

## Challenges in Executing State Administrative Court Decisions Regarding Land Disputes



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**ABSTRACT:** Indonesia is rich in natural resources. One of the important components on the face of the earth island, so land disputes often occur, whether between individuals, companies, or between citizens and the government. The State Administrative Court has the authority to examine and process cases related or disputes that occur between the community and the government, one of which is land disputes. The many problems related to overlapping land rights have certainly resulted in land cases handled by State Administrative Court becoming increasingly complex. State Administrative Court has absolute competence in land disputes, namely resolving disputes related to the truth of physical and legal data, including constitutive decisions. In abstracto, the problem of executing State Administrative Court decisions lies in the norms that provide regulation. This can be seen from the lack of legal certainty in Article 116 law of the State Administrative Court. In addition, the body and/or government officials are reluctant to carry it out due to self-interest responses or external factors that may occur due to intervention

**KEYWORDS:** Execution, State Administrative Court Decision, Land Dispute

### I. INTRODUCTION

The State Administrative Court has the authority to examine and process cases related to or disputes between the community and the government. One type of State Administrative dispute that often occurs in Indonesia is a dispute over land. Indonesia is rich in natural resources. One of the important components on earth island, so land disputes often occur, both between individuals, companies, and between citizens and the government. The complexity of land disputes in Indonesia is influenced by several factors, such as the history of land ownership, pluralism of agrarian law, and overlapping regulations.

From the perspective of legal practice, land disputes that occur in Indonesia can fall into various interrelated legal issues, namely administrative law, civil law, and even criminal law. In such cases, resolution through one area of law will affect resolution in other areas of law. As a result, land disputes often require multi-level resolution, meaning not just through one branch of law. With the complexity of the legal process that is running in Indonesia, a problem becomes more complicated because there is no clear priority in the application of appropriate laws and regulations in resolving legal disputes that occur.

This land dispute usually occurs between government agencies, namely the Badan Pertanahan Nasional (BPN) and the people in Indonesia, either individuals or groups of people. In this regard, BPN is an agency that creates and issues land title certificates. In general land problems occur because there are multiple land title certificates so that individuals issue evidence (Article 19 paragraph (2) of Law Number 5 of 1960 concerning Basic Agrarian Principles).

The many problems related to overlapping land rights have certainly resulted in land cases handled by the State Administrative Court becoming increasingly complex, which occurs due to procedural errors when issuing land rights certificates and the way to resolve them is to cancel land certificates that contain administrative defects. In addition, there is an overlapping authority between the general courts and the PTUN in handling land disputes. On the one hand, the PTUN has the authority to try state administrative disputes related to decisions of government officials, including in terms of issuing land certificates carried out by the National Land Agency (BPN). On the other hand, general courts are also often involved in civil disputes regarding land ownership. This overlap causes PTUN decisions to often be difficult to execute because they conflict with general court decisions.

Execution of a court decision is a series of legal process implementations from the court to the party proven guilty of a legal problem, where the implementation is mandatory. Execution in the State Administrative Court is applied to decisions that have permanent legal force. Only decisions that grant a lawsuit and require the defendant to take certain actions require execution. An example of a decision that does not require execution is a decision that states the decision is null and void and/or invalid if the obligation for the defendant to take actions such as revocation, rehabilitation, or compensation is not carried out. Thus, not all decisions in the State Administrative Court require execution.

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"In implementing a decision of a state administrative court which has permanent legal force, the defendant, namely the state administrative official, is obliged to do several things, namely as follows (Article 97 paragraph (9) of Law Number 5 of 1986 concerning State Administrative Courts):

- a. The TUN decision as a disputed object must be revoked;
- b. Issue new TUN decisions;
- c. The issuance of a TUN decision in the case of a lawsuit is based on the provisions of the article 2 of the PTUN Law.

The increasingly complex land disputes that occur in Indonesia certainly have an impact, namely the difficulty of implementing the execution of PTUN decisions in land disputes that occur. Therefore, in this article the author analyzes the challenges of executing TUN Court decisions related to land disputes in Indonesia.

