BENCHMARK FOR DETERMINATION OF FORCED MONEY IN EXECUTION OF STATE ADMINISTRATIVE COURT JUDGMENT

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ABSTRACT

The purpose of this research is to study about Benchmark Determination of the Administrative Court Decision Execution Forced In. Research methods used in this thesis is a research type normative and descriptive analytical research specifications, and approaches used, namely, the approach Law and approach cases. From the research we concluded that since when the claimant may apply for money of enforced at the time of the initial filing a lawsuit to the Administrative Court, for their money forced / Dwangsom in a decision of the State Administrative Court, it is motivated by a petition of Plaintiff in the lawsuit to beg loading money forced / Dwangsom Defendant if lost and wayward implement administrative court ruling, benchmark application is the amount of money forced the ruling stating Plaintiff granted, judgment and decision condemnatoir who has obtained permanent legal force. Because implementing administrative court ruling is always Agency / Administrative Officers are still active, more effective and efficient if the imposition of forced currency / dwangsom taken / deducted from salaries / allowances officials concerned each month. So it is not charged to the State finances forced money order imposing sanctions / dwangsom and administratively feasible, must be followed by concrete implementing regulations relating to money forced / dwangsom to sync with the Administrative Court Act and the Law on Government Administration.

Keywords: Dwangsom, money forced, forced cash benchmark, imposition of forced currency.

A. INTRODUCTION

In a variety of literature found the understanding of the rule of law given by scholars is "the rule of law as a state where the authorities or the government as state administrators in carrying out state duties are bound by the rules of applicable law."[1] Another explanation explains that "in the rule of law, every action of the government in carrying out government and development tasks or in the context of realizing the objectives of the country must have a legal basis or basis of authority.[2] One element of the rule of law is the functioning of an independent and impartial judiciary, the judiciary is a place to seek the enforcement of truth and justice in cases where disputes or violations of the law arise, both within the framework of resolving criminal cases, civil cases and procedures state and state administration. State based on law must be based on good and fair law. "The law exists because of legal authority. It is legal power that creates law.

Provisions that are not based on legal authority are basically not law. So the law comes from legitimate power. "[3] A good law is a democratic law in accordance with the awareness of the people's law, while a fair law is a law that is suitable and meets the purpose and objectives of each law, namely justice. Laws are made to be carried out. The law can no longer be called a law if the law has never been implemented. Good and fair law needs to be prioritized with the hope that the aims and objectives of the rule of law can be realized in accordance with the ideals of the rule of law.

The existence of the State Administrative Court, which is mandated by the 1945 Constitution, was only formed through Law Number 5 of 1986 and has only been operating effectively since January 14, 1991 through Presidential Decree of the Republic of Indonesia Number 52 of 1990 concerning the Establishment of the Administrative Court of Jakarta, Medan, Palembang, Surabaya and Ujungpandang, which aim and intend, among other things, to protect the public from the arbitrariness of the authorities or the State Administration Officials and in addition to correcting the actions of the government in this case the actions of the Official Administration who are suspected of irregularities or abuse

[1] Wiryono Projodikoro dalam Bahder Johan Nasution, *Negara Hukum dan Hak Asasi Manusia*, Cet. I, Mandar Maju, Bandung, 2011, page.1.

[2] Supandi, *Hukum Peradilan Tata Usaha Negara (Kepatuhan Hukum Pejabat Dalam Mentaati Putusan Pengadilan Tata Usaha Negara).* Pustaka Bangsa Press, Medan , 2011. page. 1

[3] Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar,* Edisi Kelima, Liberty, Yogyakarta, 2007, page. 20.

authority in carrying out its duties. Hope the community and government in power with the existence of the State Administrative Court as a newly established court at that time in order to be able to contribute, especially in the field of law enforcement which is administrative but must be recognized experience shows that several decisions made by the State Administrative Court institution do not fulfill the wishes of the justice seeker community. This is caused by the existence of decisions of the State Administrative Court that have obtained permanent legal force, in fact ignored or not obeyed by the State Administration Officer, so the decision of the State Administrative Court can not realize the purpose of the decision itself, namely the existence of certainty law and justice. One of the reasons for the weak implementation of the decision of the State Administrative Court is the absence of an executive institution and the force to enforce the decision so that the implementation of the State Administrative Court's decision depends on the awareness and initiative of the State Administration Officer. Weaknesses of Law Number 5 of 1986 concerning State Administrative Court are found in Article 116.

