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## Discourse on the Application of *Dwangsom* on Execution Court Decisions: A Comparison with Netherlands and France

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### Abstract

*The classic problem in resolving State Administration disputes boils down to the process of implementing decisions by the parties, which in practice still does not fully meet the expectations of justice seekers. If the decision is not implemented, the State Administrative Court (PTUN) imposes administrative sanctions / coercive measures against the losing party, which can be in the form of sanctions for forced payment of money (dwangsom), in order to increase the executable power of the decision. Normally, the same as the General Court, even though currently there are not many cases, it is still a problem. Article 116 paragraph (4) of the PTUN Law regulates the mechanism for coercive measures against the execution of PTUN decisions, but it is still interpreted as containing a "rechtsvacuum". This research uses normative legal research methods through literature study, and uses descriptive analysis with deductive and comparative methods. The results of the research show that the emergence of discourse on the application of dwangsom is interpreted as a means of psychological coercion against the losing parties in order to order them to comply with the ruling. If we refer to the comparison of the French and Dutch State Administrative Court justice systems, in the Administrative Justice system in France, if the*



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*government does not implement decisions that are its obligations, then it can be subject to *astreinte/dwangsom*, likewise in the Netherlands, the longer the decision of the administrative justice body is not implemented, the greater the burden of *dwangsom* that must be borne by TUN officials.*

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## A. Introduction

The State Administrative Court (Peratun) as one of the courts was formed 5 (five) years after the issuance and ratification of Law Number 5 of 1986, which then saw two amendments, namely Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning the State Administrative Court, and Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning the State Administrative Court. The formation of the Peratun is intended to resolve disputes between the government and citizens, namely disputes that arise as a result of government actions that violate the rights of citizens.

Article 47 regulates the competence of the Peratun in the judicial system in Indonesia, namely the duty and authority to examine, decide, and resolve state administrative disputes. This also includes forcing State Administrative Officials who are found guilty through a State Administrative Court Decision to carry out the contents of the decision. The existence of the Peratun Law has a big impact, especially on the wider community in this era of globalization, in terms of protecting the rights of the community itself, so that it can guarantee people's welfare and trust in the law.<sup>1</sup>

The final stage of resolving state administrative disputes at the State Administrative Court (hereinafter referred to as PTUN) is the execution or implementation of the PTUN Decision which has permanent legal force (*inkracht van gewijsde*). Execution implies the implementation of a decision by or with the assistance of another party outside the parties to the dispute.<sup>2</sup> The essence of execution is nothing other than the realization of the obligations of the party concerned to fulfill the achievements stated in the decision. This is the stage that really determines the level of ability and success of each judicial body's decision to resolve disputes in a legal state.

The State Administrative Court (PTUN) has not fully met the expectations of the Justice Seeking Community. The Administrative Court has a classic problem in resolving disputes, namely the execution of decisions. The problem of implementing judicial decisions within the State Administrative Court has existed since the founding of this court. The public is still pessimistic about the existence of the PTUN institution, the reason is because there are no positive legal rules that can form a legal culture for State Apparatus to obey court decisions.<sup>3</sup>

Regarding the mechanism or procedure for this execution, it is regulated in Articles 116 to 119 of the Regulations Law.<sup>4</sup> As stated in the previous section, with the enactment of Law Number 51 of 2009, namely the Second Amendment to Law Number 5 of 1986

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<sup>1</sup> Yodi Martono Wahyunadi, "Kompetensi Pengadilan Tata Usaha Negara Dalam Sistem Peradilan Di Indonesia," *PTUN Jakarta* 3, no. 2 (2016).

<sup>2</sup> Bernat Panjaitan, "Penyelesaian Sengketa Tata Usaha Negara (TUN) Pada Peradilan Tata Usaha Negara (PTUN)," *Jurnal Ilmiah Advokasi* 3, no. 2 (2015): 4.

<sup>3</sup> Leona Putri Sari and Arif Wibowo, "Pelaksanaan Putusan Peradilan Tata Usaha Negara (PTUN): Pengadilan Tata Usaha Negara, Hukum, Indonesia, Putusan Pengadilan," *Jurnal Penelitian Multidisiplin* 2, no. 1 (2023).

