EXECUTION LEGAL PROBLEM ON STATE ADMINISTRATIVE COURT DECISION THAT HAS GAINED PERMANENT LEGAL FORCE BY INSTITUTION/OFFICIAL(S) OF STATE ADMINISTRATION

By:

Donfri, Iskandar, Edra Satmaidi

Abstract

This study aimed at reviewing about the legal problem upon the execution of the decision of State Administrative Court (SAC) that has gained permanent legal force by Institution/official(s) of State Administration (SA). The method used in this research was normative-juridical. This research used constitutional approach, court decision and conceptual approach. Legal material analysis was conducted juridically and qualitatively. It was found that first, the binding force of law norms constitution of SAC in the regulation of execution on the SAC decision that had gained legal binding force was not sufficiently strong to push/force Institution/official(s) of SA to conduct the execution of SAC decision. Second, the causal factors of Institution/official(s) that did not execute the decision of SAC that had gained permanent legal force was due to the implementation of law norms that had gained legal binding force of Institution/official(s) of SA to implement the decision was not sufficiently strong to push/force the Institution/official(s) of SA to implement the execution of SAC decision, the absence of Government Regulation about the implementation of Recognizance of Bail, the low level of compliances and legal awareness of Institution/official(s) of SA, the non-presence of Executor's Institution. Third, the concept construction of legal norm regulations that had legal force to Institution/official(s) of SA to execute the SAC decision which was by regulation the legal norms that had sufficiently legal force by changing the legal norms as stipulated on the Article 116 Constitution of SAC and/or adding new norm requirements, which is Article 116A.

Keywords: Legal Problem, Execution, SAC Decision, Institution/Official(s) of SA.
A. INTRODUCTION

1. Research Background

One element of Legal State is a functional juridical body which is free and neutral. That juridical body is the place to seek the truth and justice. A nation of law has to stand on the a good and just law. This is in line with Sudikno Mertokusumo who stated that “Law presents as the consequence of a legal power. A legal power created law. Any requirements that are not based on a legal power is inherently not a law. Therefore, law is derived from a legal Power.”\(^1\)

Adjudicative Process of State Administration (later on abbreviated as APSA) as one of adjudicative environment that is under the supreme court is regulated in Constitution Number 5 1986 that has been replaced by the Constitution Number 9 2004 and Constitution Number 51 2009 regarding to APSA.

The purpose of APSA based on the Constitution Number 5 1986 is established in order to provide protection to society who are seeking justice, feels disadvantaged by a DAPSA. However, in regard to this, it is necessary to be aware of beside of individual rights, society also have specific rights. This society rights is based on the communal interest from people who live in that society. That interest is not always synergistic, even contradicting. In order to guarantee a fair dispute settlement towards the coercion between that different interests, legal channel is one of the best way and in line with the principles contained in the Philosophy of Pancasila State, therefore the rights and responsibilities of citizen has to be but in a synchronization, synergy, balance between the individual interest and society. Hence, the aim of APSA is not only solely for giving protection to individual but also society rights.\(^2\)

The absolute competence of APSA is shown more by the article 47 Constitution of APSA which is to investigate, judge, and settle dispute(s) that occur in State Administrative domain between Civil Legal Body and Institution/official(s) SA as the result of the a SAD release and an unreleased decision requested by by someone until the prescribed time in a

---


2 Penjelasan Umum I. 1 Constitution Number 5 1986 about Adjudication Process of State Administration
constitution, while that has been the responsibility of Institution/official(s) of SA as mentioned in the article 3 Constitution of APSA. ³

The Decision of APSA that has gained a permanent legal force and in some specific cases and won by the side of justice seeker (plaintiff), there are some defendants as Institution/official(s) of SA that were lost failed to comply to the decision.

Many ways to fix and increase the credibility and existence of APSA in public sphere in terms of the implementation of decision or execution in APSA is a very interesting thing for the writer to conduct a research, by focusing on the factors or problems that influence the side of defendant(s) /Institution /Official(s) of SA in implementing the requirements of the execution of Decision in APSA. Based on the explanation above, so the writer tried to investigate that problem in a research entitled: “EXECUTION LEGAL PROBLEM ON STATE ADMINISTRATIVE COURT DECISION THAT HAS GAINED PERMANENT LEGAL FORCE BY INSTITUTION/Official(s) OF STATE ADMINISTRATION”.

