



## THE URGENCY OF ESTABLISHMENT AN EXECUTORIAL INSTITUTION FOR THE EXECUTION OF FORCED MONEY (DWANGSOM) IN THE DECISION OF THE BANDUNG STATE ADMINISTRATIVE COURT

Aliz Zulis Al Hurni<sup>1</sup>, Indah Nur Shanty Saleh<sup>2\*</sup>

<sup>1</sup> Faculty of Law, Ahmad Dahlan University, Indonesia

<sup>2</sup> Faculty of Law, Ahmad Dahlan University, Indonesia

\*Corresponding Author:

Article History	Abstract
Entered: 15 Jan 2020 Review: 20 Feb 2020 Received: 10 Mar 2020 Published: 31 Mar 2021	<p>Ketiadaan lembaga eksekutorial terhadap eksekusi uang paksa (dwangsom) pada putusan Pengadilan Tata Usaha Negara (PTUN) menjadikan suatu permasalahan dalam eksekusi putusan yang telah berkekuatan hukum tetap dari tahun ke tahun. Ketiadaan lembaga eksekutorial tersebut menjadikan problematika yang harus dihadapi oleh PTUN Bandung dengan banyaknya amar putusan yang tidak mengabulkan petitum gugatan penggugat mengenai pengenaan uang paksa (dwangsom). Selain itu, amar putusan yang mengabulkan mengenai pembayaran uang paksa (dwangsom) juga tidak dapat dieksekusi. Penelitian ini bertujuan untuk mengetahui urgensi pembentukan lembaga eksekutorial terhadap eksekusi uang paksa (dwangsom) pada putusan PTUN Bandung dan untuk mengetahui hambatan pembentukan lembaga eksekutorial terhadap eksekusi uang paksa (dwangsom) pada putusan PTUN Bandung.</p> <p>Penelitian ini menggunakan jenis penelitian yuridis normatif dengan penggunaan sumber data sekunder yang meliputi bahan hukum primer, bahan hukum sekunder dan bahan hukum tersier serta sumber data primer berupa wawancara. Adapun metode pengumpulan data yakni studi kepustakaan dan studi lapangan berupa wawancara. Analisis data dilakukan secara deskriptif kualitatif, sehingga diharapkan pembahasan dapat akurat menjawab rumusan masalah.</p> <p>Hasil penelitian menunjukkan bahwa urgensi pembentukan lembaga eksekutorial terhadap eksekusi uang paksa (dwangsom) pada putusan Pengadilan Tata Usaha Negara Bandung adalah belum adanya lembaga yang berkewajiban untuk mengawasi dan memaksakan eksekusi uang paksa (dwangsom) pada putusan PTUN,</p>



	<p>tidak adanya peraturan pelaksana mengenai uang paksa (dwangsom), kesadaran pejabat TUN yang masih rendah dalam melaksanakan putusan uang paksa (dwangsom) pada PTUN Bandung, dan terhambatnya implementasi uang paksa (dwangsom) akibat adanya intervensi kepentingan pejabat TUN dalam suatu KTUN. Hambatan pembentukan lembaga eksekutorial terhadap eksekusi uang paksa (dwangsom) pada putusan Pengadilan Tata Usaha Negara Bandung adalah tidak adanya norma hukum yang jelas mengenai pembentukan lembaga eksekutorial terhadap eksekusi uang paksa (dwangsom) pada putusan PTUN, tidak efektifnya Peraturan Pemerintah Nomor 48 tahun 2016 tentang Tata Cara Pengenaan Sanksi Administratif Kepada Pejabat Pemerintahan dan adanya politik kekuasaan (political juris).</p> <p><b>Kata Kunci:</b> Lembaga eksekutorial; Uang Paksa (Dwangsom); PTUN Bandung</p>
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<p><i>Received: 15 Jan 2020</i> <i>Reviewed: 20 Feb 2020</i> <i>Accepted: 10 Mar 2020</i> <i>Published: 31 Mar 2020</i></p>	<p><i>The absence of an executorial institution for the execution of forced money (dwangsom) in decisions of the State Administrative Court (PTUN) creates a problem in executing decisions that have permanent legal force from year to year. The absence of an executorial institution creates a problem that the PTUN Bandung has to face, with many decisions not granting the petitem of the plaintiff's lawsuit regarding the imposition of forced money (dwangsom). Apart from that, the decision granting the payment of forced money (dwangsom) also cannot be executed. This research aims to determine the urgency of establishing an executorial institution for the execution of forced money (dwangsom) in the PTUN Bandung decision and to find out the obstacles to the formation of an executorial institution for the execution of forced money (dwangsom) in the PTUN Bandung decision.</i></p> <p><i>This research uses a normative juridical research type with the use of secondary data sources which include primary legal materials, secondary legal materials and tertiary legal materials as well as primary data sources in the form of interviews. The data collection methods are literature studies and field studies in the form of interviews. Data analysis was carried out descriptively qualitatively, so it is hoped that the discussion can accurately answer the problem formulation.</i></p> <p><i>The results of the research show that the urgency of establishing an executorial institution for the execution of</i></p>