<sup>4</sup> Badriyah Khaleed, *Mekanisme Pengadilan Tata Usaha Negara (PTUN)* (Jakarta: Media Pressindo, 2018).

concerning the State Administrative Court, the decisions of the State Administrative Court have had executable power. This is because there are sanctions in the form of *dwangsom* and administrative sanctions as well as publications against TUN bodies or officials (defendants) who do not want to implement Peratun decisions.<sup>5</sup>

Article 116 of Law Number 51 of 2009 concerning State Administrative Courts, states the execution procedure. In fact, the hope of this provision is that it can bring about a change in the awareness of State Administrative Bodies/Officials to implement the contents of the State Administrative Court Decision, at least it can have a psychological impact to force the officials concerned to cause a psychological impact to force the Officials concerned to respect the Court Decision in addition to It is also hoped that it can increase public confidence in the existence of the State Administrative Court.<sup>6</sup>

In fact, the Regulations Law already provides a mechanism for coercive measures regarding the execution of TUN Court decisions, as in Article 116 paragraph (4), however, the contents of the article still contain lacunae.<sup>7</sup> The imposition of forced money has not been clearly explained in what amount must be paid and who is the institution or body that processes the sanction or where the forced money is paid from (from personal or state assets), there are no regulations regarding this matter.<sup>8</sup> Furthermore, the author compares the implementation of *dwangsom* in France and the Netherlands.

This research concretely uses normative legal research methods, through an approach to applicable laws and regulations and literature study. The approach to statutory regulations is sourced from primary data in the form of the 1945 Constitution of the Republic of Indonesia and other statutory regulations, as well as literature studies sourced from secondary materials in the form of books, journals and other legal materials. The author also uses descriptive analysis in managing qualitative data accompanied by deductive and comparative methods.<sup>9</sup> Research also uses a prescriptive approach, namely research aimed at getting suggestions about what should be done to overcome certain problems that can produce new arguments, theories or concepts as prescriptions for solving the problems faced.<sup>10</sup> This article also uses a comparative study that describes the normative provisions along with their validity and application in the countries of France and the Netherlands.

## B. Discussion

### 1. Discourse on the Implementation of *Dwangsom* as a Forced Measure to Execute Decisions of the State Administrative Court (PTUN)

Judicial power is interpreted as the implementation of legal principles through an independent judicial process, a pillar of democratic construction, which is realized by the implementation of four judicial bodies, one of which is the State Administrative Court based on Article 18 of Law Number 4 of 2004 in conjunction with Law Number 48 2009 concerning Judicial Power.<sup>11</sup> Referring to a number of decisions issued by TUN officials, must remain

<sup>5</sup> Dezonda Pattipawae and Hendrik Salmon, "Penerapan Uang Paksa (*Dwangsom*) Dalam Eksekusi Putusan Tatausaha Negara Terhadap Ketidakpatuhan Pejabat Tun," *Community Development Journal: Jurnal Pengabdian Masyarakat* 3, no. 3 (2022).

<sup>6</sup> Khelda Ayunita and Amiruddin Lannurung, *Pengantar Hukum Acara Peradilan Tata Usaha Negara* (Makassar: Tohar Media, 2022).

<sup>7</sup> Eko Sugitario and Tjondro Tirtamulia, *Hukum Acara Peradilan Tata Usaha Negara* (Jakarta: Brilian Internasional, 2012).

<sup>8</sup> Anita Marlin Restu Prahastapa, Lapon Tukan Leonard, and Ayu Putriyanti, "Friksi Kewenangan PTUN Dalam Berlakunya Undang-Undang Nomor 30 Tahun 2014 Dan Undang-Undang Nomor 5 Tahun 1986 Berkaitan Dengan Objek Sengketa Tata Usaha Negara (TUN)," *Diponegoro Law Journal* 6, no. 2 (2017): 1–18.

<sup>9</sup> Rahmida Erliyani, "Metode Penelitian Dan Penulisan Hukum Cetakan III" (Yogyakarta: Magnum Pustaka Utama, 2021).

