

URGENCY OF CRIMINAL PUNISHMENT, THE ACT OF NOT IMPLEMENTING A COURT DECISION THAT HAS PERMANENT LEGAL FORCE

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ABSTRACT

Final court decisions should be enforced to uphold justice and legal certainty. However, decisions are often ignored without firm sanctions. This non-compliance undermines the authority of the law and harms those seeking justice. Therefore, criminal sanctions need to be implemented as a legal protection measure and to uphold the court's authority. The purpose of this study is to identify and analyze the urgency of criminalizing non-compliance with final court decisions and to develop an ideal concept that can be proposed to encourage the effectiveness of the actual execution of cases that have final legal force. The research method used is normative juridical legal research. The results show that non-compliance with final court decisions violates legal certainty and undermines judicial authority. The absence of criminal sanctions weakens the function of the law. Unlike the common law system, Indonesia still lacks regulations. Criminal sanctions need to be regulated to ensure compliance and maintain the authority of the judiciary. Actual execution is important for restoring rights, but weak sanctions make it ineffective. Solutions include criminal sanctions, strengthening enforcement institutions, and a legal culture that respects court decisions. Criminal sanctions for violations of court decisions need to be regulated as legal protection. Repressive and preventative criminal norms are needed, as well as Supreme Court or Supreme Court guidelines to support enforcement.

Keywords: Urgency of Criminal Punishment, The Act of Not Implementing of Court Decision, Permanent Legal Force.

INTRODUCTION

In a state based on the rule of law (*rechtstaat*), one of the fundamental principles is *res judicata pro veritate habetur*, which states that a court decision that has permanent legal force (*inkracht van gewijsde*) must be considered correct and must be respected and implemented by all parties. Compliance with court decisions is a concrete manifestation of respect for the law and the supremacy of the judiciary. Without the implementation of court decisions, the existence of the judiciary is weakened, and justice becomes an illusion. Therefore, failing to implement court decisions is a violation of the law itself and has the potential to create uncertainty and injustice in society.

Unfortunately, in Indonesian law enforcement practice, there are still many cases where the losing party in a civil, criminal, or administrative case refuses to voluntarily implement a court decision. This action not only hinders justice for the winning party but also violates the principle of finality and bindingness of court decisions. This situation is exacerbated by the suboptimal legal sanctions for violators, as not all forms of defiance of court decisions are classified as criminal offenses. This creates a gap in the positive legal system that allows for blatant obstruction of justice.

Normatively, the Criminal Code (KUHP) does not explicitly regulate criminal penalties for failure to implement court decisions. Several provisions in procedural law, such as Article 195 HIR and Article 196 RBg, do state that court decisions have executory power, but are not accompanied by criminal provisions for parties who deliberately ignore them. New criminal instruments have emerged limited to special criminal areas, such as in the provisions of Articles 216 and 217 of the Criminal Code concerning resistance to officials carrying out legal duties, or in administrative law, but do not provide an adequate deterrent effect for violators.

Given this reality, there is an urgency to examine the possibility of formalizing criminal penalties for parties who intentionally fail to comply with court decisions. Strengthening these criminal penalties is necessary to emphasize that respect for court decisions is an integral part of law enforcement and justice. Without firm sanctions, the rule of law will continue to erode, and the judiciary will lose its authority and authority to resolve disputes in a final and binding manner.

This study aims to analyze the urgency of regulating criminal penalties for the act of not implementing court decisions that have permanent legal force, both from a juridical, sociological, and philosophical perspective, and to formulate the direction of future criminal law policy (*ius constituendum*) in order to ensure legal certainty and effectiveness in the implementation of court decisions. Based on the description in the background section above, the formulation of the problem is:

- a. What is the urgency of criminalizing failure to implement a legally binding court decision?
- b. What ideal concept can be proposed to promote the effectiveness of the actual execution of legally binding cases?

METHODOLOGY

The type of research used in this study is normative juridical legal research. This research is descriptive analytical. Descriptive analytical research encompasses this study because its purpose is to produce a legally binding document with the most accurate information available about people, diseases, or other symptoms. The data used is secondary data. The approaches used are the statute approach, the conceptual approach, and the comparative approach.