*forced money (dwangsom) in decisions of the Bandung State Administrative Court is the absence of an institution that is obliged to supervise and enforce the execution of forced money (dwangsom) in PTUN decisions, the absence of implementing regulations regarding forced money (dwangsom), the awareness of TUN officials is still low in implementing decisions on forced money (dwangsom) at PTUN Bandung, and the implementation of forced money (dwangsom) is hampered due to the intervention of the interests of TUN officials in a KTUN. The obstacles to the formation of an executorial institution for the execution of forced money (dwangsom) in the decision of the Bandung State Administrative Court are the absence of clear legal norms regarding the formation of an executorial institution for the execution of forced money (dwangsom) in the PTUN decision, the ineffectiveness of Government Regulation Number 48 of 2016 concerning Procedures how to Impose Administrative Sanctions on Government Officials and the existence of power politics (political juris).*

**Keywords:** *Executorial institution; Forced money (dwangsom); Bandung State Administrative Court*

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## Introduction

Indonesia's declaration as a state of law certainly has real consequences for the implementation of Indonesia's constitutional life. The recognition of Indonesia as a state of law is expressly enshrined in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution) which reads "Indonesia is a country based on law". The fourth paragraph of the Preamble to the 1945 Constitution shows that Indonesia is a welfare state. Referring to Muchsan's opinion, there are characteristics of a welfare state, namely the state aims to prosper the lives of citizens equally and the state is required to provide the best service. There are two symptoms that arise from the concept of a welfare state, namely the first is government intervention in a very wide aspect of people's lives. Second, in the implementation of government functions, the principle of discretion is often used (Muchsan, 1992: 4-5). In accordance with the concept of the State of Indonesia is a welfare state that not only has the intention to curb the government from acting arbitrarily, but also provides flexibility to the government to implement the government based on the interests of the people, in this case it is the optimization of the administration of the state and a clean and effective government in providing services to the community.



The concept of a democratic state certainly has its own consequences, so that in a state institutional system there is a division of power. Montesquieu in his book entitled *L'Esprit Des Lois* (1784), that there is a separation of powers, namely legislative, executive and judicial powers. If the legislative, executive and judicial powers are united in a governing body, there will be the potential for abuses such as abuse of power and excessive power (Asshiddiqie, 2015: 283).

Of the three state institutions in Indonesia, both executive institutions, legislative institutions and judicial institutions, it is known that the executive institution has the greatest rights and roles in the administration of government when compared to legislative and judicial institutions. For this reason, it is necessary to control government behavior in all aspects of government or in policy-making in order to realize the check and balance process. The form of control over the government is by forming a State Administrative Court (PTUN), so that citizens can limit the movement of the government and so that the policies taken are not arbitrary (Ridho, 2021: 11).

Through this court, every citizen has the opportunity to file objections to government decisions that are considered contrary to laws and regulations or abuse of authority. Even in the current era, objections can be raised against decisions that are contrary to the principles of good governance (Bima, 2012:4). In practice, the implementation of the PTUN decision is constrained in its execution level. Throughout Indonesia, many PTUN decisions that have had legal force remain unenforceable. This has an impact on the open conflict of disputes between the state and the people due to maladministration actions carried out by the apparatus in carrying out their duties.

Based on Umar Dani's research citing research from Irfan Nurdin in the jurisdiction of the Bandung State Administrative Court in 2004, the results were obtained that the decision was only 30%. Research conducted by Supandi in the jurisdiction of Medan in 2005 found that 70% of officials did not comply with the decision of the Medan State Administrative Court. Fifteen years have passed since the research conducted by Irfan Nurdin, based on the report on the results of the study of the case management system in the court of first instance in 2020 conducted by the Corruption Eradication Commission in collaboration with the Supervisory Agency and the Financial and Development Supervisory Agency, the results obtained that the success in the execution of PTUN decisions can be categorized as low because it only reaches 34.92% of the total execution applications (Dani, 2022: 97).



