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The Application of Dwangsom in The Execution of State Administrative Court Decisions in Indonesia From A Justice Perspective

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Abstract

Article 116 paragraph (4) of Law Number 51 of 2009 stipulates that officials who do not implement decisions of the State Administrative Court (PTUN) that have permanent legal force may be subject to coercive measures in the form of forced money (dwangsom) and/or administrative sanctions. This study aims to: first, analyze the legal regulations on dwangsom in the execution of PTUN decisions in Indonesia; second, examine the application of dwangsom by judges in judicial practice; third, examine the implications of the application of dwangsom from a justice perspective. The method used is normative juridical with a statutory, conceptual, and case approach. Data were obtained from primary and secondary legal materials, analyzed qualitatively, with a case study on Decision Number 13/G/2016/PTUN.TPI. The results of the study indicate that the regulation of dwangsom in the execution of PTUN decisions is still partial and not supported by technical regulations. Article 116 paragraph (4) of Law Number 51 of 2009 is not accompanied by detailed guidelines so that its application depends on the judge's initiative and the plaintiff's request, without quantitative or procedural standards. In fact, dwangsom has the potential to be an effective means of pressuring officials to comply with decisions voluntarily and in a timely manner. Weak technical regulations and an unresponsive legal culture have limited its effectiveness. The conclusion of this study confirms that the dwangsom plays a strategic role in ensuring legal certainty and protecting the public's rights from arbitrary government action. Comprehensive technical regulations and the establishment of an independent national enforcement agency are recommended to ensure the practical implementation of PTUN decisions. Thus, dwangsom can function effectively as an instrument for upholding the rule of law and providing justice for those seeking justice.

Keywords: Dwangsom, Execution of the Verdict, Justice.

1. Introduction

The State Administrative Court fulfills one of the concepts of the rule of law, which contains four main elements: recognition and protection of human rights, state administration based on the principle of separation of powers (trias politica) between the legislative, executive, and judicial branches, government implementation in accordance with statutory provisions, and the existence of a state administrative court with the authority to handle cases related to unlawful acts committed by the government (Wahyono, 1984).

Previously, courts handled cases of unlawful acts by the authorities by categorizing them as civil cases, likely based on a broad interpretation of Article 1365 of the Civil Code (BW). However, these cases should fall within the realm of legal protection for citizens because they relate to government actions. This ineffectiveness of handling cases through the civil process is one of the key reasons for the establishment of the state administrative court (Hadjon, 1987).

The establishment of the State Administrative Court is part of the legal development effort, which is also an element of comprehensive national development, carried out in stages and sustainably. Therefore, the development of the State Administrative Court is also carried out in stages and continuously. The State Administrative Court was established to provide legal protection for those seeking justice, especially those who feel disadvantaged by a state administrative decision. In this context, it is important to understand that in addition to individual rights, the public also has certain rights based on the collective interests of groups within society. These interests are not always

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aligned and can even conflict. Therefore, the basic rights and obligations of citizens need to be regulated in harmony, balance, and harmony between individual and societal interests. Therefore, the establishment of the State Administrative Court aims not only to protect individual rights but also to safeguard the rights of the community. Furthermore, the State Administrative Court serves as a judicial channel to realize the principle of legal protection, complementing the administrative oversight channels that exist within the government structure (Muchsan, 2007).

The existence of administrative law, general principles of good governance, and judicial institutions play a crucial, even non-negotiable, role. This becomes even more crucial in a country that adheres to the principle of rechstaat. In this context, administrative justice plays a crucial role in ensuring legal protection for individual interests and in upholding and safeguarding human rights (Marbun, 2011). To ensure that people's rights are fulfilled and protected from arbitrary action by those in power, Indonesia established a judicial institution, one of which is the State Administrative Court, through Law Number 5 of 1986 concerning State Administrative Courts (State Gazette of 1986 Number 77).

The purpose of the establishment and existence of the state administrative court is to guarantee the protection of citizens' rights, both those arising from individual rights and those related to the collective interests of society, consisting of individuals within it (Zulkarnaen & Mayaningsih, 2018). The existence of the State Administrative Court allows the public to monitor, control, and even file lawsuits or demands against administrative actions of state officials that are detrimental to them. This is expected to foster and strengthen the sense of responsibility of state officials towards the public, reflected in improved quality of public services (Tjakranegara, 1994). In order to prevent possible violations of citizens' rights by the government in carrying out its social duties, a state administrative court or state administrative court was established as a mechanism for legal supervision and protection (Marbun & Mahfud, 1987).

The public plays a crucial role in demanding accountability from state bodies for actions deemed to violate their rights or violate the constitution and applicable laws. This role serves as an effective oversight tool to prevent abuse of authority by state institutions. The public's right to challenge the actions of state bodies also reflects the importance of public participation in a democratic system. For this participation to function optimally, the public needs to have a sufficient understanding of their rights and the legal procedures applicable to filing a lawsuit, so that the process can be accepted and processed by the courts. In this way, public involvement not only strengthens the principle of justice but also contributes to the establishment of transparent and accountable governance, where every government policy and action must be accountable to the people. Meanwhile, a court decision is the final outcome of a lengthy trial process between the defendant and the plaintiff, and the success of a decision can be measured by the parties' compliance with its contents.

Law Number 51 of 2009, which is the second amendment to Law Number 5 of 1986, stipulates in Article 116 paragraph (4) the application of a fixed execution system. This system allows the court to force the implementation of a decision on an official who refuses to carry it out. This provision explains that if the defendant does not carry out the court decision, the official concerned can be subject to coercive measures in the form of forced payment of money (dwangsom) and/or administrative sanctions. Previously, in Law Number 5 of 1986, the implementation of PTUN decisions adopted a self-respect system, namely the implementation of decisions depended on the awareness and compliance of officials based on the legal culture they adhere to. The implementation of State Administrative Court decisions by government agencies or officials is considered to greatly affect the authority of the judicial institution. This depends on the seriousness of the agency or official subject to the decision in respecting the principles and principles of the rule of law. In addition, an attitude of respect for court decisions also reflects the self-respect of the officials concerned (Lotulung, 2003).