The Defendant's noncompliance with the decision of the State Administrative Court has resulted in losses for justice seekers, so that public confidence and expectations are increasingly reduced to the existence and effectiveness of the Administrative Court decision. Regarding the forced money mechanism referred to in Article 116 paragraph (4) of Law Number 51 Year 2009, until now the regulation is unclear. Elucidation of Article 116 paragraph (4) of Law Number 51 Year 2009 only states that the imposition of payment in the form of money is stated in the ruling when the judge decides to grant the Plaintiff's claim. The absence or lack of regulation regarding the mechanism for implementing forced money payments (dwangsom) in the provisions of Law No. 5 of 1986 jo. Law Number 51 of 2009 is clearly a legal barrier that will arise in the practice of the State Administrative Court in relation to the execution of the decision on the State Administrative Court.

To fill the regulatory gap regarding the mechanism for enforcing forced money (dwangsom) in practice in State Administrative Courts it is better to use assistance (borrowing) of existing juridical instruments, namely statutory regulations on the provisions of civil procedural law during the regulation regarding the mechanism of forced money payments (dwangsom) in Law

Number 5 1986jo. Law Number 51 Year 2009 has not been specifically regulated. If it only adheres to the provisions of Article 116 paragraph (4) of Law Number 9 Year 2004 in applying forced money payments (dwangsom) to Defendants (Officials of State Administration) who do not obey the decisions in the execution of Judicial decisions. State Administration, clear is not sufficient enough. Because of the provisions of the execution of the decision in Article116 of Law Number 9 of 2004 still contains a lot of weaknesses, especially only mentioning the implementation of forced efforts in the form of payment of a forced amount of money and / or administrative sanctions against State Administration Officials who do not want to carry out State Administrative Court decisions without the provision of mechanisms for the implementation of forced measures, according to the author which specifically regulates the application of forced measures, namely the aggressor regarding the mechanism of the application of forced money (dwangsom) and the maximum and maximum amount of money that will be charged, the mechanism for applying administrative sanctions, the types of administrative sanctions and the maximum sanctions that can be massaged against the State Administration Officer concerned.

Dwangsom can be interpreted as the amount of money determined by the judge in the decision of the sentence that is charged to the defendant and is enforced if the Defendant does not carry out the sentence determined. So, dwangsom is not included in the main law, because even though a forced amount of money has been determined in the decision of the ruling, the losing party does not need to pay / be burdened with the payment of the forced money if he has consciously / willingly complied with the contents of the ruling. The dwangsom obligation must be fulfilled / paid when the losing party does not comply with the contents of the decision (which is condemnatoir). Dwangsom is an assesoir, meaning additional punishment as a guard and can also act as a coercion so that the judge's decision is obeyed / implemented. So forced money is an indirect means of execution.

Decision of the State Administrative Court that has obtained permanent legal force and in certain dispute cases that have been won by the party seeking justice (in this case the Plaintiff), there is a tendency that the Defendant as the defeated state administration official ignores and does not

comply with the order contained in the ruling, even though the execution procedure has reached the level of the President, this is based on Article 116 paragraph (6) of Law Number 51 Year 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Court. In such cases law enforcement raises responses from the public which are considered disturbing, even though full authority is in the President as Head of Government to take action.