2. Problem Identification
The problems identified in this research were:

a. How was the legal force of law norms of APSA Constitutions in regulating the execution implementation of APSA decision that had gained permanent legal force?

b. What were the factors that had caused the Institution/official(s) of SA to not comply to the decision of APSA that had gained a permanent legal force?

c. How was the conceptual construction of law norm regulation that had gained a power to force Institution/official(s) of SA to execute the decision of APSA?

B. RESEARCH METHOD
1. Research Type
This research used a normative law approach for which a legal research that is a scientific procedure, that was based on a method, a structured and certain concept of thought, by analyzing them.⁴ A legal research was based on its aims which are first; Normative Legal Research which

³ Ibid, pg. 30.

investigated about law principles, research about legal system, research about law synchronization level, research of low history, and research of law comparison. Second, sociological law or empirical research that include research about law identification (unwritten) that law effectivenesses.  

2. Research Approach

The approach used in this research was statute approach, and analytical and conceptual approach.

1. The Statue Approach by not neglecting the legis ratio and ontological basis about the power of execution particularly the one about APSA decision that had gained a permanent legal force that was the object of this research.

2. Analytical and Conceptual Approach is an analytical approach conducted by looking the meaning of law terminologies that were found in laws and regulations, in so doing the researcher obtained pictures of definition or new meaning of the law terminologies and reviewed the practical implementation by analyzing the legal decisions. The conceptual approach in legal study could be used as a departure point or approach for legal research analysis as many conceptual appearances for a legal facts.  

3. Legal Material Sources

1. Primary legal material sources are binding legal material. The primary legal source in this research were: Laws and Regulations relevant to the problem discussed such as: Constitution of Republic of Indonesia 1945, Constitution Number 5 1986 on Adjudication Process of State Administration, Constitution Number 9 2004 about amendment on the constitution number 5 1986 on Adjudication Process of State Administration, Constitution Number 51 2009 on the second amendment on the Constitution Number 5 1986 on Adjudication Process of State Administration and Constitution Number 30 2014 on Governmental Administration, Indonesia Criminal Code, Constitution Number 23 2014 on Provincial Government, Government Regulation Number 48 2016 about the

---

5 Ibid, hlm. 22.
procedure of Giving Administrative Sanction to Government Official(s) and Government Regulation Number 11 2017 on Civil Servant Management.

2. Secondary Legal Material sources, sources that give explanation toward primary legal sources, such as research, law expert works. The secondary legal materials also include all law publication which are not the parts of legal documents. The publications about law involve text-books, law journals, Jurisprudences and law theories that relate to the problems in this research.

3. Tertiary Legal Material Source, give clues and explanations towards the primary and secondary legal sources which are colleges textbooks, articles and law websites that relate to problem discussed in this research.

4. Legal Material Collection

In collecting legal sources was conducted by library study/document study towards legal materials through reading, looking, listening, and browsing Internet, laws and regulations, law books in the references pertinent to the execution of the decision of State Administrative Court (SAC) that has gained permanent legal force by Institution/official(s) of State Administration (SA).

5. Data Processing of Legal Materials

The primary, secondary, and tertiary legal sources as well as interview results were collected, inventoried and classified then verified based on the document study or problems discussed.

6. Legal Material Analysis

For the process of collected legal material analysis, the writer used qualitative-juridical analysis, where after the materials were complete, they were categorized based on each category and later on interpreted by using inductive and deductive frame of mind. That legal materials were reviewed and understood using Laws and Regulation provisions and other references related to the implementation of Decision of APSA execution that had a permanent legal force by Institution/official(s) of SA, to reach conclusion (s) or answer(s) of the formulated problems by relying on the present norms (regulations) of law.

C. RESEARCH RESULT AND DISCUSSION

1. The power to force law norms of Constitution of APSA in the regulation of execution implementation on the decision of APSA that has gained a permanent legal force.
According to the provision of Article 115 Constitution of APSA mentions that on the court decision with a legal permanent force can be executed. 