The data analysis technique used was descriptive analytical. The descriptive method is a method for presenting research findings. This method involves methodically explaining legal materials obtained through fieldwork and literature review, then drawing clear conclusions to answer the research problem formulation. Processing and analyzing legal documents descriptively means that researchers aim to provide a description or explanation of the research topic and object as a consequence of their work. This research uses a deductive approach to develop conclusions by examining relevant laws and regulations.

RESULT AND DISCUSSION

Urgency of Criminalizing Acts of Not Implementing Court Decisions that Have Permanent Legal Force

Enforcing legal certainty in the state administrative court (PTUN) Law Number 51 of 2009 Concerning the Second Amendment to Law Number 5 of 1986 Concerning State Administrative Courts as regulated must be understood in three dimensions: normative certainty, procedural certainty, and implementative certainty. Normative certainty relates to the clarity of the material and formal legal rules governing the authority of officials and their control mechanisms. Procedural certainty relates to the guarantee that every litigation process in the PTUN is conducted in accordance with fair and transparent procedural law. Meanwhile, implementative certainty requires that court decisions that have permanent legal force must be implemented in practice, without bureaucratic or political obstacles.

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Therefore, a reformulation of the approach to law enforcement in the State Administrative Court (PTUN) is necessary, namely by balancing the principles of legal certainty, justice, and the principle of legal expediency. This approach aligns with Gustav Radbruch's thinking, which emphasizes that when there is tension between legal certainty and justice, unjust laws must be considered to have lost their quality as law. Therefore, the existence of the PTUN is not only intended to guarantee legal certainty but also to simultaneously realize legal certainty and legal benefit.

The State Administrative Court (PTUN) not only carries out its judicial function to annul state administrative decisions that violate the law, but also acts as a corrective and oversight mechanism for ensuring that governmental practices remain within the law. Therefore, the existence of the PTUN not only guarantees the legality of government administrative actions but also serves as a concrete means to achieve fair legal certainty, as mandated by the constitution.

However, in practice, a paradox often arises between formal legal certainty and substantive justice. For example, when a decision of a state administrative official is annulled by the PTUN, but is not immediately followed up or effectively implemented by the official concerned, this actually violates the principle of finality of judgment and harms justice for citizens who have received a valid decision. In such circumstances, legal certainty becomes a

mere illusion if it is not supported by effective execution of the decision and public officials' compliance with the law.

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In the context of a modern state based on the rule of law, the existence of judicial institutions, including the State Administrative Court (PTUN), not only serves as formal law enforcement but also reflects the quality of a nation's democracy and legal civilization. Through the state administrative court system, citizens have legal access to correct administrative actions by state officials deemed arbitrary, beyond their authority, or inconsistent with the principles of justice.

Therefore, from a legal and philosophical perspective, criminalizing non-compliance with court decisions is urgent and crucial. In the context of reforming Indonesian criminal law, it is recommended to:

1. Formulate a new article in the Criminal Code or through a special law on the enforcement of court decisions, which defines the criminal offense for disobedience to court decisions.
2. Provide a specific enforcement mechanism, for example through a judicial enforcement unit authorized to investigate and process acts of contempt of court orders.
3. Provide judges with the authority to impose criminal sanctions in the context of active resistance to the implementation of decisions as part of the integrity of the judicial system.
4. Thus, it is clear that criminalizing non-compliance with court decisions is not merely a legal alternative, but a necessity to ensure the upholding of a truly rule of law state.

Ideal Concept to Encourage the Effectiveness of Real Execution of Cases That Have Permanent Legal Force

The final step in the judicial process is for a decision to have permanent legal force, at which point it is considered binding. Once the parties in a case have exhausted or failed all other available legal procedures, such as appeals or cassation, the decision becomes permanently binding. Because the Supreme Court is the highest court in the country, any decision it makes in a cassation case is final and binding and cannot be overturned.

In the context of state administrative courts, the implementation of decisions that have permanent legal force is regulated in more detail in Article 116 of the PTUN Law. This provision emphasizes that state administrative officials are obliged to implement PTUN decisions that have permanent legal force within a maximum period of 60 days. If the official concerned fails to implement the decision, the court may request the President of the Republic of Indonesia to enforce the decision through the relevant minister. This provision demonstrates that permanent legal force is not only a procedural aspect but also has structural implications in the relationship between the judiciary and the executive branch.