<sup>10</sup> Zainuddin Ali, *Metode Penelitian Hukum*, ed. Leni Wulandari (Jakarta: Sinar Grafika, 2021).

<sup>11</sup> Law Number 48 of 2009 concerning Judicial Power (State Gazette of 2009 Number 157, Supplement to State Gazette Number 5076)

guided by the applicable laws and regulations and at least in accordance with the general principles of good governance.

However, in reality it often happens that KTUN is considered to be contrary to the law or detrimental to the interests of citizens or civil legal entities. As a result, the people, as the party who feels disadvantaged, sue the governing body or official who issued the decision before the court. The existence of PTUN is one of the main milestones in revitalizing the social control function of society over the running of government.<sup>12</sup> If a judge has given a decision to a state administrative official to revoke a KTUN and issue a new KTUN, and the official concerned does not carry it out, *dwangsom* can be applied, and if the official concerned voluntarily carries out the court's decision, the *dwangsom* automatically becomes invalid. The State Administrative Court Law does not provide a definition of forced money.

The concept of *dwangsom* began to exist since the promulgation of Law Number 9 of 2004 which was later changed to Law Number 51 of 2009 concerning State Administrative Courts. Article 116 paragraph (4) Law no. 9 of 2004 as amended by Law no. 51 of 2009 concerning the second amendment to the State Administrative Court Law, regulates that in the event that the defendant is unwilling to implement a court decision that has obtained permanent legal force, the official concerned will be subject to coercive measures. The legal basis regarding the application of *dwangsom* in judicial practice in Indonesia also refers to Article 606 a. (*Wetboek op de Burgerlijke Rechtsvordering*) states that as long as the judge's decision contains a punishment other than paying a certain amount of money, it can be determined that as long as or every time the convict does not comply with his sentence, he must be handed over a certain amount of money, and this money is called *dwangsom*.

Based on the provisions of Article 606 a Rv., Article 116 of the State Administrative Court Law, and Law Number 30 of 2014 concerning Government Administration, in the context of the competence of the State Administrative Court, it can be defined, *dwangsom* is an amount of money determined by the judge. in a decision that is imposed on the convict and is enforced as long as or whenever the convict does not carry out the decision which contains a penalty for carrying out certain actions. Latulong stated that coercive measures were more effective coming from the superior hierarchy of the *tun* officials concerned who could force their subordinates to obey and implement the words of the judicial decision. Psychologically, this is true, because a subordinate basically has a tendency to obey his superiors more than outside agencies.<sup>13</sup>

*Dwangsom* is applied if the losing party is unwilling to carry out the decision. Thus, the position of forced money in the decision is assessor, meaning that the existence of forced money depends on the main sentence. So a *dwangsom* cannot exist if a decision does not contain a basic sentence. This provision only works when the basic punishment is not complied with. The position of forced money is not a punishment, but rather an instrument of decision execution attached to the judge's decision. Before further discussing forced money (*dwangsom*) in the State Administrative Court, it is necessary to discuss the difference between forced money (*dwangsom*) and compensation. This discussion is important because there are still many who equate and do not know the intersection between payment of forced money and compensation.

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<sup>12</sup> Edi Pranoto and M Riyanto, *Politik Hukum Eksekusi Putusan Pengadilan Tata Usaha Negara*, 2022.

<sup>13</sup> I Gede Aris Eka Pramana, I Made Arjaya, and Ida Ayu Putu Widiati, "Kompetensi Absolut Peradilan Tata Usaha Negara Terkait Titik Singgung Antara Peradilan Tata Usaha Negara Dan Peradilan Umum Dalam Sengketa Pertanahan (Studi Kasus Putusan Nomor: 27/G/2017/Ptun. Dps)," *Jurnal Analogi Hukum* 1, no. 1 (2019).