Amendment to Article 116 can be said is progress in developing legal certainty for the sake of justice in the implementation (execution) of a State Administrative Court Decision. In Article 116 of Law Number 5 of 1986, the implementation of decisions is more and relies on officials' awareness and encouragement by the hiekrarkis agencies themselves which depend a lot on the level of legal compliance of the defendant. Whereas Article 116 of Law Number 9 of 2004 and Law Number 51 of 2009 recognize 2 (two) types of enforceable efforts that can be implemented when the defendant party (TUN Officer) does not obey and voluntarily execute court decisions that have permanent legal force in the form of the payment of a sum of forced money and / or administrative sanctions. The application of legal remedies in the form of forced money, although in the provisions of the Law, the application of forced money can be alternative (severally), meaning that it is imposed on its own without the imposition of administrative sanctions and can also be cumulative (jointly) that is, to be imposed together with administrative sanctions. It is also possible for an announcement (publication) of Officials who do not implement a State Administrative Court decision in the printed mass media.

The basic purpose of enforcing forced money (dwangsom) in the execution process, both in the State Administrative Court and the Civil Court is clear, namely as an execution tool that serves to exert psychological pressure (dwaang middelen) to the Defendant or the losing party in a case process in court, so that the Defendant or the losing party is willing to obey or implement a court decision which has permanent legal force. Based on the basic intent of holding the dwangsom forced institutions, those who are psychologically threatened so that a judicial body's decision is carried out must be a personal Defendant or person who is in office at the time the decision must be implemented. And in accordance with the characteristics of forced money, the threat of forced cash payment continues to be

enforced until the verdict is implemented or obeyed by the Defendant.

In reality the problem of execution of decisions in the State Administrative Court can also arise related to the implementation of regional autonomy, because with regional autonomy all regional head officials in cities or districts have broad authority in managing their regions and in terms of making decisions and administrative policies. The order to impose administrative sanctions aimed at the authorized official to punish the state administration official up to now. The judiciary in the trial can choose the imposition of forced money, but on the other hand there are no implementing rules and benchmarks that guide the JudgePTUN regarding the amount of forced money to be given . Based on the background description above, the issues that will be raised in this study are:

1. Since when can I file forced money?

2. What are the benchmarks that can be used to determine the amount of forced money?

3. Who is burdened with paying forced money?

B. RESEARCH METHODS

The method used in this research is the conceptual approach, the normative approach, and the case approach.

a. Conceptual Approach. "The conceptual approach moves from the views and doctrines that develop in the science of law." It was also explained that "building concepts in the study of law is basically an activity to construct a theory, which will be used to analyze it and understand it."

b. Law Approach. "The statute approach is carried out by examining all laws and regulations relating to the legal issues being addressed."

c. Case Approach. "The case approach is carried out by examining cases relating to the issues at hand that have become court decisions that have permanent legal force."

1. Types and Specifications of Research

This type of research is normative juridical research that is research that focuses on secondary data or library data including laws, books, journals, magazines and so forth.

The specification of this research is analytical descriptive. Descriptive because this study will describe how the implementation of forced money payment / Dwangsom in the Decree of the State Administrative Court and illustrate how the test is carried out by the State Administrative Court, then the Court Decisions are analyzed in order to find new legal principles. In this study law is conceived as binding norms, so sociological legal norms are not used in this study.

2. Sources of Legal Materials

The source of legal material in research is the source of secondary legal material

obtained from literature or documentation from various written sources or documents. There are three forms of secondary legal material sources used in this study, namely:

1. Primary legal materials are legal materials that are authoritative meaning they have authority. Primary legal material consists of binding legal material in the form of legislation, political decisions (Policy), official records or minutes in the making of laws and judges' decisions.

2. Secondary legal materials are materials that provide explanations and support primary legal materials consisting of books written by experts in various forms and media related to this research and can help in analyzing and understanding primary legal materials. Secondary legal materials can be in the form of text books, journals, articles, research reports, scientific magazines, reports, statistical data, and others.

3. Tertiary legal material is material that provides instructions and explanations for primary and secondary legal materials. Tertiary legal materials can be in the form of dictionaries, encyclopedias, academic texts, Draft Laws.

3. Data Collection Methods

The method of gathering legal materials in this research was carried out through literature study and documentation to collect secondary legal materials. The steps in collecting legal material are as follows:

1. Collecting the laws and regulations regarding or relating to the issue at hand.

2. Collecting the Decisions of the State Administrative Court until the Decisions have permanent legal force, the contents of which are issuing sanctions for forced money / dwangsom.