Another research related to the issue of decision execution at the PTUN was also carried out by Hari Sugiharto as the Director of Technical Personnel Development (Dirbinganis) as quoted by Umar Dani showing that the decisions executed by the PTUN in 2020 were as much as 27% or only 38 decisions were executed out of 140 applications. In 2021, only 16 decisions from 144 applications could be executed or only 11.1%. In his research, it was stated that the failure to properly execute the PTUN decision was due to the limited authority of the defendant in carrying out the execution (Dani, 2022:98).

As if aware of the blunt implementation of the PTUN decision which is based on the awareness of TUN officials, the government took steps by promulgating Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986. The regulation regulates the imposition of forced money (*dwangsom*) on TUN officials who do not comply with the decision that has permanent legal force. This is contained in Article 116 paragraph (4) of Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning the State Administrative Court.

In practice, the application of forced money (*dwangsom*) still raises several problems, such as what type of decision can be imposed on forced money (*dwangsom*), who is responsible for the payment of forced money (*dwangsom*), and since when forced money (*dwangsom*) can be enforced. In fact, there are still many PTUN decisions that are not carried out by TUN officials. The assumption of the PTUN decision as a "toothless tiger" does not seem to be exaggerated. The public certainly views based on the reality that occurs, that in other courts after the verdict is said to have permanent legal force, it can be forcibly executed, while in the PTUN it faces another reality.

In this case, related to the problem of the enforcement of forced money (*dwangsom*), in reality it also occurs in the Bandung State Administrative Court. The Bandung State Administrative Court, which functions as a control over arbitrary actions, often faces problems at the level of execution of decisions that have permanent legal force from year to year. The enforcement of forced money (*dwangsom*) also poses a problem with many rulings that do not grant the plaintiff's petition regarding the imposition of forced money (*dwangsom*) as examples, namely Decision Number 114/G/PTUN-BDG, Decision Number 61/G/2011/PTUN-BDG, Decision Number 71/G/2013/PTUN-BDG, in Decision Number 150/G/2020/PTUN-BDG, Decision Number 152/G/2020/PTUN-BDG, and Decision Number 153/G/2020/PTUN-BDG. In reality, the enforcement of forced money



(*dwangsom*) is also still continuing to this day and has not reached a middle point, namely with Decision Number 108/G/2017/PTUN-BDG which until now the imposition of forced money payments (*dwangsom*) has not been implemented. The same thing also happened in Decision Number 45/G/2008/PTUN-BDG where the forced money (*dwangsom*) could not be executed.

The implementation of PTUN decisions based on the awareness and initiative of TUN officials themselves is often not implemented. The implementation of the hierarchy system as regulated in Law Number 51 of 2009 concerning the State Administrative Court tends to be difficult to apply in the implementation of PTUN decisions. In addition, there is a lack of clarity in legal norms that guarantee the certainty of the implementation of the execution of the verdict itself. The ambiguity concerns which institution is authorized in determining administrative sanctions or forced money (*dwangsom*) and what are the legal criteria for the application of forced efforts in the form of forced money (*dwangsom*) against TUN bodies/officials who do not implement the PTUN decision. This means that there is no executive institution specifically formed to oversee and ensure the implementation of execution. In the absence of such an executory institution, the community cannot obtain legal certainty because a decision that initially has brought legal certainty becomes unable to obtain legal certainty after a decision that has legal force still cannot be executed as it should because there is no connection between the lawsuit and the decision. In the absence of legal certainty, justice cannot be achieved.

### **Method**

In writing this thesis, it uses a type of normative juridical research, namely research that is focused on studying law as a rule or norm and the application of legal rules in practice (Muhaimin, 2020: 118). The secondary data sources are sourced from legal materials consisting of primary, secondary and tertiary legal materials. In addition, the author also uses primary data sources in the form of interviews conducted with Mr. Akhdiat Sastrodinata, S.H., M.H. as the Judge of the Bandung State Administrative Court and Mr. Suhendra, S.H., M.H. as the Registrar of the Bandung State Administrative Court in relation to the urgency of establishing an executive institution for the execution of forced money (*dwangsom*) in the decision of the Bandung State Administrative Court so that in collecting data can obtain accurate sources and related to the title to be researched by the author. The data collection technique used by the author through literature research is by conducting an inventory and studying library data in the form of laws and regulations, literature books and official



documents. In addition, field research is also used, namely by conducting interviews to reveal facts to obtain direct data. The analysis technique in writing this thesis uses qualitative descriptive analysis techniques, namely data analysis obtained from literature studies and also obtained from field studies carried out systematically and logically, so that the data obtained either orally or in writing can answer research problems and then can be concluded