Enforcement of a judgment is carried out by force if the losing party does not voluntarily comply with the decision, to ensure that the court's decision has substantive force and provides legal certainty for the disputing parties (Mulyanti et al, 2025). A court decision capable of providing legal certainty must possess certain characteristics. The decision must provide an authoritative solution, meaning it can be accepted, recognized, and used as a reference. The process must also be efficient, meaning it must be swift, low-cost, and inexpensive. Furthermore, the implementation of the decision must comply with applicable laws and regulations in Indonesia. The decision must also create stability by fostering a sense of order and security in society, and guarantee the principle of equality for all parties. The legal certainty reflected in the judge's decision is the result of an assessment of legally relevant trial facts and is decided with due consideration of conscience (Vivi, 2024). The absence of implementing regulations or derivative regulations delegated by law to lower-level laws and regulations can lead to a loss of legal certainty and

confusion for justice seekers in the State Administrative Court, especially if the court decision ends up only as written text and cannot be enforced (Muhidin, 2023).

Legal certainty is not only related to the judicial process itself, but also encompasses the implementation of the decision. Execution is the final phase of the judicial process, which must ensure that the rights of the winning party are respected and restored. Without concrete and effective implementation, court decisions lose their meaning and can undermine public confidence in the justice system. When discussing legal certainty, attention is drawn to the importance of clarity and firmness in the process of establishing legal norms in social life. This process significantly influences the level of public compliance with the law. Therefore, legal certainty is understood as clear standards that can serve as guidelines for society in their daily actions. If this process is questionable, the resulting legal norms lose their force and become meaningless (Lubis & Ilyas, 2024).

Nevertheless, it has been revealed that the success rate of decision implementation within the State Administrative Court remains relatively low, both before and after the introduction of coercive enforcement measures as stipulated in Law Number 9 of 2004 concerning amendments to Law Number 5 of 1986 concerning the State Administrative Court.

Laws and regulations stipulate that the implementation of court decisions (self-execution) is carried out by officials who have lost a case and have been awarded a final and binding court decision. However, the implementation of this system faces various obstacles, one of which is low legal awareness among officials, so that victory in the State Administrative Court (PTUN) is often considered merely a formal victory with no real guarantee of execution. This is exacerbated by the limited authority of the Chief Justice of the PTUN, who only acts as an execution supervisor, and the role of bailiffs, which is considered suboptimal. Some believe that this weakness may stem from the legal model adopted, namely the French legal system, where officials have a high level of legal awareness to voluntarily implement court decisions. This contrasts with Indonesia, where some officials view defeat in court as a loss of self-respect, feeling defeated by ordinary citizens (Noer & Esty, 2024).

This situation is certainly concerning, considering that the function of the state administrative court is as an external legal control, to realize justice in the field of government administration for justice seekers. The hope of justice seekers is clear, after the court decision in their favor has permanent legal force (inkracht van gewisde), the decision is implemented or obeyed by the losing party, so that the winner enjoys the results of the judicial process that has been undertaken. The penalty of forced payment (dwangsom) as applied in the General Court in the execution of civil cases, is expected to be able to increase the success rate of the implementation/execution of the decision. However, in reality, until now the application of the penalty of forced payment remains problematic. Not many or it can be said rarely administrative court judges issue decisions with a penalty of forced payment in order to improve the implementation of the decision. Starting from this problem, it is very important to conduct a comprehensive study entitled “The Application of Dwangsom in the Execution of Decisions of the State Administrative Court in Indonesia from a Justice Perspective” (Implementation of Dwangsom in the Execution of Decisions of the State Administrative Court in Indonesia from a Justice Perspective)”.

2. Research Method

This research employs normative legal research, which utilizes written regulations or other normative legal materials as sources. This research is also known as library research, as it focuses on the collection of documents and library data (Soekanto, 2006). Normative legal research examines socially formed legal doctrines and the principles contained in literature and legal science (Ali, 2016). This research employs a case approach, a historical approach, a conceptual approach, and an analytical approach.

In this study, the author uses legal materials based on documents. The secondary data used by the researcher are materials sourced from documents, not from sources, as the primary legal material, as is the nature of normative research (Suteki, 2022). The legal sources used are primary and secondary legal materials. The primary legal materials used by the researcher in this study are Law Number 5 of 1986 concerning State Administrative Courts in conjunction with Law Number 51 of 2009. Meanwhile, secondary legal materials consist of Draft Laws, Books, journals, and opinions of legal experts (Muhaimin, 2020). The collection of legal materials through data collection using a bibliography study. Meanwhile, data analysis adopts a qualitative descriptive analytical method using a deductive logic approach.

3. Results and Discussions

The Legal Regulation of Dwangsom in State Administrative Court Decisions in Indonesia The principle of the rule of law (rechtstaat) not only requires that all government actions comply with the law but also ensures that court decisions, as an embodiment of the supremacy of law, can be effectively implemented. In the context of the state administrative court (PTUN), the existence of a final and binding court decision (BHT) should provide concrete protection for justice seekers from arbitrary actions by state administrative officials. However, the reality shows that the implementation of PTUN decisions often does not proceed as intended. It is not uncommon for officials declared defeated to voluntarily fail to implement the decision, thus obscuring the meaning of justice itself.