Table 1.1  
Comparison of Compensation and Forced Money (*Dwangsom*)

No	Type	Compensation	Forced Money
1	Draft	Punishment to pay an amount of money charged to the convicted person because of an unlawful act	Punishment to pay a certain amount of money because the convicted person did not comply with the judge's decision
2	Legal basis	Article 53 paragraph (1) and Article 97 paragraph (10) of the State Administrative Court Law	Article 116 of the State Administrative Court Law.
3	Types of punishment	Basic punishment	Additional punishment/assessment
4	Obligation to pay	Must be paid by the convicted person as implementation of the decision.	It does not have to be paid if the convicted person has complied with the basic sentence.
5	Consequences of payment	Basic law (payment obligations), deleted/completed.	<i>Dwangsom</i> execution does not eliminate the basic punishment.
6	Function	As a legal remedy for losses arising from unlawful acts/defaults	Instruments/Tools of execution and psychological coercion (psychische dwang)

Based on the table above, compensation in legal terms is often called *legal remedy*, namely a method of fulfilling or compensating rights based on a court decision given to a party who suffers losses as a result of another party's actions which were carried out due to negligence or mistake or on purpose. In a court decision, compensation is a type of basic punishment imposed on a party proven to have committed a legal act (*onrechmatige*) or broken a promise (default). If the payment burden has been decided in the judge's decision, this amount must be met by the condemned person. Meanwhile, forced money (*Dwangsom*) is an amount of money determined by the judge in the decision which is charged to the convict if he does not carry out the sentence stipulated in the judge's decision.<sup>14</sup>

Forced money (*dwangsom*) is not included in the basic punishment, because even though a certain amount of forced money has been stipulated in the verdict, the losing/condemned party does not need to pay it if he has complied with the contents of the verdict. The obligation to pay forced money/ new *dwangsom* must be fulfilled/paid. when the losing party does not comply with the contents of the decision (which is condemnatory in nature). This is the essential difference between compensation and forced money (*dwangsom*). *Dwangsom* is an assessor in nature, meaning additional punishment as a guard and can also act as a coercor so that the judge's decision is obeyed/implemented. So forced money is more of a means of execution.<sup>15</sup> Based on the content and nature of the decisions of the State Administrative Court, not all

<sup>14</sup> Triwulan Tutik dan Ismu Gunadi Widodo, *Hukum Tata Usaha Negara Dan Hukum Acara Peradilan Tata Usaha Negara Indonesia* (Jakarta: Prenada Media, 2011).

<sup>15</sup> I Wayan Dedy Cahya Pratama, Anak Agung Sagung Laksmi Dewi, and Luh Putu Suryani, "Upaya Paksa Terhadap Pejabat Yang Tidak Melakukan Putusan Pengadilan Tata Usaha Negara Denpasar," *Jurnal Preferensi Hukum* 1, no. 2 (2020).

decisions can be subject to Coercive Measures, but only decisions that meet the requirements, including :

- a. A decision stating that the lawsuit is granted, that is, if the results of the examination at the trial show that the arguments of the Plaintiff's lawsuit have been proven formally and materially and can support the petitum put forward by the Plaintiff;
- b. Decisions are condemnatoir in nature, namely decisions that impose a burden or obligation to carry out certain actions on State Administrative Bodies/Officials, such as the obligation to revoke State Administrative Decisions which are declared null/invalid , the Obligation to issue State Administrative Decisions of agencies/replacements, the Obligation to revoke and issuing a new State Administrative Decree , Obligation to pay compensation, Obligation to carry out rehabilitation in employment disputes.
- c. A decision that has obtained permanent legal force (*inkracht Van Gewijsde*) , namely a court decision for which no further legal action can be applied to the decision. So that other types of content and nature of decisions, such as decisions that are declaratory in nature, the lawsuit is not accepted, the lawsuit is dismissed, especially when a lawsuit is rejected cannot be subject to coercive measures because it is not a decision that is condemnatory in nature.<sup>16</sup>

In looking at the reality of what is happening, even though the TUN court decision has legal force, it still does not mean that the decision will be implemented that easily. Not everyone who is subject to a decision wants to carry out this decision, so sometimes coercion is required. In principle, a judge may not refuse to try the Plaintiff's *dwangsom claim* on the grounds that there are no or no detailed regulations regarding *dwangsom* in the statutory regulations.<sup>17</sup>