3. Collecting legal literature related to forced money / dwangsom and testing by the State Administrative Court.

4. Analyzing and discovering the legal principles of the Decisions of the State Administrative Court which resulted in the issuance of forced money sanctions / dwangsom.

5. Prospectively review what should be regulated in a Government Regulation regarding forced money / dwangsom.

4. Methods of Analysis of Legal Materials

In this study, the problem is analyzed by interpreting all laws and regulations relating to the issues discussed, evaluating legislation, and assessing legal materials by taking into account the general principles of good governance, court decisions, and the opinions of legal experts . This method aims to understand the legal symptoms and methods regarding the implementation of the payment of forced money made by government administration officials, and testing it in the State Administrative Court. To achieve the clarity of the problem discussed by using the Deductive thinking method, which is a method of thinking that bases on general matters and then draws conclusions that are specific.

C. RESEARCH RESULTS AND DISCUSSION

1. When submitting Forced / Dwangsom Money

The law was created as a tool (instrument) to regulate the rights and obligations of legal subjects so that each legal subject can carry out their obligations properly and obtain their rights appropriately, but the law also functions as an instrument of protection for legal subjects, if related to the existence of a country, the law can function as a protector of citizens from government actions that are tyrannical and absolute. In order to institutionalize the legal protection of these citizens, a judicial institution is established to carry out its functions to uphold law and justice as well as a place to seek justice, so that it can be concluded that the position of the government or state administration in this matter is no different from a person or a parallel legal entity so that in the State Administrative Court there is a peace effort before entering the trial different from the District Court in civil cases that are not preceded by reprimands and peace efforts.

Article 116 and paragraph (7) refer to the regulation regarding the amount of forced money and its implementation but until now the regulation has not yet existed, and one of the main issues raised is when to apply for forced money. to whom the imposition of forced payment is charged, whether to the state or to the person of the official, other than that there is a difference in the perception and understanding of the Judge regarding the imposition of payment of a sum of money in applying the forced money demand.

According to the author, the imposition of forced money is from the time of the end of the summoning / order period. Because the function of dwangsom is accessoir, surely the negligence of the convicted person can only be determined after the grace period has been given by the Chairperson of the Court so that the convicted person fulfills the principal sentence required. After the grace period has passed, the dwangsom begins to be calculated and enforced. The Chairperson of the Court as referred to in Article 116 paragraph (3) of Law Number 51 Year 2009. For this reason, the Chairperson / Determination of the Chair must be stated as a time limit. So because according to this idea, the forced money is deducted from the Defendant's salary every month, then on the following day after the termination of the report by the Chairperson of the Court, the Chairperson of the Court must immediately send a Letter of Determination addressed to the Head of the KPKN or officials who have such authority, which contains an order The Head of the Corruption Eradication Commission deducts the Defendant's salary every month as determined in the decision, until the Defendant complies with the content of the decision of the judge who has permanent legal force.

2. What are the benchmarks that can be used to determine the amount of forced money / dwangsom.

According to the writer, because those who are sentenced to carry out the Peratun verdict are always the State Administrative Agency / Officials who are still active, of

course they routinely get a salary every month. Therefore, if the official does not implement the decision, it is more effective and efficient if the imposition of dwangsom is taken / deducted from the salary / position allowance of the Officer in question each month, the amount of which is the allowance from the defendant or the current official at the time the decision must be implemented. And the salary deduction order, in the Judge's decision, is addressed to officials authorized to carry out salary deductions, (for example, the Head of the Treasury and State Treasury Office (KPKN) for State Administration Officers, whose payroll is through a process at the State Treasury and Treasury Office, the Head of the Treasury Office and Regional Treasury (KPKD) for State Administration Officers whose payroll is processed through the KPKD (including the Regent or Mayor), or other such Official for other State Administration Position, then the dwangsom money is handed over to the Plaintiff and this deduction continues until the obeying the verdict.