To address the problem of weak implementation of PTUN decisions, the concept of dwangsom emerged as an alternative solution. Dwangsom, or forced money, is a sanction in the form of a sum of money imposed by a judge on a party who fails to comply with the decision. The primary purpose of dwangsom is not to compensate for losses, but rather to exert psychological and financial pressure on officials who neglect or defy legal obligations. This concept originates from the Dutch legal system and was first introduced through Articles 606a and 606b of the Reglement op de Burgerlijke Rechtsvordering (Rv). In Indonesian law, its initial application was found in the civil sphere through Supreme Court Decision Number 454 K/Sip/1974, and later expanded into state administrative law (Slamet et al, 2023).

Based on Hans Kelsen's legal hierarchy theory, the provisions of the law of dwangsom can be explained as follows. According to Kelsen's hierarchy of norms (Stufenbau Theory), each lower-level legal norm derives its validity from a higher-level norm. In this context, the law, as the highest norm (below the constitution), should provide a clear and detailed mandate for lower-level regulations to ensure effective implementation. However, the reality of the regulation of dwangsom in Indonesia demonstrates a dysfunction in the application of this hierarchy of norms, as evidenced by the incompleteness of the regulations at the lower levels. A more detailed analysis of the legal provisions of dwangsom in legislation is as follows:

3.1. Legal Regulations at the Statute Level

First Recognition, based on Law Number 51 of 2009 concerning State Administrative Courts. As a generally binding source of law, this law accommodates coercive monetary sanctions. Article 116 paragraph (4) specifically states:

Article 116 paragraph (4): “If the defendant is unwilling to implement a court decision that has obtained permanent legal force, the official concerned shall be subject to coercive measures in the form of payment of a sum of money and/or administrative sanctions.”

Based on the provisions of the above paragraph, it is understood that a defendant who is reluctant to implement a decision may be subject to sanctions in the form of payment of money and administrative sanctions. The phrase “the official concerned shall be subject to a monetary sanction” in the paragraph refers to the imposition of a sum of money determined by the judge due to their position when the decision is included in their decision. This regulation also explains the subjects and objects of monetary sanctions. The subject who can impose sanctions is the judge or panel of judges; the subject who can request the sanctions to be imposed is the plaintiff (an individual or civil legal entity); the subject who can be subject to sanctions is the State Administrative Court official as the defendant; and the subject who oversees the implementation of the sanctions is the Chief Justice of the State Administrative Court/Chief Justice of the State Administrative High Court (Zulkifli et al, 2025). The legal object that can be subject to monetary sanctions is the actions or behavior of the defendant who fails to implement the court decision. The explanatory section of this paragraph further explains:

Explanation of Article 116 paragraph (4): “The term “the official concerned is subject to a fine” in this provision refers to a payment of a sum of money determined by the judge due to their position, as stated in the decision when deciding to grant the plaintiff's lawsuit.”

However, the fundamental weakness of this law lies in Article 116 paragraph (7), which reads:

Article 116 paragraph (7): “Provisions regarding the amount of fines, the type of administrative sanctions, and the procedures for implementing the payment of fines and/or administrative sanctions are regulated by statutory regulations.”

Based on this provision, the State Administrative Law provides a basis for determining the amount and payment mechanism. However, the relevant statutory regulation, namely a Government Regulation, does not yet exist

(Astawa, 2012). This is influenced by several factors, including the lack of a clear mention of the type and form of implementing regulations to be established, as well as the lack of a deadline for establishing the implementing regulations for these sanctions. As a result, the State Administrative Law remains unclear regarding the determination of the amount and payment mechanism for these fines.

Second, based on Law Number 30 of 2014 concerning State Administration. Unlike the State Administrative Law, which regulates dwangsom in the context of sanctions for enforcing court decisions, Law Number 30 of 2014 concerning State Administration (the State Administration Law) also adopts the concept of hard money, but in the context of administrative sanctions. This law regulates sanctions for government officials who fail to fulfill their obligations. Article 81 paragraph (2) classifies moderate administrative sanctions, one of which is the payment of hard money. The article reads:

Article 81 paragraph (2): "Moderate administrative sanctions as referred to in Article 80 paragraph (2) include: a. payment of hard money and/or compensation; b. temporary dismissal with the acquisition of official rights; or c. temporary dismissal without the acquisition of official rights."

Interestingly, the State Administration Law provides a different and specific definition of "hard money" in its explanation, distinguishing it from dwangsom in the context of PTUN decisions.

Explanation of Article 81 paragraph (2) letter a: "What is meant by "forced money" is an amount of money that is deposited as collateral for the Decision and/or Action to be implemented so that when the Decision and/or Action has been implemented the forced money is returned to the Government Official concerned."

Based on this explanation, the primary function of compulsion money in the State Administration Law is to guarantee the implementation of a decision or administrative action. This money is not a forfeited penalty, but is returned to the official concerned after their obligations have been fulfilled. This differs from the concept of dwangsom in the State Administration Law, which serves as a punishment (strafe) for official negligence, where the compulsion money paid becomes the plaintiff's right. This difference demonstrates two distinct normative approaches in the Indonesian legal system regarding compulsion money sanctions: one as a judicial punishment, and the other as an administrative guarantee (Rohaedi et al., 2023).

3.2. Administrative Regulations in the Form of Circular Letters

In the Supreme Court Circular Letter Number 7 of 2012, in an effort to address the legal vacuum, the Supreme Court (MA) issued Supreme Court Circular Letter (SEMA) Number 7 of 2012. The SEMA is a notification letter from the Supreme Court Leadership to all judicial officials containing technical instructions and directives regarding the implementation of administrative duties. The purpose of the SEMA is to provide clarity and insight into the interpretation of regulations to prevent errors that could lead to legal uncertainty (Santoso et al., 2023).