### **The Urgency of the Establishment of an Executory Institution for the Execution of Forced Money (*Dwangsom*) at the Decision of the Bandung State Administrative Court**

The PTUN functions as a judicial control and has a very strategic role, namely as a control or supervisory institution of government legal actions for TUN officials to remain in accordance with the law. In addition, it acts as a protector of public rights against arbitrary abuse by government officials (Paramitha, et al., 2023: 260). It can be imagined that it is ideal that TUN bodies or officials will always obey to carry out the execution of PTUN decisions, but in reality this is only an assumption based on the fact that the PTUN procedural law is not regulated regarding the sanction mechanism for parties who do not carry out the execution of PTUN decisions. The presence of an executory institution within the Bandung State Administrative Court is essential considering that the absence of a coercive force mechanism can result in the ineffective implementation of the Bandung State Administrative Court's decision. Therefore, the establishment of an executory institution for the execution of forced money (*dwangsom*) in the Bandung PTUN decision is driven by several underlying reasons, namely:

1. There is no institution that is obliged to supervise and enforce the execution of forced money (*dwangsom*) on the decision of the PTUN

The PTUN system is a subsystem of administrative law enforcement whose output is a decision. The implementation of the judgment submitted to the defendant is the scope of power of another subsystem, which in this case is a government administration system based on the principle of division of power. To ensure legal certainty for the implementation of the decision, there must be a pressing norm within the government administration itself by clearly defining the mechanism and procedure as well as who is authorized as the owner of the authority to give sanctions and consequences if the decision is not implemented. This is in line with administrative law enforcement which consists of a system that supports each other, so both must function according to their respective authorities, so that for the strengthening of the implementation of PTUN decisions, a separate execution subsystem is needed with the formation of an executory institution.



In the execution of forced money (*dwangsom*) on the PTUN decision, it must also be made by its own institution that is given full authority or authority as a bridge to ensure the implementation of the PTUN decision. So far, the follow-up to the implementation of the PTUN decision is in the gray area between the power of the court and the executive power which is depicted as follows:

Figure 1 Subsystem for the Implementation of PTUN Decisions



Source: (Dani, 2022: 15)

With the PTUN decision in a *gray area* between the power of the court and the executive power, it is important for there to be a link between the decision and the execution so that an executory institution is needed. In this case, the executory institution has an important role in improving and improving the administrative process related to the implementation of the PTUN decision, especially in the context of forced money (*dwangsom*). Executing institutions can ensure transparency and accountability in the implementation of their duties. This can be done by providing public reports on the progress of the implementation of the PTUN decision and a mechanism to receive input and complaints from the public related to the implementation.

2. Absence of implementing regulations on forced money (*dwangsom*)

It can be understood that the execution norms listed in Article 116 are not effective, especially those contained in paragraphs (4) to (7) related to their implementing regulations. In the paragraph contained in Article 116, it has been explained that in particular, some decisions that are condemnatory (decisions that punish the losing party to fulfill achievements) can be subject to coercive measures in the form of payment of a certain amount of forced money and/or administrative sanctions. However, related to the forced money and/or administrative sanctions, there is no clarity on the laws and regulations that regulate it further.





Related to this, it is then necessary to correlate with Article 72 paragraph (1) of Law Number 30 of 2014 concerning Government Administration which states: "Government Agencies and/or Officials are obliged to carry out legitimate decisions and/or actions and decisions that have been declared invalid or canceled by the Court or the relevant officials or superiors". If you also refer to the administrative sanctions, they are contained in Article 80 paragraph (2) of Law Number 30 of 2014 concerning Government Administration which states that "Government officials who violate the provisions as referred to in Article 25 paragraph (1), Article 25 paragraph (3), Article 53 paragraph (2), Article 53 paragraph (6), Article 70 paragraph (3), and Article 72 paragraph (1) are subject to moderate administrative sanctions" (Azzahra, 2020: 133-134). It should also be noted that what is meant by administrative sanctions in the medium category is in accordance with the provisions of Article 81 paragraph (2) of Law Number 30 of 2014 concerning Government Administration which states: "Medium administrative sanctions as referred to in Article 80 paragraph (2) are in the form of payment of forced money and/or compensation; temporary dismissal by obtaining office rights; or temporary dismissal without obtaining the rights of the position".