Therefore, the principle that enforcement or execution may only be carried out against decisions that have permanent legal force is a fundamental principle in the Indonesian legal system. This principle serves as a safeguard against potential rights violations during the judicial process, while also ensuring that any coercive action taken by the state is truly based on final, valid, and unquestionable law. In the context of a state based on the rule of law, adherence to this principle reflects respect for the supremacy of law and the protection of the constitutional rights of every citizen.

The existence of executorial power in PTUN decisions has important implications for the functioning of the administrative justice system. It concretely reflects that a state based on the rule of law is not solely supported by written legal norms, but also by the effectiveness of judicial institutions in upholding the supremacy of law in the field of state administration. Therefore, the validity and implementation of PTUN decisions are not merely a reflection of judicial legitimacy but also a measure of the success of the judicial oversight system of government administrative actions.

The ideal concept that can promote the effectiveness of the actual execution of court decisions includes several integral approaches, namely:

Establishing an Independent Execution Institution or Unit under the Supreme Court

Currently, the implementation of PTUN decisions relies solely on the goodwill of the losing party. Therefore, it is necessary to establish a separate execution unit under the Supreme Court with the structural and operational authority to coordinate and oversee the implementation of decisions, including in government administrative

cases. This unit could be adopted from the Dutch judicial system, which employs bailiffs tasked with executing court orders.

One of the classic problems in the Indonesian judicial system is the weak implementation or execution of final and binding court decisions. This occurs not only in civil cases but also in state administrative and state administrative cases in general. Many court decisions, particularly those from the PTUN, cannot be effectively executed because they depend on the will or goodwill of state administrative officials, who in many cases are the losing parties in disputes. This situation creates a credibility crisis in court decisions and undermines the principles of the rule of law and legal certainty.

To ensure the effectiveness of court decisions and maintain the authority of the judiciary, a legal breakthrough is needed through the establishment of an independent enforcement unit directly under the Supreme Court. This unit will function specifically to enforce all types of legally binding court decisions, whether in civil, criminal, or state administrative cases. Legally, the formation of this unit can be based on the Supreme Court's attribution authority as mandated in Article 24A paragraph (1) and Article 24C paragraph (5) of the 1945 Constitution, which grants the Supreme Court the authority to oversee the course of justice in all judicial environments. Thus, this independent execution institution will have constitutional legitimacy as well as strong institutional standing within the judicial power structure.

Functionally, this unit will have the task of:

- 1) Supervise the implementation of court decisions;
- 2) Coordinate with government agencies or private parties obligated to enforce decisions;
- 3) Impose administrative sanctions or propose criminal sanctions in the event of a breach of the obligation to enforce court decisions;
- 4) Act as an extension of the judiciary in enforcing the law in practice.

The existence of this unit will resolve the classic issue of dual authority between the courts that issue decisions and the administrative officials that execute them. As is known, the Supreme Court currently only carries out its judicial function without a strong executive arm to ensure the implementation of its decisions, particularly in administrative cases involving government agencies or officials. With this execution unit, every court decision will have an immediate and effective operative effect, independent of the political or bureaucratic will of the defendant's agency.

The establishment of such institutions has also been practiced in various countries. In the Netherlands, for example, there is a unit within the judicial system responsible for enforcing administrative decisions against the government. In France, the enforcement of administrative court decisions against the government can be enforced by fines if they are not implemented within a certain period of time. Indonesia could adopt a similar approach by making constitutional and institutional adjustments.

Furthermore, this institution will also strengthen the principles of procedural and substantive justice, as it ensures that citizens who have received a fair decision from the courts can truly experience that justice in practice. In this regard, the existence of an independent execution institution reflects legal reforms oriented toward the benefit and effectiveness of the legal system as a whole, as mandated by the progressive legal paradigm.

Thus, the establishment of an independent execution institution or unit under the Supreme Court is not merely normative discourse, but a real necessity to strengthen the judicial system, ensure legal certainty, and effectively uphold justice. This step aligns with the principles of legal modernization, access to justice, and protecting citizens' constitutional rights from arbitrary actions by the state.