Regarding the concept of a monetary penalty, the Circular Letter of the Supreme Court (SEMA) outlines that a plaintiff may request a monetary penalty, even though there are no detailed implementing regulations. The Circular Letter also states that only decisions containing condemnatory demands may include monetary penalties. A condemnatory demand is a decision that punishes one party, and the penalty imposed takes the form of legal action that must be obeyed, carried out, and fulfilled by the losing party. Regarding the legal entities subject to monetary penalties, the Supreme Court, through its National Working Meeting, has unanimously agreed that monetary penalties are imposed on defendants as individuals whose payments are made using the official's personal funds.\

The provisions for monetary penalties in Supreme Court Circular Letter Number 7 of 2012 remain the same as those in the State Officials Law, although they do have shortcomings. The provisions of the Circular Letter of the Supreme Court (SEMA) only regulate the permission for monetary penalties to be requested in lawsuits, although implementing regulations are still lacking. The procedures for imposing these penalties and the mechanism for imposing these penalties remain completely unexplained. For the following reasons, the provisions on forced monetary sanctions can be seen from other legal sources which are more technical in nature, such as in Book II of the Technical Guidelines for Administration and Technical Guidelines for State Administrative Courts.

3.3. Administrative Regulations in Book II of the Technical Guidelines for Administrative and Technical Affairs of State Administrative Courts

Criteria: In terms of legal force, the validity of this legal source is based on the Decree of the Chief Justice of the Republic of Indonesia Number: KMA/032/SK/IV/2006 and can only be enforced after the legal sources, starting from statutes, Supreme Court Regulations, and the Supreme Court Circular Letters, have been amended.

Book II technically regulates several matters, one of which is the inclusion of demands for compulsion in lawsuits. It states, "If the principal claim is granted, but the plaintiff does not include payment of compulsion in their lawsuit, and the defendant is unwilling to implement the court's decision, the Chief Justice of the State Administrative Court/Chief Justice of the High State Administrative Court may impose compulsion based on these provisions."

Book II also explains how to determine the amount of compulsion, with judges having the authority to determine the amount on a case-by-case basis, taking into account reasonableness and not exceeding the amount requested by the plaintiff. However, this provision does not yet explain the mechanism for payment of compulsion.

3.4. *Legal Basis in Jurisprudence*

The regulatory aspect of dwangsom can also be seen in judicial practice through jurisprudence, namely, judicial decisions that have become legally binding and are followed by judges in similar cases (Efendi, 1998). Jurisprudence plays a crucial role, particularly in cases where a legal vacuum exists.

Several cases demonstrate the dynamics of the application of the penalty of fines:

a. Decision in Case Number: 15/G/2017/PTUN.SMD: The Samarinda State Administrative Court rejected the demand for a monetary penalty because the plaintiff failed to provide proof of the amount of the penalty. From this decision, it can be concluded that every claim involving a monetary penalty is required to provide proof of the amount of the penalty.
b. Decision in Case Number: 47/G/2008/PTUN.SMG: The Semarang State Administrative Court granted the penalty of fines. The judge determined the amount of the penalty based on the plaintiff's income, which was Rp 50,000 every day, which differed from the plaintiff's demand of Rp 1,000,000. This case demonstrates that the judge determined the penalty amount using the plaintiff's pay slip as a consideration.
c. Decision in Case Number: 104/G/2008/PTUN.JKT: The Jakarta State Administrative Court granted the penalty of fines. However, the judge could not meet the plaintiff's request of Rp1,000,000,000 a day. The judge decided on a monetary penalty of Rp1,000,000 a day, taking into account the "state of the developing country." This jurisprudence creates ambiguity, as the determination of the amount is adjusted to the state's financial capacity, making it appear as if this sanction is imposed on the state, not the individual official.

From these three jurisprudence cases, it can be seen that the determination of the amount of sanctions and the payment mechanism do not yet have clear standards, leaving this entirely to the judge's discretion.

3.5. Legal Basis for Doctrine (Opinions of Legal Experts)

Doctrine or the opinions of legal experts serve as a source of inspiration for lawmakers and judges' decisions, especially in filling legal gaps. In state administrative law, doctrine is crucial because it can generate new theories that can then give rise to state administrative law principles.

Regarding the provisions on coercive monetary sanctions, Prof. Supandi, for example, explained that coercive monetary sanctions should ideally be imposed on officials in their own name and using the defendant's personal funds. This is because disobeying a court decision constitutes a personal error (faute personnelle), not an official error (faute de serve) (Lahopang, 2018). Furthermore, if the sanctions are imposed on state finances, it will create problems with the use of the budget, which must be allocated in advance, even though the payment of coercive monetary sanctions is incidental.

Furthermore, regarding determining the amount of the penalty, Bambang Heriyanto argues that, due to its nature as psychological pressure (psychische dwang), the nominal amount can be determined using the following formula: X = Amount of money that can psychologically pressure the defendant to comply with the court's decision, and X = Amount of money that can be taken from the defendant's assets if they fail to comply with the decision (Heriyanto,

2021). This means that the amount of the penalty must be proportional to the psychological pressure on the official, but not so large that it is difficult to enforce.

Regarding the payment mechanism or procedure, the Supreme Court, through research by its judges, has outlined an ideal formula. In short, the penalty is deducted from the official's salary and/or allowances by cumulative monthly deductions by the State or Regional Treasury Service Office (KPPN/KPPD) after receiving an order from the State Administrative Court. The resulting deductions are then deposited in the treasurer's account at the State Administrative Court as part of Non-Tax State Revenue (PNBP). Furthermore, Ujang Abdullah has also compiled an academic paper explaining the payment procedures for the penalty in detail. From various sources of literature and jurisprudence that have been presented, it can be concluded that the legal regulations for dwangsom in the PTUN execution system are indeed available formally and substantively, but remain weak structurally and procedurally.