Based on the description of the article, it can be understood that administrative sanctions with a moderate category given to government agencies and/or officials who do not carry out valid decisions and/or actions and decisions that have been declared invalid or canceled by the court or the officials concerned or their superiors concerned may be subject to the payment of a sum of forced money (*dwangsom*) (Azzahra, 2020: 134).

In this case, the payment of forced money (*dwangsom*) is considered ineffective due to the absence of an implementing regulation where in Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning the State Administrative Court, Article 116 paragraph (7) states that "provisions regarding forced money, types of administrative sanctions, and procedures for the implementation of forced money payments and/or administrative sanctions are regulated by laws and regulations". In the event that the defendant is not willing to implement the court decision that has obtained permanent legal force, the official concerned is subject to coercive measures in the form of payment of a certain amount of money and/or administrative sanctions.

Based on several jurisprudence rulings of the Bandung Administrative Court that granted applications regarding forced money (*dwangsom*), there were applications that were granted and some were rejected. In the legal consideration



for the decision that refused to pay forced money (dwangsom), it was based on the absence of an implementing regulation regarding forced money (dwangsom) so that the panel of judges did not grant the payment of forced money (dwangsom) as requested by the plaintiff. On the other hand, for the panel of judges who granted the plaintiff's lawsuit related to forced money (dwangsom), it is to ensure legal certainty for the implementation of the judgment if the defendant is negligent in carrying out the decision.

In line with this, it seems as if there is a difference of opinion regarding the absence of the implementing regulation, but Mr. Akhdiat Sastrodinata, S.H., M.H. as the Judge of the Bandung State Administrative Court stated that this is not a difference of opinion because basically in Law Number 51 of 2009 concerning the second amendment to Law Number 5 of 1986 concerning the State Administrative Court, it has provided facilities to be able to apply forced money (dwangsom). In line with this, the imposition of forced money (dwangsom) carried out by the judge is guided by positive law which is a unit of a legal norm that can be given to the defendant to pay a certain amount of money to the plaintiff if he is negligent in the decision.

On the other hand, there are judges who do not impose forced money (dwangsom) on the basis that the imposition of forced money (dwangsom) in practice cannot be executed. Because the forced money (dwangsom) cannot be implemented and to make a decision perfect, the forced money (dwangsom) is not included in a decision. This is based on the fact that if the forced money (dwangsom) is still included in a decision and the decision cannot be implemented, it will have an impact on the decision that continues to be litigated or the dispute is not resolved so that the decision becomes a non-executable decision.

In Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning the State Administrative Court, there is a problem where there is no implementing regulation regarding forced money (dwangsom) so that there is no principle of legal certainty related to the imposition of forced money (dwangsom) that can be imposed on TUN officials who do not carry out the content of the decision. Although in this case there has been a regulation regarding the execution of money, including providing the imposition of forced money (dwangsom) to TUN officials who do not implement court decisions, in fact it does not guarantee the norms of execution in the regulation in an effective manner.



With the absence of legal certainty and the absence of an executory institution to execute forced money (*dwangsom*), the execution of forced money (*dwangsom*) in the PTUN decision is floating, like unstoppable and uncertain flowing water. This condition is contrary to the principle of *litis finiri oportet*, namely this principle wants an end to the existence of government administrative disputes in the form of PTUN decisions implemented by TUN officials. The purpose of this principle is in line with legal certainty (Yulius, 2018: 23). In the absence of an executory institution, according to the author, this norm is contrary to the principle of legal certainty, because the plaintiff is dependent on the circumstances of the decision that is not implemented by the defendant, so that legal certainty for the plaintiff is not obtained.

3. TUN officials' awareness is still low in implementing the forced money decision (*dwangsom*) in the PTUN decision

In a country of law, court decisions have binding legal force and all parties, including TUN officials, must comply with and implement the rulings that have been determined. The court decision is a form of legal expression and therefore TUN officials have the obligation to implement the content of the decision (Untoro, 2018: 2).

By implementing the court decision, TUN officials show obedience to the law and principles of the state of law itself. However, in fact, it can be seen in the data related to the execution application submitted to the Bandung State Administrative Court, which until now has not been executed, which is a problem in the State Administrative Court system. Because the success of a decision depends on the legal awareness of TUN officials. In the research that the author has conducted in the Bandung State Administrative Court related to the application for execution of decisions in the Bandung State Administrative Court, there are at least 27 abandoned decisions that cannot be implemented in the period 2019 to 2023. Therefore, based on these data and facts, it can be concluded that the level of compliance of officials with the implementation of court decisions is still low.