In essence, if we analyze in depth regarding Article 116 of the Regulations Law, then there are two types of execution that we are familiar with in the State Administrative Court, namely the execution of court decisions which contain obligations as intended in Article 97 paragraph (9) letter a, namely obligations in the form of revocation of the relevant KTUN. Then there is the execution of the court decision which contains the obligations as intended in Article 97 (9) letters b and c, namely: revoking the relevant KTUN and issuing a new KTUN; or the issuance of a KTUN in a lawsuit based on Article 3. If there is an execution of the first type, then the provisions of Article 116 paragraph (2) are applied, namely 4 months after the court decision which has obtained permanent legal force as intended in paragraph (1) is sent, the defendant does not implement it. obligations, then the disputed KTUN no longer has legal force. Thus, there is no need for any other actions or efforts from the court, for example warning letters and so on.<sup>18</sup> Because the KTUN will automatically lose its legal force.<sup>19</sup>

An example of a request for forced money by the Plaintiff that was rejected by the TUN court is decision No. 15/G/2017/PTUN.SMD which is a decision on an employment dispute. The Plaintiff in his petitum requested that the panel of judges provide additional punishment (*assesoir*) in the form of *dwangsom*, namely charging the Defendant to pay forced money (*dwangsom*) of Rp. 1,000,000.00 (one million rupiah) every day if the Defendant fails to carry out the contents of the decision in this case from the time it is decided until it is finally implemented.

The limitation of petitum with the purpose of requesting coercive measures in the form of forced money has a basis as a judge's guide in determining the inclusion of forced money. As in case No. 15/G/2017/PTUN.SMD, where the judge refused to include forced money in the

<sup>16</sup> Ridwan Hayatuddin, *Memahami Undang-Undang Peraturan Dan Strategi Beracara Di Pengadilan Tata Usaha Negara* (Bandung: Prenada Media, 2022).

<sup>17</sup> Tri Cahya Indra Permana, "Penguujian Keputusan Diskresi Oleh Pengadilan Tata Usaha Negara" (UNIVERSITAS DIPONEGORO, 2009).

<sup>18</sup> Dola Riza, "Keputusan Tata Usaha Negara Menurut Undang-Undang Peradilan Tata Usaha Negara Dan Undang-Undang Administrasi Pemerintahan," *Jurnal Bina Mulia Hukum* 3, no. 1 (2018).

<sup>19</sup> S T Muhammad Syahrums, *Peradilan Semu Hukum Acara Peradilan Tata Usaha Negara* (Riau: CV. DOTPLUS Publisher, 2022).

decision because the Plaintiff did not show evidence of the losses suffered as the basis for the *dwangsom* request. Therefore, the construction of the next provision when the Plaintiff includes dowry, the Plaintiff is obliged to detail or prove the losses suffered. Specifically, in employment disputes, the proof of loss in question is the employment rights (basic salary and benefits) obtained by the Plaintiff before the issuance of the KTUN which is the object of the dispute.

The *dwangsom* should have been paid from the Defendant's personal finances to provide psychic pressure (*psychische dwang*) to the Defendant and not to the agency where the Defendant worked. Given that the dispute arose until the verdict because of a violation committed by the Defendant that caused the Plaintiff to suffer losses. Therefore, the Defendant's personal finances, namely the Defendant's monthly salary/allowance, will be deducted to pay the *dwangsom* to the Plaintiff. However, it is important to remember that force does not replace the Plaintiff's material losses.

The application of sanctions against officials who do not comply with court decisions actually has a place in positive law, as stated in Article 116 of Law Number 5 of 1986 concerning State Administrative Courts which has been amended by Law Number 51 of 2009 concerning the Second Amendment to the Law. Law Number 5 of 1986 concerning State Administrative Courts explains the process of implementing PTUN decisions with details of Article 116.<sup>20</sup>

The enforcement of forced money payments is carried out from the end of the warning period/order of the Chair of the Administrative Court as intended in Article 116 paragraph (3) of Law no. time for implementation of the Court Decision.<sup>21</sup>

It turns out that such a complex mechanism has not been able to reach appropriate implementation in the TUN judiciary. Even though there are general rules regarding *dwangsom*, it turns out that it is very rare for TUN judicial judges to impose penalties for forced money payments/ *dwangsom* in order to increase the executable of decisions. Considering that there is no regulation of the mechanism for imposing forced money, the juridical basis for the application of forced money during executions is not strong enough, based on Article 116 (4) of the Peratun Law. In this case, the weakness of the regulation can be seen from the data obtained from 2020 to 2021 issued by the Director of Technical Personnel Development (Binganis) and Peratun Administration as follows:

**Table 1.2. Percentage of compliance with execution of administrative court decisions**

Year	Entry Application	Held	Percentage
2020	140	38	27.1 %
2021	144	16	11.1 %

Based on the fact that the issue of non-compliance with the court decision is partly because the official concerned is released from responsibility towards third parties. This condition is a worrying fact that the existence of Peratun in Indonesia has not been able to bring justice to society within the scope of government administration. However, in the implementation of PTUN decisions, the presence of security forces is not possible to encourage their execution, which is possible by the intervention of the president as head of government in order to force them.

<sup>20</sup> Nurul Qamal, *Karakteristik Hukum Acara Peradilan Tata Usaha Negara* (Makassar: Pustaka Refleksi, 2011).

<sup>21</sup> Khoiruddin Manahan Siregar, "Kedudukan Pengadilan Tata Usaha Negara Di Indonesia," *Jurnal AL-MAQASID: Jurnal Ilmu Kesyariahan Dan Keperdataan* 6, no. 1 (2020): 88–100.

## 2. Comparison of *Dwangsom* Implementation Models and Practices in Several Countries in the World

### a. Model of Application of *Dwangsom* as a State Administrative Judicial Execution in the Netherlands

In the Netherlands, the concept of *dwangsom* is known as *astreinte*. Provisions regarding forced money (*dwangsom*) are regulated in articles 5.32 to 5.36 Algemene Wet Bestuurrecht (Awb) or in English known as the General Administrative Law Act (GALA) which basically explains that if the government does not implement decisions that are its obligations, it could be subject to *astreinte*. The longer the decision of the administrative justice body is not implemented, the greater the burden of forced money that TUN officials must bear. *Astreinte* is paid to the government agency authorized to manage *astreinte*. (General Administrative Law Act/Algemene Wet Bestuursrecht, nd, sec. 5(34) b.2) The obligation to pay *astreinte* remains in effect throughout the implementation of the *astreinte*. the decision has not been implemented.

The application of sanctions in administrative justice in the Netherlands cannot be separated from the role of judges who can order the revocation of decisions in state administration cases. a decision or suspension of an action, whether in whole or in part, issued by a state administrative agency or state official who has committed an unlawful act, namely in the case of ordering the head of the administrative agency or state administrator concerned to carry out his/her duties within a specified period of time by the State Administrative Court, in cases where it is submitted that it is alleged that the administrative body or state administrator has neglected its duties or carried out its duties. completing tasks with unreasonable delays

In the practice of State Administrative Courts, *astreinte* can also be used by judges if State Administrative Officials do not carry out decisions ordered by the judge. This is also regulated in article 8.72 Algemene Wet Bestuurrecht (Awb) or the General Administrative Law Act (GALA). This provision states that *astreinte* payments must be paid by a legal entity appointed by the court to a party appointed by the court. The procedures for applying *astreinte* in implementing the judge's decision apply *mutatis mutandis* as in articles 611 a to 611 i of the Criminal Procedure Code or the Criminal Procedure Code in force in the Netherlands. In an examination conducted by the reporting judge, and in the event that the accused official does not heed the order of the reporting judge or does not comply within the specified time period, the court can take action: Report the problem to his superior or to the Prime Minister for correction, Take coercion or take action discipline, or imposing criminal contempt of court as a last resort. In the Netherlands itself, the decision execution mechanism applies *mutatis mutandis* in civil procedural law. The longer the decisions of administrative justice bodies are not implemented, the greater the burden of forced money that TUN officials must bear, which is called *astreinte*.<sup>22</sup>