Without strong implementing regulations and a functional enforcement agency, the dwangsom norm will remain declarative and lose its effectiveness as a means of enforcing decisions. This problem, if not addressed immediately, will threaten the authority of the judiciary and undermine the law's function as a tool for protecting citizens' administrative rights.

Although the substance is in place, the legal structure supporting the implementation of dwangsom is not yet optimal. When examined through the lens of Hans Kelsen's Norm Hierarchy Theory, the legal system regarding dwangsom in Indonesia exhibits a lack of harmony. Kelsen emphasized that each lower-level norm must derive its validity from a higher-level norm. In this regard, Law Number 51 of 2009 (the Administrative Law) explicitly mandates that further provisions regarding the amount, type of administrative sanctions, and procedures for implementing coercive money be regulated through “statutory regulations” (Article 116 paragraph 7). This order demonstrates a clear hierarchy, where the law, as a higher norm, mandates subordinate norms, such as Government Regulations or Supreme Court Regulations (Perma), to supplement their legal substance. However, because these implementing regulations have not yet been issued, a significant legal vacuum has emerged, leaving the norm regarding dwangsom classified as an inoperative norm.

The absence of implementing regulations has given rise to a number of serious practical problems. First, there is the lack of clarity regarding who is responsible for paying the dwangsom, whether it is borne by the official personally or by their institution. Second, there is the absence of an implementing agency (executor) with the authority to deduct allowances or enforce the payment of dwangsom. Third, there is a lack of awareness among officials of their legal obligations, exacerbated by the lack of standards regarding the appropriate amount of dwangsom. Fourth, judges often rely on outdated legal instruments such as Government Regulation No. 43 of 1991 and non-specific provisions no longer relevant to the needs of modern enforcement.

In this vacuum, various attempts have emerged to fill the gap, such as the Supreme Court Circular Letter (SEMA), Book II of the Technical Guidelines, and Jurisprudence. Based on Kelsen's theory, the SEMA and the Guidelines do not have the status of legal norms equal to or inferior to statutes, and therefore cannot fully fill this gap. They function only as internal administrative guidelines and cannot formally create new legal norms. As a result, the legal basis for dwangsom is not solid, and its implementation in the field depends on ad-hoc judges' policies, which can be seen from the inconsistency in jurisprudence such as the Jakarta PTUN Decision No. 048/G.TUN/2004/PTUN.JKT, the Banjarmasin PTUN Decision No. 01/G.TUN/2006/PTUN.BJM, and the Tanjungpinang PTUN Decision No. 13/G/2016/PTUN.TPI.

This situation can be further analyzed using W. Friedmann's legal system theory. Friedmann views the effectiveness of law as dependent on three main pillars: legal substance, legal structure, and legal culture. In the case of dwangsom, the substantive dimension of law has been recognized and formalized in law. However, the implementing legal structure is absent, and a strong legal culture that encourages compliance with decisions has not yet been established.

When these three elements do not function synergistically, the legal system becomes unequal, and justice fails to be achieved.

Furthermore, the issue of weak implementation of dwangsom also has implications for the dimension of justice. Gustav Radbruch emphasized that just law does not stop at its form but must be able to provide real protection for citizens' rights. When a PTUN decision declaring a person's right to annul a KTUN cannot be enforced due to the lack of an operational dwangsom mechanism, justice ceases to be symbolic. In this case, dwangsom should function as a bridge between formal and substantive justice—that is, as a tool for the realization of law.

Thus, it can be concluded that the legal provisions on dwangsom in the PTUN (State Administrative Court) execution system are substantively imperfect and require strong implementing regulations to complement existing norms. Furthermore, the legal structure for its implementation is also lacking, necessitating the establishment of a functional national execution institution with coercive powers. Without strong implementing regulations and a functional execution institution, the dwangsom norm will remain declaratory and lose its effectiveness as a means of enforcing the execution of decisions. If not addressed immediately, this problem will threaten the authority of the judiciary and undermine the law's function as a tool for protecting citizens' administrative rights (Heriyanto, 2021).

3.5.1. Practice of Dwangsom Application in the Execution of State Administrative Court Decisions in Indonesia

Dwangsom as a means of enforcing the execution of decisions has an explicit legal basis in the State Administrative Court procedural law system through Article 116 paragraph (4) of Law Number 51 of 2009. Although the norm is available, its application in judicial practice remains very limited and inconsistent. Not all panels of judges actively use dwangsom in their decisions, and there is still resistance from the defendant or even from the judges themselves in understanding and applying it effectively.

A concrete example of the application of dwangsom in practice can be found in Tanjungpinang State Administrative Court Decision No. 13/G/2016/PTUN.TPI. In this case, the plaintiff explicitly requested that the court impose a penalty of Rp 500,000 per day of delay, calculated from the date the decision became final. This request was based on concerns that the defendant would not voluntarily implement the decision, as is often the case in other state administrative cases. The panel of judges, in their ruling, not only granted the lawsuit in its entirety but also imposed a penalty of dwangsom against the defendant and the second intervening defendant, jointly and severally.

The panel of judges' ratio decidendi in this case does not explicitly include a theoretical analysis of the rationale for imposing dwangsom. However, the ruling implicitly considers that in cases involving the cancellation of ownership certificates and active administrative orders (land registry deletions), an adequate coercive mechanism is necessary to ensure the decision's effective implementation. The imposition of dwangsom here appears to be based on the need to ensure the effective implementation of a condemnatory decision, rather than simply serving as a formality in the ruling. This can be seen implicitly in the plaintiff's considerations in including dwangsom in his petitum.