9 The decision of court that has not yet gained a permanent legal force does not have power to execute or in other words the court decision available for legal remedy can not be asked for being executed.

The power to force of law norms in Constitution of APSA in the Article 116 Constitution Number 51 2009 on the second amendment on Constitution Number 5 1986 on Adjudication Process of State Administration which is about the mechanism effort of execution on APSA decision that has gained a permanent legal force.

The norms are as follows:

1. A copy of court decisions that have gained a permanent legal force, shall be sent to relevant parties with a letter registered by District Court Clerk on the instruction of Local Chief Justice who judges on the first level within a period of 14 (fourteen) working days.

2. If after 60 (sixty) working days the court decision with permanent legal force as mentioned in the verse (1) is accepted the defendant(s) do not fulfill their responsibilities as mentioned in the article 97 verse (9) letter a, hence the State Administrative Decision that is disputed does not longer poses any legal force.

3. If the defendant(s) shall fulfill their responsibilities as mentioned in the article 97 verse (9) letter b and c, and henceforth if after 90 (ninety) working days fail to do it, the plaintiff pledge to the chief justice as mentioned in the verse (1), in order for the court to order the defendant(s) to do the court decision.

4. If the defendant(s) fail to comply to the court decision that has a permanent legal force, to the official(s) will forcibly ordered to pay some amount of money and/or administrative sanction.

5. any official(s) that fail to comply the court decision as mentioned in the verse (4) published on local print mass-media by the court clerk since the completion of provision stipulated in the verse (3).

6. Along with the publication in the local print mass-media as mentioned in the verse (5), the chief justice shall lodge this matter to the president as the highest executive order to order those official(s) to carry out the court decision, and to the representative house Institution to carry out supervision function.

7. The provision about the amount of recognizance of bail, administrative sanction type, and procedure of recognizance of bail payment and/or administrative sanction regulated by constitution.

Different from the law of civil procedure, in the process of state administrative procedure law there is no impromptu execution \textit{executie bij voorraad} from a final court decision. Only the court decision which has gained a permanent legal force can be executed. At this level, that legal dispute has to be ended \textit{litis finiri oportur}. If there is no longer legal remedy available, that court decision has gained permanent legal force.\textsuperscript{10}

In the civil affair law, the decision court that has gained permanent legal force only bind the litigants, different from APSA decision. The decision of APSA that has gained permanent legal force is public legal decision. Therefore, that court decision also apply to parties outside the dispute \textit{erga omnes}.\textsuperscript{11}

Different from the execution of general judicature, the implementation of APSA decision established through registered letter(s), sent by the district court clerk on the order of Chief justice who is in charge in the first level within the period of 14 days as mentioned in Article 116 verse (1) Constitution of APSA. After 60 (sixty) working days where the court decision is sent, surprisingly the defendant(s) do not voluntarily carry out the decision, hence, SAD that is being disputed no longer has legal force as mentioned in the article 116 verse (2) Constitution of APSA. The problem is that whether with the statement of that absence of legal force, the problem has been finished and fulfilled justice sense of the defendants.

The answer for this problem is “not yet”, in a sense that problem has not yet finished and fulfilled the defendant sense of justice. As an illustration, a letter of instruction to demolish a house, after several days since the issuance of the letter initiated demolition to that house, due to the feeling of disadvantaged, the house or that building owner lodge to the APSA as a response to that demolition letter. After passing through that certain procedures, it is found that the letter has been revoked by the court. Then, that court decision is sent to the both defendant(s) and plaintiff(s). After 60 (sixty) working days, it is found that the Institution/Official(s) of SA do not carry out the court decision, then, the letter of


\textsuperscript{11} Ibid.
demolition is no longer vested with legal power. In fact, the house or the building has been demolished with a relatively huge amount of loss. Thus, is the statement of no longer posses legal power sufficient for the SAD? In the writer opinion, a much longer process for the justice to be done as the main expectation can be achieved is still necessary.