### II. RESEARCH METHOD

The research method used by the author is normative legal research. Research using normative legal research is based on the approach and analysis of legislation. This approach is used by the author in this study is by means of literature study (library research). The data collected comes from scientific works such as scientific journals, books, dictionaries and so on. The writing that has been analyzed will be described to see the relationship between variables. In this case, it is the relationship between challenges in executing state administrative court decisions regarding land disputes.

### III. RESULT AND DISCUSSION

#### Competence of the State Administrative Court in Land Disputes Occurring in Indonesia

The context of a welfare state is when there are people who feel or even experience an incident that is detrimental to the actions of the government, namely the government tries its best for the welfare of its citizens but on the one hand there are citizens who feel their interests are being harmed. So there must be a problem-solving institution, namely the State Administrative Court. Unlawful acts in its context can be seen from a broad and narrow perspective. In a broad context, unlawful acts are something that includes all written and unwritten rules. In a narrow context, what is seen is an act that violates a written rule only, both laws and regulations below it.

The government in carrying out its duties, may violate written or unwritten rules. Both can be held accountable by the government if they cause harm to citizens. Unlawful acts, both in a broad and narrow sense, can occur within the scope of civil law and public law. In civil law, the government can violate the law in both a broad and narrow sense. Likewise in public law, where the government can violate the law, both in a broad and narrow sense.

Authority absolutely the authority of the TUN Court is to try TUN disputes that occur. The court has duties and authorities in this regard; examine, decide, and resolve state administrative disputes" (Article 47 of Law No. 5 of 1986 concerning State Administrative Court). This means that the State Administrative Court does not only conduct examination/trial proceedings in court, but must also ultimately decide on the case being examined. The main issue to be resolved in the State Administrative Court is the State Administrative Decision, individuals and/or legal entities who suffer losses due to the issuance of a State

Administrative Decision may file a lawsuit with the appropriate court, with a request that the decision issued be canceled and/or declared invalid, accompanied by compensation and/or rehabilitation, or not. "The argument in the lawsuit is that the State Administrative Decision being challenged is contrary to the applicable regulations and the State Administrative Decision being challenged is not in accordance with the general principles of good governance" (Article 53 of Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning State Administrative Courts).

In essence, if a citizen feels or even experiences a loss caused by an action or decision made by a TUN official, they can file a lawsuit with the TUN Court. It is important to remember that the lawsuit must be based on strong arguments, adequate reasons, and submitted to a court that has the authority to handle the case.

PTUN has absolute competence in land disputes, namely resolving disputes related to the truth of physical and legal data, including constitutive decisions. If there is a declarative TUN decision, then the decision can be challenged in the TUN court, and if the civil or criminal judge decides that the declarative decision has no legal force. Meanwhile, in the civil realm, the decision focuses more on the aspect of land ownership rights without interfering with administrative authority. This means that in civil decisions related to land disputes, it is not permitted to use a decision that states "cancel" or "declare void" the land certificate. The PTUN also has the authority to handle disputes arising from the issuance, change, cancellation or rejection of land rights applications by the Agency.

BPN or other related officials. Examples of decisions that fall into this category include:

- a. Issuance of Land Certificates: The PTUN can examine and try cases if there is suspicion that the issuance of land certificates by the BPN was carried out in violation of procedures or in violation of the law.
- b. Certificate Cancellation: Disputes related to the cancellation of ownership certificates by authorized officials are also within the jurisdiction of the PTUN.
- c. Refusal of Issuance of Rights.

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The PTUN also has authority in land disputes related to land ownership or use, especially those involving decisions by state administrative officials. In this case, for example, related to land use permits, disputes regarding the granting or revocation of land use permits issued by state officials such as governors or mayors can be the object of lawsuits at the PTUN. In addition, it is also related to decisions on land acquisition for public interest, in this case the PTUN can handle cases related to disputes in decisions on land acquisition for public interest, such as infrastructure projects or construction of public facilities, which often give rise to disputes with residents or land owners.