Nevertheless, technical issues remain an obstacle to the systematic implementation of dwangsom. One major issue is the lack of clarity regarding who is subject to the payment of the coercive fee. The PTUN Law does not explicitly regulate whether the coercive fee is levied on the agency where the official works, or on the official himself. In practice, two prevailing views prevail. The first holds that the payment should be borne by the state because the official's actions are an extension of the state. The second holds that the coercive fee should be the official's personal responsibility because the sanction is psychological and individual—aimed at forcing compliance.

In the context of Decision No. 13/G/2016/PTUN.TPI, the panel of judges did not clarify who the coercive fee will be levied against or how it will be enforced. This raises practical issues: how the coercive fee will be collected, from what funding source, and to whom. The lack of rationalization or standardization of the amount of the coercive fee is also problematic. In this case, the amount set was Rp 500,000 per day. Although this amount can be considered proportional in general, the basis for the calculation is not explained—whether it is related to the official's income, the plaintiff's losses, or simply the results of the plaintiff's request.

In this case, the dwangsom must be determined by considering psychological, logical, and realistic aspects—for example, by approaching the official's income component (one-third of the salary or allowance). The goal is that the sanction will truly encourage compliance while also being practically enforceable.

Another remaining obstacle is the lack of an administrative execution body within the State Administrative Court (PTUN). Legal uncertainty arises in the execution of state administrative court decisions due to the fact that these decisions are sometimes non-executable. This can occur due to the absence of implementing regulations or conflicting legal norms (antinomies), which trigger legal conflicts. Furthermore, the implementation of decisions can also be hampered by various non-legal factors, such as political considerations or their connection to regional or state assets. This situation renders state administrative officials unable to enforce existing state administrative court decisions (Yulius, 2019).

From the perspective of Lawrence M. Friedman's legal system theory, this situation indicates that the substance of the law has developed, but is not supported by an adequate legal structure and legal culture. The absence of a collection mechanism, ambiguity of accountability, and a lack of courage in enforcing sanctions render dwangsom

ineffective. Even when judges have imposed it in a ruling, as in Decision No. 13/G/2016/PTUN.TPI, concrete implementation remains uncertain.

Thus, it can be said that the legal application of dwangsom is now possible and has been progressively implemented in several decisions, including the a quo case. However, its implementation remains overshadowed by structural and normative issues: who pays, how the amount is calculated, how it is enforced, and how its implementation is guaranteed. All of this requires systemic reform so that dwangsom can become a tool for restoring justice, not simply a text in a ruling.

3.5.2. Analysis of the Implications of the Implementation of Dwangsom from a Justice Perspective

The application of dwangsom (forced money) in State Administrative Courts raises quite complex justice implications, particularly regarding who should be liable for the payment of the force money. Dwangsom is designed as a sanction that exerts psychological pressure on the defendant to comply with a legally binding decision. However, in practice, the lack of clarity in legal norms regarding the subject of dwangsom payments actually creates the potential for new injustices within the state administrative law system itself.

In practice, two main approaches have emerged. The first approach holds that dwangsom should be imposed on the state. This approach is based on the assumption that the actions of officials in exercising administrative authority represent the state or a public legal entity. Therefore, all consequences of these actions, including non-compliance with court decisions, constitute an institutional responsibility that must be borne by the state through budgetary mechanisms, either the state budget or regional budgets. This argument aligns with the principles of institutional legal responsibility and the protection of government institutional functions.

However, this approach has a fundamental weakness. If the entire burden of paying dwangsom falls on the state, it will result in a disproportionate distribution of responsibility. Public taxes become the source of payment for the legal negligence of a particular official. This creates an imbalance in fiscal and moral justice, as the general public bears the consequences of the actions of a few individuals who should be held personally responsible. In the long run, this approach has the potential to create moral hazard, where officials are less likely to violate the law because they know that the financial consequences will be borne by the state.

Conversely, if dwangsom is imposed on officials individually, this approach emphasizes the principle of individual accountability. Officials who deliberately fail to comply with court decisions can be financially compelled to comply. This model supports corrective justice, as the burden of dwangsom falls directly on the perpetrator of the violation. Furthermore, this approach has a strong deterrent effect. When officials know they will personally bear the consequences of non-compliance, they are more motivated to enforce the decision. This also strengthens the principle of the rule of law and the court's position as the ultimate arbiter in dispute resolution.

However, the personal burden scheme also carries risks. In the reality of bureaucracy, not all violations are the result of individual intent or negligence. Sometimes officials cannot implement decisions due to inconsistencies in internal procedures, lack of permission from superiors, or regulatory conflicts. If the burden of dwangsom is automatically imposed on officials without objective review, this will lead to procedural injustice and can even create a disincentive to courageously make administrative decisions.

To address the tension between these two approaches, an evaluative approach is necessary that considers both substantive and procedural justice simultaneously. Substantive justice focuses on the end result of the application of the law, namely the extent to which the plaintiff's rights are truly protected through the implementation of the decision. Dwangsom is a crucial instrument in ensuring substantive justice, because without it, a plaintiff's legal victory will not result in real rights restoration. The decision will cease to be a legal text that is not implemented, ultimately diminishing legal legitimacy and public trust.

However, substantive justice cannot be separated from procedural justice, namely, justice that arises from a fair, transparent, and accountable legal process. In the context of the application of dwangsom, procedural justice concerns how the court assesses the defendant's responsibility, whether there is an element of intent, whether there are legitimate administrative obstacles, and how the imposition of responsibility is carried out proportionally. Dwangsom imposed without clarification of personal responsibility has the potential to violate procedural justice, because not all officials have full authority over the disputed decision.

The balance between substantive and procedural justice also reflects the highest value in Gustav Radbruch's theory of justice, which states that the law should not stop at formal legality but must produce results that are morally and

socially just. In the context of dwangsom, justice is not only realized when the plaintiff wins; it is truly meaningful only when the punishment process against the official is carried out fairly.