Institution/official(s) shall carry out the responsibility as mentioned in the injunction to issue SAD, it is found that after 60 (sixty) working days, fail to do the injunction, the defendant(s) propose a request to Court Chair Person so that the court orders the defendant(s) to carry out that decision as expressly stressed by the Article 116 verse (3) Constitution of APSA. If the defendant(s) remain refuse to carry out the decision, to them will be given a forceful treatment which is paying Recognizance and/or administrative sanction as expressed by Article 116 verse (4) Constitution of APSA. Any official(s) who fail to carry out that decision as mentioned in the article 116 verse (4) Constitution of APSA are announced on the local printing press by the District Court Clerk since the absence of the provision of Article 116 verse (3) Constitution of APSA as expressly mentioned in the Article 116 verse (5) Constitution of APSA. If that Institution fail to adhere to the decision, the Chair Person of the Court proposes this matter to the president as the highest executive order.

The phase of sending the letter to the president is through a relatively long and complicated process with the execution request to the Chair Person of APSA the the Chief court make a notification letter to the Institution/official(s) of SA to carry out the decision of APSA, and when Institution/official(s) of SA remain unwilling to do it therefore Institution/official(s) of SA will be given administrative sanction by the relevant superior of Institution/official(s) of SA (Governor/Minister), and when the superior of Institution/official(s) also act in similar behavior then asking for the president for further instruction as the highest executive order can be initiated as well as to the Representative House Institution to conduct supervision function as mentioned in the Article 16 verse (6) Constitution of APSA.
thing has made the justice seekers become apathetic towards the Adjudicative Process of SA as a long and complicated process needed in doing the legal remedy for the execution of APSA decision.

Several problems that were found in the field in terms of the execution of APSA decision that gained permanent legal force towards Institution/Official(s) that did not want to carry out the decision of APSA voluntarily:

1. Execution Through the revocation of APSAD
2. Execution Through Administrative Sanction
3. Execution Through Payment of Recognizance of Bail
4. Execution Through Announcement on the Mass-Media
5. Execution Through Notification to the President

Based on the five executions above, it is not sufficiently strong to push/force Institution/Official(s) of SA to carry out APSA due to the weakness of the entire execution the implementation is still returned back to the executive parties and/or Institution/Official(s) of SA to do the decision voluntarily and the law awareness of Institution/Official(s) of SA itself.

2. Factors that Cause Institution/Official(s) of SA Failed to Carry Out the APSA Decision That Has Gained Permanent Legal Force.

Several factors that caused Institution/Official(s) of SA failed to carry out the Decision of APSA that has gained permanent legal force were:

a. Legal Norms that has gained Power to Force Institution/Official(s) of SA to Carry Out the Decision of APSA were not sufficiently strong to push or force Institution/Official(s) of SA to carry out the Decision of APSA that has gained permanent legal force.


c. Factor of Compliance and Legal Awareness of Institution/Official(s) of SA towards APSA

d. Factor of the absence of Executional Institution.

3. Conceptual Construction of Legal Norms Regulation that have Power to Force Institution/Official(s) of SA to execute the
Decision of APSA.

Conceptual Construction of Legal Norm Regulation force Institution/Official(s) of SA mentioned above to be able to carry out the decision of APSA that has gained permanent legal force, it hoped that there is legal norm regulations that are strict and specific on the administrative sanction and based on the regulation of criminal sanction in terms of Institution/Official(s) of SA who fail to carry out the APSA decision.

The regulation of legal norms that has force nature can also be by changing the regulation of legal norms as provisioned in the Article 116 Constitution of APSA and/or adding new provisions, which is article 116A.

Conceptual construction that has force nature can be explained as following adding verse (8) and verse (9) on the Article 116 Constitution Number 51 2009 on Adjudicative Process of State Administration: the Conceptual Construction: first:

(8) For the Institution/Official(s) of SA failed to carry out the decision of APSA, the Institution/Official(s) of SA is punished with criminal imprisonment.

(9) The implementation of sanction to Institution/Official(s) of SA who fail to carry out the decision of APSA is conducted based on the provisions regulated in the Article 216 of Criminal Code and Criminal Law Procedure Code.