Dwangsom is only applied when officials who are convicted of certain actions based on a judge's ruling do not comply with them. So dwangsom is applied (forced) to the official if he is against the judge's decision. When a judge issues a decision, he is essentially acting as a pseudo legislator (the body that makes pseudo laws), therefore the product of the Judge (the panel of judges) is a legal product that is at the level of the law. Therefore, when the State Administration Officer does not comply with the judge's decision, the non-compliance is categorized as a violation of law / legislation. And violations committed by these officials are personal violations / errors (faute personelle), so that the consequences of accountability must also be personal (personalliability) of the person in office and not the institution or the state.

This is certainly very different from when he was an official in carrying out tasks which despite being in accordance with the laws and regulations could actually cause harm to the community. In this situation, the loss suffered by the community must be the responsibility of the State to replace its losses. So, it is stressed here, the actions of officials who do not comply with the decision are of a personal law violation, and instead in the context of carrying out the role of the state which of course always in accordance with the law. This brings the consequence that dwangsom must also be borne / paid personally (with personal money). Then, from which money / assets could be forced on the Defendant to fulfill dwangsom.

The amount of forced money that can be dropped in the verdict, according to the Author, is based on the decision of the Panel of Judges themselves. In this case, the decision of the Panel of Judges must be independent. If the type of decision of the Panel of Judges is only constitutive or declaratory, then it is impossible to charge dwangsom with a nominal amount. Because those who are sentenced to carry out the Peratun decision are always the State Administrative Agency / Officials who are still active, of course he gets a salary every month. Therefore, if the official is stubborn to carry out the ruling, then dwangsom is appropriately taken / deducted from the monthly salary of the official concerned.

And the salary deduction order is instructed to the Head of the Treasury and the State Treasury Office (KPKN) or other such authorized Officer, then the dwangsom money is handed over to the Plaintiff. This deduction continues until the verdict is obeyed. And if there is a change of official, if the new official does not comply, then the salary of the new official is deducted from his salary.

3. Who is burdened with paying forced money / Dwangsom.

According to Dr. Supandi, SH, M.Hum .:

"That in theory a person who is carrying out his duties is carrying out the role of the State, therefore when in carrying out this role / task, it will cause loss to people / society as long as those tasks are carried out according to the law, then it is true that the loss suffered by people / the community is subject to payment to the State because it is classified as "official error". Which is different from when an official does not obey the judge's decision (which can be likened to disobeying the law), then at that time he is not currently carrying out the role of the State (because ideally, carrying out the role of the State is implementing legal provisions), therefore the risk from non-compliance with the law can not be charged to the State finances but must be borne personally from the person in office, because it is a "personal mistake". Which is in line with the 'error' theory developed from Counseil d'Etat jurisprudence which essentially distinguishes between official error (Faute de Serve) and personal error (Faute Personalle)[4]

From the description above there are 2 (two) provisions regarding whom forced payment of money must be charged, namely:

i. Charged to State finances.

ii. Charged to the personal finances of the Defendant / Officer who is currently serving at the time the Judicial decision must be implemented.

The author himself believes that forced payment of money must be borne by the personal finances of the official who is serving at the time of the decision of the State Administrative Court must be implemented. So it is not charged to the State finances. This opinion is based on arguments more to the practical approach as follows: The basic purpose of the enactment of Dwangsom / Forced Money in the execution process, both in the Civil Court and the State Administrative Court is clear, namely as an execution tool that serves to exert psychological pressure (dwaang middelen) to the Defendant or the losing party in a court proceeding in court, so that the Defendant or the losing party is willing to obey or implement a court decision that has permanent legal force.

Based on the basic intent of the holding of the dwangsom forced institutions, those who are "psychologically threatened" so that a judicial ruling is implemented must be a personal Defendant / person who is in office at the time the ruling must be implemented. And in accordance with the characteristics of dwangsom, the threat of

[4]http://antiquem.blogspot.co.id/2011/11/hambatan-eksekusi-putusan-ptun.html, tanggal 11 Pebruari 2016, Jam 12.17 WIB.

forced cash payments continues to be enforced until the decision is carried out / complied with by the Defendant, because the State Administration Agency / Official who does not want to carry out a State Administrative Court decision which has legal force can still be considered to have committed an illegal act personal. So that the burden of forced payment of money must be imposed on him, even though in practice problems can arise if in the implementation stage it turns out that the official concerned moves his duties outside the area of the relevant State Administrative Court or outside the area of the different KPKN and if it turns out that his salary is not enough to pay the money forced. However, this can be overcome by establishing coordination between the one State Administrative Court and the payment method in installments.