From this perspective, a clear distinction is needed between the circumstances under which the state is entitled to bear dwangsom and when officials must personally bear it. Imposing a fine on the state is justified when officials are proven to have carried out their duties in accordance with internal procedures, superior orders, or applicable regulations. There is no element of personal negligence, and administrative decisions are part of institutional policy. In these circumstances, imposing dwangsom on the state reflects procedural justice.

Conversely, imposing a fine on an official becomes relevant when officials are proven to have knowingly and intentionally failed to implement a decision, refused or delayed it without a valid legal reason, or used their discretion erroneously. In these circumstances, substantive and corrective justice can coexist, as sanctions are imposed on the perpetrators directly responsible for the non-compliance.

In PTUN case No. 13/G/2016/PTUN.TPI, the panel of judges imposed a dwangsom of Rp 500,000 per day of delay, jointly and severally, on the Defendant and the Second Intervening Defendant. However, this ruling does not explicitly state who must pay, the mechanism, or the basis for its consideration. The absence of a ratio decidendi in this aspect demonstrates a lack of procedural clarity in the implementation of the dwangsom sanction. This has implications for legal uncertainty and the weak enforcement effect of the dwangsom itself.

In Lawrence M. Friedman's legal system approach, this situation demonstrates an imbalance between legal substance, legal structure, and legal culture. The legal substance recognizes dwangsom as a legal instrument, but this is not supported by a legal structure that supports its implementation. There are no institutions or enforcement mechanisms to ensure the implementation of dwangsom. Meanwhile, the bureaucratic legal culture also does not fully support compliance with court decisions, so dwangsom tends to be ignored or not implemented.

From John Rawls's theory of justice, justice is understood as justice as fairness, which rests on two main principles: the principle of equal liberty and the difference principle (Rawls, 2006). In the context of dwangsom, the principle of equal liberty can be interpreted as the right of every citizen to legal protection and equality before the law, including the right to have court decisions enforced. When an official fails to implement a decision, he or she indirectly violates citizens' freedom to access justice.

On the other hand, Rawls's difference principle can be used to critique the imposition of dwangsom on the state. This principle states that social and economic inequalities should be arranged in such a way as to provide the greatest benefit to the least advantaged members of society. If dwangsom payments are taken from the national/regional budgets (taxes), this means that the financial burden of an official's negligence is borne by the wider community, including the most vulnerable groups. This contradicts the difference principle, as the least advantaged groups bear the burden of the negligence of others. Conversely, imposing dwangsom privately on negligent officials would be more in line with Rawls's principle, as such financial sanctions would not disrupt the distribution of resources intended for the public welfare.

A study of decisions at the Pekanbaru Administrative Court (PTUN), particularly in civil service and land disputes, emphasizes the courts' central role in upholding justice by overturning legally flawed administrative decisions. These decisions demonstrate that the substance of the law has been functioning effectively, with violated citizens' rights successfully restored through the judicial process. However, this success does not necessarily guarantee optimal execution of decisions, as the legal structure for their implementation remains very weak, particularly regarding the penalty of forced payment. A case study of the application of forced payment at the Tanjungpinang Administrative Court (PTUN), for example, shows that although the judge imposed a monetary penalty, the unclear mechanism and subject of payment left wide room for interpretation, thus questioning its effectiveness as a coercive tool.

This phenomenon reinforces the argument that although the legal substance recognizing forced payment exists, the legal structure supporting it, such as the executing agency and implementing regulations, is inadequate. Without strong implementing regulations, the norm of forced payment will remain merely symbolic and fail to achieve substantive and procedural justice. Therefore, the establishment of comprehensive regulations, either in the form of a Government Regulation or a Supreme Court Regulation, is necessary to technically regulate: who is subject to payment, the criteria for imposing responsibility, the collection method, and the enforcement mechanism.

In principle, the executive and legislative branches currently lack a dedicated institution to handle the implementation of court decisions. Therefore, it is necessary to establish a separate institution tasked with managing the execution of legally binding court decisions from all four jurisdictions. This eliminates the need for a separation

between execution in general courts, religious courts, military courts, and state administrative courts. However, the intended execution primarily relates to the government in the broadest sense, including all state apparatus. This institution is also expected to serve as a supporting tool in the process of law formation through court decisions by implementing the contents of those decisions.

In theory, law formation is carried out not only by the legislative body through laws or the executive body through government regulations and other governmental regulations, but also by the judiciary through its court decisions. The legal products of this judicial institution are an integral part of the overall legal products produced by the legislative and executive bodies (Yulius, 2019).

4. Conclusion

The legal provisions regarding dwangsom in the execution of PTUN decisions in Indonesia still lack a clear normative and technical foundation. Article 116 paragraph (4) of Law Number 51 of 2009 does provide a legal basis, but the lack of implementing regulations makes its application inconsistent and dependent on the judge's initiative. This creates legal uncertainty and makes it difficult for judges and court officials to consistently impose and execute dwangsom.

In practice, dwangsom has the potential to be an effective coercive tool to ensure officials' compliance with condemnatory decisions. However, its use remains limited, case-by-case, and its effectiveness is often questioned. The ambiguity regarding who is responsible for paying dwangsom—the state or individual officials—creates wide room for interpretation and is detrimental to justice seekers. A case study at the Tanjungpinang PTUN shows that although dwangsom was imposed, the lack of a clear mechanism hinders its function as an instrument of legal pressure.

From a justice perspective, dwangsom only addresses procedural aspects but has not yet fully realized substantive justice in the form of real rights restoration. The debate on the imposition of dwangsom needs to pay attention to distributive and corrective justice, where personal negligence should be borne by officials, while systemic responsibility can be placed on the state. For this reason, comprehensive technical regulations and the establishment of a national execution institution are needed so that dwangsom does not cease to be a formal norm, but truly becomes a means of upholding substantive justice for the community.