Although the PTUN has the authority to handle various administrative disputes related to land, the PTUN does not have the authority to:

- a. Resolve land ownership disputes directly (land ownership disputes are the authority of the civil court).
- b. Handling land disputes involving purely civil or criminal aspects. Adjudicating
- c. cases related to actions of state officials that are not administrative decisions

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The decision of the Administrative Court should be based on three main aspects, namely the legal, philosophical, and sociological aspects, to ensure the creation of justice, legal certainty, and benefits. A decision that requires and requires execution is a decision that contains an order from the court to the losing party in the trial. In other words, only decisions that are condemnatory in nature require execution.

The decision of the TUN dispute has permanent legal force, but it turns out that many of its decisions are not implemented properly. The cause is public officials who have minimal awareness and compliance with the law. The characteristics of the PTUN are as supervisors of the implementation of decisions, not as executors (executors of decisions). The one who is obliged to be the executor is the public official involved. This means that the PTUN only has the authority to try state administrative decisions, but cannot directly resolve the main issues of land disputes, such as land ownership status.

Based on the guidelines of the TUN court procedure, execution is classified into 2 forms. First, automatic execution occurs if 60 working days have passed and the defendant (the losing party) does not fulfill his obligation to revoke the TUN Decision that has been decided by the court and has permanent legal force so that the decision loses its legal force. Second, hierarchical execution is an execution carried out by the Chief Justice who instructs the TUN official to implement the court decision containing certain obligations, through the superior of the TUN official in accordance with applicable laws and regulations.

In a state administrative case, if the defendant does not wish to carry out a final court decision, then the party involved may be subject to coercive measures by paying a sum of money by force and/or administrative sanctions" (Law Number 51 of 2009 concerning the Second Amendment to Law No. 5 of 1986 concerning State Administrative Courts). This is done to make the implementation of PTUN decisions more effective to pressure government agencies and/or officials to comply with the decisions.

In general, the problematic of the execution of PTUN decisions lies in the norms that provide the regulations. This can be seen in the fact that legal certainty is not reflected in Article 116, namely:

1. Problems of implementing forced money
  - a. Requires further regulations regarding the implementation and procedures for payment of forced money
  - b. The timeline for the total amount of money that must be paid is still unclear.
2. Problems in implementing administrative sanctions
  - a. The type of sanctions applied is not yet certain
  - b. There are no regulations that govern administrative sanctions that can be used as guidelines.
  - c. The mechanism and procedures for implementing administrative sanctions have not been clearly accommodated.

There are other things that also cause the PTUN decision not to be executed, namely the unclear legal structure in terms of norms. In addition, government agencies and/or officials are reluctant to implement it due to self- response or external factors that may occur due to intervention or changes in regulations that make the decision unenforceable at that time.

When the PTUN decides that an administrative decision, such as the issuance of a land certificate by the BPN, is void, the decision only cancels the administrative decision without directly resolving the underlying ownership conflict. This causes the execution of the decision often not to resolve the problem completely. The authority to cancel a land certificate is the BPN, because the act of canceling is an administrative action of the land government agency, especially the BPN.

The TUN Court functions as a government agency that monitors the decisions of government officials who act inconsistently. For example, an execution application submitted to cancel the SHGB which causes both material and immaterial losses to the plaintiff. In addition, a final TUN court decision is considered inappropriate because the decision or determination issued is not complied with by government officials or BUMN officials (as defendants), and the TUN court is considered less proactive in dealing with situations like this.

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### IV. CONCLUSION

The scope of land disputes that are within the competence of the PTUN includes disputes related to administrative decisions by state officials or administrative bodies related to land, such as the issuance of certificates, cancellation of rights, rejection of rights applications, and revocation of land rights. However, the PTUN only handles administrative disputes, and cannot directly adjudicate disputes related to land ownership.

The problems of executing PTUN decisions related to land disputes in Indonesia are influenced by various structural and practical factors including dualism of authority, weaknesses in law enforcement, political and economic influence, and social resistance. Resolving these problems requires reforms in the land law system, increased coordination between institutions, and stricter and fairer law enforcement to ensure that court decisions can be implemented effectively.

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