D. CLOSING

1. Conclusions

Based on the results of the research and analysis of the discussion of the problems raised in this study, the following conclusions can be drawn:

1. Since when the Plaintiff can submit forced money is when the initial filed a lawsuit to the Administrative Court, because of forced money / Dwangsom in a State Administrative Court decision, this was motivated by the existence of the plaintiff's petitum in his lawsuit to request the imposition of forced money / Dwangsom to the Defendant if defeated and not compliant in implementing the PTUN decision, in this case the Supreme Court provides guidelines for PTUN Judges to refer to the provisions of Book II Regarding Administrative and Technical Guidelines for State Administrative Court (2009 Edition). In this Handbook the Supreme Court states that requests for forced money / dwangsom can be submitted together with a lawsuit. If the Judge approves the Plaintiff's claim, then the imposition of forced payment of money should be elaborated in legal consideration together with the subject matter of the dispute.

2. Benchmarks that can be used to determine the amount of forced money are against decisions that claim the Plaintiff's claim is granted, decisions that are condemnatoir, namely decisions that are given the burden or obligation to carry out certain actions to the State Administration Agency / Officer and to decisions that have been obtain permanent legal force (InkrachtVan Gewijsde). In determining dwangsom, the substance of the decision letter as the object of the dispute determines the Panel of Judges' considerations to determine the amount of forced money / dwangsom. So that the nominal of a dwangsom in a Judge's decision is highly determined by the quality or substance of the type, form and category of the Decree which is the

object of the dispute in a State Administration dispute.

3. Because those who are sentenced to carry out State Administrative Court decisions are always State Administration Offices / Officers who are still active, of course, regularly getting salaries and other benefits according to the provisions of the Law every month are more effective and efficient if the imposition of forced / dwangsom money is taken / deducted from the salary / position allowance of the Officer in question each month in the amount of the salary / office allowance of the Defendant or the current official at the time the decision must be implemented. And the salary deduction order, in the Judge's decision, is addressed to the Officer in charge of carrying out the salary deduction. Forced payment of money must be borne by the personal finances of the Officer in charge at the time the decision of the State Administrative Court must be carried out. So it is not charged to the State finances because the violations committed by the officials are of a personal violation / error (faute personelle), so that the consequences must also be taken personally (personal liability), from the person in office and not the institution or the state. Enforcement of Forced / Dwangsom Money in the execution process, both in the Civil Court and the State Administrative Court is clear, namely as an execution tool that serves to exert psychological pressure (dwaang middelen) to the Defendant or the losing party in a trial in the court, so that the parties Defendant or the losing party is willing to obey or implement a court decision which has permanent legal force.

2. Suggestions

From the results of the research that the author has described in the previous chapters, the author's suggestion on "Benchmarks for the Determination of Forced Money in Execution of State Administrative Court Decisions", namely:

1. The need for revision of Book II concerning Administrative and Technical Guidelines for State Administrative Court in order to implement the provisions in Article 116 of the Law on Administrative Court, in connection with the filing of forced money.

2. The need to apply the principles of good governance so that the implementation of government is more transparent, favors democracy and the prosperity of the people. And conflicts over disputes and problems in the State Administrative Court, can be reduced. If it has been decided by the State Administrative Court, the implementation is easier to be obeyed and resolved with concrete legal certainty. For the application of forced / dual money sanctions and

administrative sanctions to be carried out, it must be followed:

a. Revision of the State Administrative Court Law (to be in sync) with the Government Administration Act.

b. Make laws and regulations in the field of finance and line items available for it.

3. Against the Defendant who did not implement the decision of the State Administrative Court that has permanent legal force, the law should be applied in the form of criminal sanctions, namely by applying Article 216 of the Criminal Code, and also revising the PTUN Law in particular the provisions of article 116.

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