Integration of administrative, civil, and criminal sanctions

The execution of decisions should not rely solely on administrative sanctions such as *dwangsom*, but should also be integrated with criminal penalties in cases of deliberate disobedience. The addition of criminal provisions in the Administrative Court Law or the new Criminal Code is crucial to creating a deterrent effect. These sanctions are not intended to criminalize officials, but rather to uphold the authority of the court, as affirmed by the principle of contempt of court.

Digitization and Tracking of Execution Performance

The use of information technology in the judicial system (e-court and e-execution) can serve as a data-driven oversight tool. The Supreme Court needs to develop an online public reporting system regarding the status of court decision implementation by government agencies. This aligns with the spirit of public information transparency and public oversight as a form of democratic participation.

Harmonization of Laws and Regulations

There is an urgent need to harmonize the PTUN Law with other sectoral regulations, including regulations on personnel, regional autonomy, and general administrative law. This harmonization aims to eliminate conflicting norms that complicate the implementation of court decisions, particularly those related to the appointment, dismissal, or reinstatement of individuals.

The creation of a new legal norm (*ius constituendum*) governing the criminalization mechanism for officials who fail to implement court decisions is a long-term solution. This norm could be included in the revised PTUN Law and the Criminal Code as a form of legal reform that guarantees actual enforcement as part of due process of law. Based on opinion by Bagir Manan, Law does not stop at normative regulations, but must balance certainty, expediency, and justice. Therefore, legal reform in this context is a systemic necessity. The effectiveness of court ruling execution is not merely a technical legal issue, but reflects the extent to which the Indonesian legal system is capable of upholding the rule of law and justice. Therefore, establishing an ideal concept for the actual execution of legally binding cases is essential to ensure the integrity of the judicial system and foster public trust in the law as an instrument for protecting rights.

The ideal concept proposed to promote the effective execution of final and binding court decisions is to establish an enforcement system that is independent, responsive, and repressive against non-compliance with the law. Legally, it is necessary to establish specific norms in civil and criminal procedural law that grant direct execution authority to the courts, while simultaneously imposing criminal sanctions on any party who obstructs or refuses execution.

This model could emulate the practice of contempt of court in common law countries, with adjustments to the Indonesian legal system. Institutionally, it is necessary to establish a "Court Decision Execution Agency" unit under the Supreme Court, tasked with ensuring swift, professional, and consistent execution of court decisions. Furthermore, the role of bailiffs must be strengthened, ensuring they are not merely administrative implementers but also have strong legal standing to face challenges in the field. Thus, this ideal concept is expected to achieve legal certainty, effective justice, and the rule of law in the Indonesian justice system.

CONCLUSION

Based on the description above, the following conclusions can be drawn:

- 1) Failure to enforce a legally binding court decision constitutes a violation of legal certainty and judicial authority. The absence of criminal sanctions for this act undermines the authority of the judiciary and hinders justice for the winning party. Unlike the common law system, which recognizes contempt of court, Indonesia still faces a legal vacuum. Therefore, criminalization of this act urgently needs to be regulated to ensure compliance with the law and protect the dignity of the judiciary.
- 2) The actual execution of legally binding court decisions is crucial to guarantee the restoration of rights. However, the lack of sanctions for those who obstruct enforcement renders legal coercion ineffective. An ideal concept should encompass criminalization, strengthening implementing institutions, and a legal culture that upholds compliance with court decisions.

Suggestions

The suggestions that researchers can convey in this writing are:

- 1) Criminal penalties for those who fail to comply with court decisions need to be developed as a form of legal protection. Specific criminal norms that are both repressive and preventative are needed to create a deterrent effect and encourage compliance. The Supreme Court is also expected to issue guidelines or a Circular Letter (SEMA) to support law enforcement against such non-compliance.
- 2) The effectiveness of actual execution needs to be supported by normative, institutional, and cultural approaches. Normatively, strengthening technical regulations and court authority is needed. Institutionally, it is necessary to establish a professional, integrated, cross-agency execution unit. Culturally, legal education must be improved to foster public awareness of law-abidingness.

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