In addition, the awareness of TUN officials in implementing decisions related to forced money (*dwangsom*) is still low. This is in accordance with the research that the author has conducted that there are several decisions from the Bandung Administrative Court that grant the application for forced money (*dwangsom*) as stated in the plaintiff's lawsuit, but the decision was not implemented and the forced money (*dwangsom*) was not paid by the defendant. For example, in Decision Number 108/G/2017/PTUN-BDG with the decision of the Governor of West Java Number: 561/Kep.644-Yanbangsos/2017, Decree of the Governor of



West Java Number: 561/Kep.679-Yanbangsos/2017 and Decree of the Governor of West Java Number: 561/Kep.680-Yanbangsos/2017 regarding the minimum wage of labor-intensive industries is declared invalid and requires the revocation of the letter that has been issued by the Governor of West Java and the issuance of a new decree related to the minimum wage. In addition, the panel of judges of the Bandung State Administrative Court has also granted the imposition of forced money (dwangsom) of Rp. 5,000,000.00 (five million rupiah) for each day of delay if the defendant is negligent and/or does not carry out the decision of the Bandung State Administrative Court which has permanent legal force with legal considerations to ensure legal certainty for the implementation of the judgment if it is not carried out by the defendant, but in this case it turns out that the defendant did not carry out the court decision so that after This decision is declared to have permanent legal force, then up to 90 days after the verdict is declared to have permanent legal force, the defendant does not perform his obligations as the decision has been issued. In this case, the plaintiff has submitted an application for execution, but after the application for execution, the defendant still does not implement the decision, so it is appropriate that the defendant can be subject to forced money (dwangsom). However, since 2017 until now, the imposition of forced money payments (dwangsom) has not been implemented. The low awareness of TUN officials to be able to pay forced money (dwangsom) makes the decision still running or it can be said that the decision is a non-executable decision.

Another example is in Decision Number 45/G/2008/PTUN-BDG where in the lawsuit was filed on behalf of 85 people by suing the Head of the Tangerang Regency Land Office with the object of the lawsuit for recording the release of land rights to PT Panca Wiratama Sakti Tbk which was carried out by the defendant without a clear basis in the land book of ownership numbers 113 to number 197 on behalf of the plaintiffs. In the lawsuit, Decision No. 45/G/2008/PTUN-BDG includes a petitum, namely declaring the cancellation of the registration of the release of land rights to PT Panca Wiratama Witness carried out by the defendant in the land book of ownership number 113 to number 197 on behalf of the plaintiffs, ordering the defendant to cross out the recording of the release of land rights, ordering the defendant to issue a new certificate of ownership on behalf of the plaintiffs, and punish the defendant to pay forced money (dwangsom) of Rp. 1,000,000.00 (one million rupiah) per day if the defendant neglects to carry out the verdict. In the ruling, the application for payment of forced money (dwangsom) in the amount of Rp. 1,000,000.00 (one million rupiah) per day is granted if the defendant is negligent in implementing the decision. In reality, the defendant did not carry out the court



decision that had permanent legal force so that the plaintiff submitted an application for execution, but the application for execution submitted by the plaintiff did not seem to give any results because the decision was still not implemented and the imposition of forced payment (*dwangsom*) could not be executed.

The decision is not a new decision but has occurred from 2008 and 2017 which until now the decision has not been implemented by the defendant or is still being requested for execution to the Bandung State Administrative Court. This provides an understanding that the awareness of TUN officials to carry out the execution of forced money (*dwangsom*) based on self-respect is still low. The low awareness of TUN officials to implement the decision makes the plaintiff have no legal certainty over the decision. This is in line with the research that the author has conducted with Mr. Suhendra, S.H., M.H. as the Registrar of the Bandung Administrative Court which stated that the application for forced money execution (*dwangsom*) submitted to the Bandung Administrative Court that has occurred so far is almost due to the defendant not wanting to carry out the content of the decision while the court does not have the authority to execute the decision.

4. The implementation of forced money (*dwangsom*) is hampered due to the intervention of the interests of TUN officials in a KTUN

One of the factors that affect law enforcement is the existence of a power. This is in line with the results of research that the author has conducted with Mr. Akhdiat Sastrodinata, S.H., M.H. stating that in the context of administrative law, the interests of power can be reflected in administrative decisions or actions. The issuance of KTUN as an object of dispute is often related to power conflicts between the government or public institutions and other parties such as individuals, community groups, government organizations, or even with the government itself. The conflict is related to the determination of individual rights and public policies.