References

Ali, Z. (2016). *Pengantar ilmu hukum*. Jakarta: Sinar Grafika.

Astawa, I. G. P. (2012). *Dinamika hukum dan perundang-undangan di Indonesia*. Bandung: PT Alumni.

Hadjon, P. M. (1987). *Perlindungan hukum bagi rakyat Indonesia: Suatu pengkajian tentang prinsip-prinsipnya, penanganannya oleh pengadilan dalam lingkungan peradilan umum dan pembentukan peradilan administrasi negara*. Surabaya: PT Bina Ilmu.

Heriyanto, B. (2021). Kajian hukum pelaksanaan uang paksa (dwangsom) di peradilan tata usaha negara. *Pusat Penelitian dan Pengembangan Hukum dan Peradilan, Direktorat Jenderal Peradilan Militer dan Peradilan Tata Usaha Negara, 4*(2), 150.

Komisi Yudisial Republik Indonesia. (2024, Juli 10). CHA Mustamar: Kelemahan PTUN terletak pada eksekusi putusan yang sering diabaikan. https://www.komisiyudisial.go.id/frontend/news_detail/15669/cha-mustamar-kelemahan-ptun-terletak-pada-eksekusi-putusan-yang-sering-diabaikan

Lahopang, S. R. (2018). Kajian hukum proses eksekusi putusan peradilan tata usaha negara. *Jurnal Lex Administratum, 6*(3), 161.

Lotulung, P. E. (2003). *In re-examining the main ideas of the founders of state administrative courts in Indonesia*. Jakarta: Institute for Research and Development of State Administrative Law.

Lubis, F., & Ilyas, G. (2024). Penerapan asas kepastian hukum dalam proses eksekusi putusan hakim kepada pihak yang kalah dalam perkara perdata. *Jurnal Hukum Progresif, 7*(6), 114.

Marbun, S. F. (2011). *Peradilan administrasi negara dan upaya administrasi negara*. Yogyakarta: FH UII Press.

Marbun, S. F., & Mahfud, M. M. D. (1987). *Pokok-pokok hukum administrasi negara*. Yogyakarta: Liberty.

Muchsan. (2007). *Sistem pengawasan terhadap perbuatan aparat pemerintah dan peradilan administrasi negara di Indonesia*. Yogyakarta: Liberty.

Muhaimin. (2020). *Metode penelitian hukum*. Mataram: Mataram University Press.

Muhidin, A. (2023). Kepastian hukum mengenai pelaksanaan putusan peradilan tata usaha negara yang telah mempunyai kekuatan hukum tetap. *Al-Afkar: Journal for Islamic Studies, 6*(4), 418.

Mulyanti, V. S., dkk. (2025). Analisis yuridis kepastian hukum pelaksanaan putusan Mahkamah Agung Nomor 109/Pk/Pdt/2022 pada perkara Dago Elos ditinjau berdasarkan Undang-Undang Nomor 5 Tahun 1960 tentang Pokok-Pokok Agraria. *Jurnal Hukum Tata Usaha Negara dan Hukum Publik, 2*(1), 73.

Pengadilan Tata Usaha Negara Tanjungpinang. (2016). *Putusan perkara Nomor 13/G/2016/PTUN.TPI, Budi Saputra vs. Kepala Kantor Pertanahan Kabupaten Karimun dan Nathan Wahyudianto dan Haris alias Tjap Hiok*.

Rawls, J. (2006). *A theory of justice*. Oxford: Oxford University Press.

Rohaedi, E., Kusnadi, N., Heriyanto, B., & Nuradi. (2023). Kedudukan uang paksa (dwangsom) dalam eksekusi putusan pengadilan tata usaha negara. *Pakuan Law Review (PALAR), 9*(2), 121.

Santoso, R. A., et al. (2023). Kedudukan dan kekuatan hukum surat edaran Mahkamah Agung (SEMA) dalam hukum positif Indonesia. *Deposition: Jurnal Publikasi Ilmu Hukum, 1*(4), 13.

Slamet, S. R., dkk. (2023). Dwangsom sebagai upaya paksaan terhadap putusan hakim. *Lex Jurnalica, 20*(2), 239.

Soekanto, S. (2006). *Pengantar penelitian hukum*. Jakarta: UI Press.

Suteki. (2022). *Pengantar penelitian hukum*. Depok: Raja Grafindo.

Tjakranegara, S. (1994). *Hukum acara peradilan tata usaha negara Indonesia*. Jakarta: Sinar Grafika.

Vivi. (2024). *The principle of legal certainty in the implementation of an international arbitration decision* (Tesis). Bogor: Program Studi Ilmu Hukum, Sekolah Pascasarjana, Universitas Pakuan.

Wahyono, P. (1984). *Beberapa permasalahan konstitusional di Indonesia*. Jakarta: Ghalia Indonesia.

Yulius. (2019). *Masalah eksekusi pejabat tata usaha negara dan wacana lembaga eksekusi negara*. Lampung: Aura.

Zulkifli, M. A., Hidayat, N., & Pirmansyah, P. (2025). Kajian yuridis ketentuan sanksi uang paksa (dwangsom) dalam pelaksanaan putusan pengadilan tata usaha negara berdasarkan Undang-Undang Nomor 51 Tahun 2009 tentang perubahan kedua atas Undang-Undang Nomor 5 Tahun 1986 tentang peradilan tata usaha negara. *Journal of Sharia and Law, 3*(4), 1198.

Zulkarnaen, & Mayaningsih, D. (2018). *Hukum acara peradilan administrasi di Indonesia*. Bandung: Pustaka Setia.