regulations. This is done so that every party in a case adheres to the law, thereby creating justice and legal certainty in society.

- **Oversight of Implementation**

The procedures for implementing administrative sanctions are supervised to maintain transparency and prevent the abuse of power. If there is an indication of abuse, the aggrieved party can file a case in court to seek legal protection. This system is designed to ensure that the administrative process is fair and balanced, giving all involved parties the right to present a defense or clarification.

The system for executing judgments and implementing coercive payments and administrative sanctions in Japan is designed for efficiency, with clear regulations to ensure government bodies and officials comply with the law. This system, in turn, brings justice to the public in the enforcement of administrative law. The winning party in these trials is typically the public, who places its hopes in the judiciary. This execution process allows for administrative action without judicial intervention, but it still provides a mechanism for appeals and strict oversight to prevent the violation of citizens' rights.

CONCLUSION

The non-compliance of State Administrative Court (TUN) officials in implementing judges' decisions is a primary cause for the large number of execution requests submitted by Plaintiffs to the PTUN. Plaintiffs often find themselves at a standstill in resolving their disputes, even after the verdict has been in their favor and their lawsuit granted. A new problem arises when the TUN body or official is unwilling to follow the judge's order. The author summarizes several reasons for the stalled implementation of PTUN verdicts, including:

- ✓ **Low Legal Awareness Among TUN Bodies or Officials**

State administration officials often fail to obey the law because an individual typically complies out of fear of sanctions for violations, or because they feel their interests will be protected by adhering to the law, or because the law aligns with their personal values. In this situation, the Defendant who loses an administrative dispute

will naturally feel that their interests are not guaranteed if they have to comply with the court's decision. Consequently, the Defendant usually chooses to disregard the court's order.

✓ **Inadequate Legal Framework**

Although Article 116 of the Peratun Law regulates the procedures and steps for executing a judgment when the defendant fails to comply, and Article 116, paragraph (4) of Law No. 51 of 2009 explicitly mentions the application of administrative sanctions, a deeper examination reveals a problem. Article 116 of Law No. 9 of 2004 does not explicitly state that the further execution of a decision will be governed by technical instructions. This ambiguity creates confusion for the parties involved, leading to the improper execution of judgments. The current regulation is considered neither firm nor strong enough to effectively minimize the non-execution of PTUN decisions. The author believes there is a need for implementing regulations that govern the execution of PTUN decisions in a detailed and concrete manner.

In this journal, the author offers arguments and opinions as recommendations to address the issue of execution. A comparative study with Japan on the implementation of court decisions provides a compelling alternative. Japan's structured and systematic legal framework, combined with a high level of compliance from government bodies and officials, serves as an exemplary model that Indonesia can apply. Indonesia's judicial institutions, particularly the State Administrative Court, can learn from the Japanese system. One key approach would be to form a special task force dedicated to monitoring judges' decisions from the moment they are pronounced, through their final legally binding status, to their ultimate execution. In Japan, there is a specific court official known as the **Jōhō Shikkōnin** (or 執行官, *Shikkōkan*). This is a court official responsible for carrying out court decisions, especially in civil cases. The role is most similar to a bailiff or Judicial Enforcement Officer in Western legal systems. This official operates strictly based on a formal order from the court, with formal procedures for every action they take. For example, seizing a house requires a valid execution order. According to the author, a simple warning letter from a court is not strong or influential enough and is often ignored. Therefore, strict sanctions, such as coercive payments and other administrative penalties, must be enforced to ensure justice for the public.

If a government official is proven to have caused a loss to the state or the Plaintiff by disregarding a judge's decision, then coercive payments (*dwangsom*) can be executed unilaterally by withdrawing funds directly from the official's bank account. Meanwhile, administrative sanctions themselves can range from a written reprimand, to a reduction in salary/allowances, or even dishonorable dismissal. All of these legal actions require a legal basis in the form of detailed, technical regulations. These implementing regulations could be formalized as a Government Regulation or a Supreme Court Regulation to give them legal enforceability. Superiors of government bodies or officials are expected to actively monitor and guide their subordinates to improve legal awareness and ensure the implementation of court decisions. Government bodies and officials must respect judicial rulings as a form of justice for the public. This is the implementation of the ideal of a state based on the rule of law, which is just and non-discriminatory. The State Administrative Court (PTUN) exists as a law enforcement body to prevent government officials from acting arbitrarily toward the public through controversial policies rife with corruption, collusion, and nepotism. The success of the Japanese judiciary and the compliance of its bureaucracy in implementing court decisions can hopefully serve as an example and a guideline for the government and judicial apparatus, especially the Indonesian State Administrative Court.

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