Conceptual Construction of legal norms the second, it is made a new legal norm regulation by adding the Article of 116A Constitution Number 51 2009 on State Administrative Procedure Law Concept as follows:

The addition of Article 116A

(1) For Institution/Official(s) fail to carry out the decision of APSA, the Institution/Official(s) of SA will be sentenced with Criminal Imprisonment.

(2) The implementation of criminal imprisonment to the Institution/Official(s) of SA who fail to carry out the decision of APSA is conducted according to the provision regulated in the Article 216 Criminal Code and Criminal Law Procedure Code.

D. CLOSING

1. Conclusion

a. The power to force of legal norms of Constitution of APSA in the regulation of Execution Implementation on the decision of APSA that has gained permanent legal force is not sufficiently strong to push/force Institution/Official(s) of SA to carry out the execution decision of APSA.
The provision of Article 116 Constitution of APSA that determines the execution decision through revocation of relevant ASAD, decision execution through administrative sanction, execution through recognizance, and execution through mass media announcement as well as execution through notification to the president is not sufficiently strong to force Institution/official(s) of SA to carry out the decision of APSA that has gained permanent legal force.

b. Factor that caused Institution/Official(s) of SA failed to carry out to the decision of APSA that has gained permanent legal force are: the first, the regulation of legal norms that has fore nature to the Institution/official(s) of SA to carry out the decision of APSA is not sufficiently strong to push/force Institution/official(s) of SA to carry out the execution of APSA decision, second, factor of absence of Government Regulation (GR) on the implementation in the application of recognizance, third, the compliance and legal awareness of Institution/Official(s) in carrying out the decision of APSA that has gained permanent legal force is very low due to the fact that many of them assumed that they are superior(s) and can not be disputed/intervened by their subordinate(s) and arrogant acts of the Institution/Official(s) of SA and the fourth, the absence of executional Institution so that the Institution/Official(s) felt that there was no one who would supervise their acts in carrying out the decision order of APSA that has gained permanent legal force.

c. Conceptual concept of legal norm regulation that has force nature towards Institution/Official(s) of SA to execute the decision of APSA which is by the regulation of sufficiently strong legal norms that have force nature by changing the regulation of legal norms as provisioned in the Article 116 Constitution of APSA and/or adding new norm provision which is the article 116A.

2. Suggestions

a. It is necessary to have a revision of the Article 116 Constitution of APSA particularly pertinent to the execution mechanism of the decision of APSA that has gained permanent legal force towards
Institution/Official(s) who fail to carry out the decision of APSA that has gained permanent legal force by inserting or revising the Article 116 on the administrative sanction and criminal imprisonment sanction, by adding verse (8) and (9) with norms articulated as follows:

(8) For the Institution/Official(s) of SA failed to carry out the decision of APSA, the Institution/Official(s) of SA is punished with criminal imprisonment.

(9) The implementation of sanction to Institution/Official(s) of SA who fail to carry out the decision of APSA is conducted based on the provisions regulated in the Article 216 of Criminal Code and Criminal Law Procedure Code.

b. Government needs to immediately pass Government Regulation (GR) relevant to the regulation of recognizance on Institution/official(s) of SA who fail to carry out the decision of APSA that has gained permanent legal force.

c. It is necessary to create a new constitution article of Adjudicative Process of State Administration that clearly and specifically states norms of executional effort for the APSA decision to be done with legal permanent force and simple procedures without forgetting to synchronize with the current Constitution and Government Regulation as well as revoking Constitution Number 5 1986 on Adjudicative Process of State Administration, Constitution Number 9 2004 the first amendment of Constitution Number 5 1986 and Constitution Number 51 2009 the second amendment on the Constitution Number 5 1986 on Adjudicative Process of State Administration which is quite old and not sufficiently strong to push and force Institution/Official(s) of SA to carry out the decision of APSA and the exceeding number of Constitution on Adjudicative Process of State Administration these days.

BIBLIOGRAPHY

A’an Efendi dan Freddy Poernomo, 2017, Hukum Administrasi, Sinar Grafika, Jakarta.


Harifin A. Tumpa, 2010, Memahami Eksistensi Uang Paksa (Dwangsom) dan Implementasinya di Indonesia, Kencana Prenada Media Group, Jakarta.