The issuance of KTUN can also be influenced by the desire of individuals or groups to maintain or expand their influence and power in a certain environment so that the KTUN issued is based on authority, procedures and substances that are not in accordance with the law. If the KTUN passes through an authority or procedure that is not correct, then it is necessary to question again whether the TUN official deliberately violated the law or accidentally violated a law. If the issuance of KTUN is based on political authority and power, then TUN officials should be aware that the KTUN issued is a juridical flaw. Therefore, if there is



no executory institution, the TUN official will provide this even though it has been decided by the PTUN that the KTUN must be revoked or the KTUN must be replaced with a new KTUN.

If a KTUN is declared to have violated the law or the general principle of good governance, the PTUN will cancel the decision, revoke the decision or even issue a new decision. The underlying problem is that if TUN officials have an interest in the issued KTUN, it is impossible for TUN officials to execute it. Moreover, if the decision has been submitted for execution, in this case, the panel of judges will summon the defendant to ask the defendant the reason for not complying with the content of the decision. After that, if it is still not implemented, it can be subject to the payment of forced money (*dwangsom*), but the imposition of forced money (*dwangsom*) also cannot be implemented as it should, where TUN officials will not heed the payment of forced money (*dwangsom*) due to the interest of TUN officials in the KTUN that has been issued

### **Obstacles to the Establishment of Executory Institutions to the Execution of Forced Money (*Dwangsom*) in the Decision of the Bandung State Administrative Court**

The establishment of an executory institution as an independent state institution authorized to supervise and execute is the key to resolving non-executable PTUN decisions because PTUN decisions based on the self-respect of TUN officials are not carried out properly, but the establishment of the executory institution has experienced obstacles in its formation. That based on the results of the interview that the author has conducted with Mr. Akhdiat Sastrodinata, S.H., M.H. as the Judge of the Bandung State Administrative Court and Mr. Suhendra, S.H., M.H. as the Registrar of the Bandung State Administrative Court, if the author integrates, there are 3 factors that hinder the formation of an executive institution in the State Administrative Court, namely:

1. There is no clear legal norm regarding the establishment of an executory institution against the execution of forced money (*dwangsom*) in the decision of the PTUN

As a country of law, the law enforcement system in Indonesia is highly dependent on regulations and procedural clarity regulated in existing laws and regulations, but in this case the establishment of an executory institution against the execution of forced money (*dwangsom*) in the PTUN decision until now there is no regulation or law that specifically regulates



the establishment of an executory institution. In this case, neither Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning the State Administrative Court nor Government Regulation Number 48 of 2016 concerning Procedures for the Imposition of Administrative Sanctions to Government Officials and other laws and regulations do not provide legal norms that regulate who is authorized to execute forced money (dwangsom) in the decision of the State Administrative Court.

The absence of specific laws or regulations in the establishment of an executory institution creates uncertainty in the process of enforcing it. Without clarity about the institution responsible for carrying out the execution of forced money (dwangsom), the execution can become deadlocked or even hampered. This uncertainty creates a gap for abuse of power, injustice and unsustainability of law enforcement. The absence of legal norms and unclear or ambiguous legal norms can create confusion and uncertainty in the process of establishing an executory institution. Without an adequate legal umbrella, the formation process becomes difficult to realize and can be a source of conflict or controversy. Therefore, efforts are needed to formulate clear and comprehensive laws or regulations that regulate the formation, structure, and function of executive institutions to be able to execute PTUN decisions. Without an adequate legal umbrella, the establishment of the executive institution becomes difficult to realize.

## 2. Ineffectiveness of Government Regulation Number 48 of 2016 concerning Procedures for Imposition of Administrative Sanctions to Government Officials

Mr. Akhdiat Sastrodinata, S.H., M.H. as the Judge of the Bandung State Administrative Court stated that in this case Government Regulation Number 48 of 2016 concerning Procedures for the Imposition of Administrative Sanctions to Government Officials has not been able to provide legal certainty that regulates the obligation to carry out a forced money execution (dwangsom) in the PTUN decision. One of the obstacles that arise in the implementation of this regulation is the lack of firmness regarding what sanctions can be given if TUN officials do not implement the decision, and who is authorized to impose sanctions on TUN officials who do not implement the court decision, as well as who is authorized to carry out the execution of forced money (dwangsom) in the decision of the State Administrative Court, thus causing the awareness of TUN officials in carrying out the execution of forced money (dwangsom) is still low.



Ambiguity in such legal norms can threaten the effectiveness of the regulation in ensuring compliance with court decisions and maintaining legal certainty.

