

# OBSTACLES TO THE IMPLEMENTATION OF STATE ADMINISTRATIVE COURT JUDGEMENTS IN PEKAN BARU BASED ON LAW NUMBER 51 OF 2009 CONCERNING STATE ADMINISTRATIVE COURT

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## Abstract

Philosophically, the State Administrative Court's role in the construction of a legal state is to provide legal protection for individuals or public rights, thereby achieving harmony and balance, as well as the dynamic and harmonization of relations between citizens and the state, including the successful implementation of the law of the State Administrative Court's Decision. These are the most important indicators of the court's authority and justice seekers' success. However, it was ascertained that one of the reasons for the weak implementation of State Administrative Court judgements was the absence of an executorial institution and the power of coercion and that, as a result, the implementation of State Administrative Court judgements depends on the voluntary of the State Administrative Officer in question.

**Keywords:** Execution, Court Decision, Legal Certainty.

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## Introduction

Indonesia's state is a legal state (UUD 1945 Article 1 Paragraph 3). The concept of a legal state was conceived in response to the arbitrariness of the authority that imposes an absolute system and the supremacy of the people's rights (Hakim, 2011). According to another definition, a state built on law and justice for its citizens is governed by state law. It denotes that all arbitrariness and activities of state apparatus or authority are based purely on the law or, in other words, are governed by law. This will represent justice for the social life of its citizens (Judge, 2011) based on Article 24, paragraph 2 of the Constitution of the Republic of Indonesia from 1945. According to Article 18 of Law No. 48 of 2009 on Judicial Authority, judicial authority is implemented by a supreme court and judicial bodies within the General Courts,

Judicial authority is an autonomous power to administer justice to protect law and justice; thus, establishing a trustworthy and authoritative judicial institution is critical to promoting a sense of social justice. The establishment of the State Administrative Court is stipulated by the newly enacted Basic Law by Law Number 5 of 1986. With the passage of time and the implementation of legal reforms, Law Number 9 of 2004 about amendments to Law Number 5 of 1986 and Law Number 51 of 2009 addressing the second amendment to Law Number 5 of 1986 have been enacted. With the State Administrative Court as an administrative court that functions as control or supervisory agency, it is hoped that legal actions from the government (*bestuur*) will stay in effect and protect citizens.

The philosophical existence of the State Administrative Court in the formation of a legal state is to offer legal protection for individual rights or the rights of the general public in order to promote harmony, fairness, balance, and dynamism in the relationship between people and the state (Marbun, 1997), in this instance, state administrative personnel. This harmonization includes a guarantee of the value of justice in state administrative judgements (*beschikking*) imposed against people by public officials. Essentially, the existence of the State Administrative Court is a method of implementing judicial functions to control the implementation of executive functions in the form of testing the form of State Administrative judgements issued by State Administrative Officials to ensure that the decisions are following the provisions of laws and regulations and general administrative principles (Wiyono, 2009). According to article 115 of Law No. 5 of 1986 on State Administrative Courts, which states that only judgments having permanent legal force may be executed, it implies that only such decisions may be implemented. The accomplishment of the execution of the State Administrative Court's judgments is the primary indication of the court's authority and the accomplishment of justice. The number of Pekanbaru State Administrative judgments that cannot be

enforced causes problems for those seeking justice, especially with the emergence of pessimism and apathy in society. The fact that the Pekanbaru State Administrative Court has not been capable of providing justice for the public in the administrative sphere of government is cause for serious concern. Based on the above-described legal phenomenon, the further authors will undertake more research and discussion in a study.

### Highlight issues

To what degree are there barriers to executing the judgment of the Pekanbaru State Administrative Court based on Law No. 51 of 2009 pertaining to the Pekanbaru State Administrative Court?

### Research methods

This study employs a normative juridical approach to collect secondary data via a literature review of legislation and legal books, as well as empirical and sociological juridical approaches to collect primary data such as through field research in the form of direct interviews with respondents.

### Discussion

After the case examination is completed, the panel of judges collects all the examination results to filter which ones are important and which ones are not. Based on the examination results, the panel of judges tried to find the incident (*feit vinding* or *fact vinding*). After the panel of judges has received certainty that an incident has occurred, it then determines if the event that has occurred is a violation of the law or not. Then, the panel of judges determines if the legal regulations that control the events that have occurred or better known as "finding the law," or "*rechtvinding*," or "law vinding." If the judge has found out about the events that have occurred and have found the law, they will immediately decide on the execution mechanism.

1. The copy of the court's judgment, which has acquired permanent legal force, should be given to the parties by registered letter by the clerk of the local court, under the direction of the head of the court that tried it in the first instance within fourteen working days.
2. If, after sixty working days, the court's decision that has obtained permanent legal force as referred to in paragraph (1) is received by the defendant and he does not carry out his obligations as referred to in article 97 paragraph (9) letter a, the disputed State Administrative decision will no longer have legal force.
3. If it is determined that the defendant must carry out the obligations as referred to in Article 97 paragraph (9) letter b and letter c, and then after ninety working days, it turns out that the obligation has not been carried out. The plaintiff submits an application to the court's chairman as referred to in paragraph (1); thereby, the court orders the defendant to implement the court's decision.
4. In the event that the defendant is unwilling to implement a court decision that has obtained permanent legal force, coercive measures are used against the person concerned in the form of forced payment of a sum of money or administrative sanctions. The official who does not carry out the court decision as referred to in paragraph (4) is announced in the local print mass by the clerk since the provisions in paragraph (3) are not fulfilled;
5. In addition to being announced in the local printed mass media, as referred to in paragraph (5), the chairman of the court must submit this to the President as the holder of the highest government power to order the official to carry out the court's decision, and to the people's representative institution to carry out the supervisory function.
6. Provisions regarding forced money, types of administrative sanctions, and procedures for implementing forced money payments and/or administrative sanctions are regulated by laws and regulations.

When the authors interviewed the clerk of the Pekanbaru State Administrative Court, Aswirman, SH., MH, Mairi, SH, one bailiff of the Pekanbaru State Administrative Court, Jefrinal, and three judges of the Pekanbaru State Administrative Court, A. Tirta Irawan, SH., MH, Nasrifal, SH., MH, and Fitri Wahyuningkyas, SH., that the decision of the State Administrative Court, which has permanent legal force, may not necessarily be executed in the field, even though the court has ordered the defendant with the execution order based on the execution request letter

The following is the execution order by the Head of the Pekanbaru State Administrative Court based on the petition for execution by the plaintiff from 2014 to 2017.

**Table 1: Execution Request Data**

No	Case Number	Plaintiff (Plaintiff for Execution)	Execution Order
1	11/G/2013/PTUN-Pbr	Edison	W1.TUN6.85/Prk.02.02/I/2015
2	04/G/2013/PTUN-Pbr	Majelis Kerapatan Tinggi Suku Melayu Hambaraja Negeri Kubu	W1.TUN6.108/Prk.02.02/II/2015

3	19/G/2013/PTUN-Pbr	Baidar	W1.TUN6.78/Prk.02.02/I/2017
4	38/G/2013/PTUN-Pbr	Revelino Chandra E	W1.TUN6.86/Prk.02.02/II/2016
5	6/G/2015/PTUN-Pbr	Syahrial	W1.TUN6.632/Prk.02.02/XII/2015
6	34/G/2012/PTUN-Pbr	Detty Zulaida	W1.TUN6.227/Prk.02.02/IV/2014

Source: Administrative Court-Pekan Baru

The number of Pekanbaru State Administrative judgements that cannot be executed causes problems for justice seekers, namely the birth of pessimism and apathy in society when seeking justice. This condition is a matter of great concern that the existence of the Pekanbaru State Administrative Court has not been able to provide justice for the community in the administrative sphere of government. One of the reasons for the weak implementation of the judgements of the State Administrative Court is the absence of an executorial institution and coercive powers. Hence, the implementation of the judgements of the State Administrative Court depends on the voluntarism of the State Administrative Officials concerned (Aswirman, 2017). In Law Number 51 of 2009 concerning the second amendment to Law Number 5 of 1986 concerning the State Administrative Court, Article 116 paragraph (4) provides for the imposition of sanctions for State Administrative Officials who do not carry out decisions that have permanent legal force in the form of forced money payments (*dwangsom*) and/or administrative sanctions as well as publication in the print media.

Furthermore, paragraph (6) also regulates the reporting of disobedience to state administrative officials implementing the decision of the State Administrative Court to the President as the holder of the highest government power and to the people's representative institutions to carry out the supervisory function. However, if the state administrative officials are still unwilling to implement the decision of the State Administrative Court, the court cannot take direct coercive measures (Irawan, 2017). The things that cause the ineffective implementation of state administrative court judgements are:

1. The lack of awareness among state administrative officials regarding the importance of following the judgements of state administrative courts; the lack of legal awareness by state administrative officials in the legal environment of the Pekanbaru State Administrative Court greatly affects the non-compliance of the Pekanbaru State Administrative Court's decision. Because normatively, the execution of state administrative court judgements relies heavily on the officials' willingness to implement them (Wahyuningtyas, 2017).
2. Based on the results of interviews conducted with Jefrinal (2017), a statement was obtained that regarding the lack of progress reports on the implementation until now, the Pekanbaru State Administrative Court still has difficulty recording how many decisions have been executed. The Pekanbaru State Administrative Court can only record if there is a request for execution from the plaintiff. Meanwhile, if there is no application for execution by the plaintiff, it is very difficult for the State Administrative Court to know whether a decision has been executed or not. Since the disputing parties have not shown up yet, the court has not been able to confirm whether a Pekanbaru State Administrative Court decision has been made (Mairi, 2017).

Since the implementation of Law Number 51 of 2009 concerning the State Administrative Court, after being ordered by the defendant to implement the Pekanbaru State Administrative Court Decision by the head of the court based on the petition for execution by the plaintiff, the court does not know whether the decision has been implemented or not (Mairi, 2017). Contrary to the opinion above, Nasrifal (2017) said that the head of the Pekanbaru court should have a major role in overseeing the execution of the decision. The court chairman must ask for an explanation from the State Administration official who is unwilling to comply with the decision, including asking for obstacles and reasons that ensnare the state administrative official as a defendant.

### Conclusion

One of the reasons for the weak implementation of the judgements of the State Administrative Court is the absence of an executive body and the power of coercion, so the implementation of the judgements of the State Administrative Court depends on the volunteerism of the State Administrative Officials concerned, not only that if there is a request for execution by the plaintiff, the Administrative Court It is very difficult for the state to know whether a decision has been executed or not, coercive measures have never been carried out at the Pekanbaru State Administrative Court due to the limitations of the regulations for implementing such coercive measures as mandated in Law Number 51 the Year 2009 article 116 paragraph (4).

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