Without firmness regarding who is responsible for imposing sanctions, the process of implementing court decisions can be slow and inefficient. TUN officials who do not comply with court decisions in the form of forced payment of money (*dwangsom*) may not feel compelled to implement the decision if there is no clear threat of sanctions and there is no institution that imposes pressure on TUN officials who do not comply with PTUN decisions. Uncertainty about who has the authority to impose sanctions can also create loopholes for abuse of power or discrimination in the law enforcement process. In the absence of clear and transparent mechanisms, law enforcement can become unfair and unpredictable which is contrary to the principles of legal certainty.

### 3. The existence of political *juris*

The intervention of TUN officials' interests in a KTUN is a real obstacle to the existence of illegal political *juris* that encourages the establishment of an executory institution against the execution of forced money (*dwangsom*) in the PTUN decision. This is based on the fact that there is an intervention in the interests of TUN officials in the KTUN that has been issued by TUN officials, making the KTUN that has been decided by the court to be revoked or even replaced with a new KTUN not implemented by TUN officials. The low awareness of TUN officials in implementing PTUN decisions is also closely related to the intervention of power interests in a KTUN issued. The interests of TUN officials have hampered the formation of an executory institution against the execution of forced money (*dwangsom*) at the State Administrative Court.

The establishment of an executory institution is hampered by political interests where TUN officials who may be related to the PTUN decision do not provide support or hinder the formation of an institution considering the many interests of TUN officials in a KTUN. The defendant, who is a TUN official, often thinks that the existence of an independent executive institution can threaten the position or even political interests of TUN officials towards an action or KTUN that has been issued. The view that the existence of an executory institution can endanger certain political positions or interests also determines the attitudes and actions of





stakeholders. Stakeholders believe that an independent executory institution can attack or even suppress its existence in the legal system.

## Conclusion

Based on the results of research and discussion, the author hereby draws conclusions regarding "The Urgency of the Establishment of an Executory Institution for the Execution of Forced Money (Dwangsom) in the Decision of the Bandung State Administrative Court", which is as follows:

1. The urgency of the establishment of an executory institution against the execution of forced money (dwangsom) in the decision of the Bandung State Administrative Court is that there is no institution that is obliged to supervise and enforce the execution of forced money (dwangsom) on the decision of the State Administrative Court, the absence of implementing regulations regarding forced money (dwangsom), the awareness of TUN officials who are still low in implementing the decision of forced money (dwangsom) at the Bandung State Administrative Court, and the inhibition of the implementation of forced money (dwangsom) due to the intervention of the interests of TUN officials in a KTUN.
2. The obstacles to the establishment of an executive institution against the execution of forced money (dwangsom) in the decision of the Bandung State Administrative Court are the absence of clear legal norms regarding the establishment of an executive institution against the execution of forced money (dwangsom) in the decision of the State Administrative Court, the ineffectiveness of Government Regulation Number 48 of 2016 concerning Procedures for the Imposition of Administrative Sanctions to Government Officials, and the existence of political juris.

The suggestions that the author can provide from the results of this study with the hope that this advice can be used as consideration or correction for related parties, namely:

1. First, the establishment of an executive institution for the execution of forced money (dwangsom) is needed which has the authority to supervise and execute the decisions of the State Administrative Court. Second, lawmakers can immediately make implementing regulations related to the implementation of forced money (dwangsom). Third, there is a need to increase awareness for TUN officials to implement the forced money



verdict (dwangsom). Fourth, the need for independence of TUN officials in a KTUN that has been issued.

2. It is necessary to take decisive steps in dealing with some of the critical problems that have been mentioned. First, the Government and the legislature must immediately produce regulations that clearly outline the procedures for the establishment of executive institutions, including the mechanism for implementing decisions, execution procedures, and the authority of related institutions. Second, regarding the ineffectiveness of Government Regulation Number 48 of 2016 concerning Procedures for the Imposition of Administrative Sanctions on Government Officials, more decisive action is needed in revising and perfecting the regulation. Government Regulations need to be thoroughly revised to clarify the procedures for imposing sanctions, the criteria for violations, and the rights and obligations of the officials involved. Third, regarding the existence of power politics (political jurisprudence) in the formation of executive institutions, in the legislative process, the establishment of executive institutions also requires a strong commitment for the government to be able to protect the interests of citizens as state institutions that are subject to the decisions of the State Administrative Courts so that later it is hoped that independence and integrity will always be guaranteed in the process of executing the decisions of the State Administrative Courts.

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