Administrative authorities (State Administrative Agencies/Officials) are required to provide notification to the public that approval has been granted fictitiously rather than a formal (real) license. With this public notification, third parties are informed about the fictitious agreement. This shows that if the administrative authority (State Administration agency/official) fails to carry out its notification duties, there is a risk that the administrative authority will have to pay a fine. This occurs when the applicant has requested notification by written notice of default and the administrative authority does not respond to this request within two weeks. The fines are the same as when there is an untimely decision. The exact amount of the fine payment depends on the amount of time required before the administrative authority notifies the tacit authorization. With this instrument, the administrative authority is once again sanctioned due to the fact that a decision has not been taken before the strict deadline. In addition to sanctions

<sup>22</sup> Victor Yaved Neno, *Implikasi Pembatasan Kompetensi Absolut Peradilan Tata Usaha Negara* (Jakarta: PT Citra Aditya Bakti, 2018).

in the form of fines, administrative authorities may also be forced to formally send notification of a permit granted by filing an appeal with an administrative court, again after a written notification of default has been issued and two weeks have passed. Courts may order administrative authorities to officially notify or publish permits granted in secret

### **b. Model of Application of *Dwangsom* as a Judicial Execution for State Administration in France**

The specificity of the TUN court system in France is that there is an organizational structure of the TUN court which stands alone and is separate from the general judiciary, and is not even included in the sphere of judicial power. Regarding the judicial system in France, Auby<sup>23</sup> stated that the judicial system in France has two judicial systems (*dual system of courts*), general courts (*ordinary courts/the ordre judiciaire*) and administrative courts (*administrative courts/order administrative*). General courts are divided into courts that have civil authority and criminal authority, unless they involve the state or public officials or public legal entities as parties, in which case the State Administrative Court has special authority. The TUN judicial structure in France culminates in *the Conseil d'etat*, which is an institution like the Supreme Advisory Council in Indonesia in the 1945 Constitution (original text), but with very broad authority in both the administrative and judicial fields. The unity of jurisprudence in State Administrative Law in France is obtained through *arrests* or decisions of *the Conseil d'etat* in the field of State Administrative Courts.<sup>24</sup>

Apart from the existence of *the Conseil d'etat* at its peak, regions in France also have *Administrative Tribunal institutions*, namely the State Administrative Tribunal which examines and decides on State Administrative disputes at the first level. Decisions at *the Administrative Tribunal level*, of which there are 25 Administrative Tribunals throughout France, can be appealed (*appel*) to *the Conseil d'etat* which has legal jurisdiction in Paris.<sup>25</sup>

*The Conseil d'etat* and *the Administrative Tribunal* have two functions or dual roles, namely as a government advisory institution and at the same time as a state administrative justice institution. Thus, it can be said that the supervisory function of *the Conseil d'etat* and *the Administrative Tribunal* is preventive (advising the government) and repressive (testing administrative decisions). Since 1872, *the Conseil d'etat institution* has seriously carried out its function as a state administrative court and through its functionaries who have a serious position as state administrative judges has had the authority to issue binding state administrative court decisions. The judiciary has developed legal principles and regulations through which state administrative acts are tested.<sup>26</sup>

Apart from the two TUN Judicial institutions above, in France there are also special TUN Judicial bodies with competence/authority in certain fields or limited to certain matters. In general, these institutions have the authority to examine at the first level and appeal (*appel*) while the cassation is made to the *Conseil d'etat*. The authority of this special judicial body, for example, concerns issues: 1) state finances, which are examined and decided by *the Cour des Comptes* (a kind of Financial Supervisory Body); 2) education also includes university issues; 3) taxes; 4) social security; 5) professional fields such as: doctor, advocate, architect,

<sup>23</sup>Seerden, Rene and Frits Stroink, *Administrative Law of the European Union, its Member States and the United States*, Intersentia Uitgevers Antwerpen, Groningen, Netherlands, 2002, p. 75.

<sup>24</sup>Zainatul Ilmiyah, Vina Septi Megita, and Virga Dwi Efenedi, "Concept and Implementation of *Dwangsom* as A Forced Execution of PTUN Decisions in Indonesia: Comparative Perspective in Thailand and The Netherlands," in *Proceeding of International Conference on Sharia and Law*, vol. 1, 2022, 173–79.

<sup>25</sup>Sandya Erlangga, Huta Disyon, and Hoàng Thảo Anh, "Forced Money (*Dwangsom*) in the Indonesian State Administrative Court System and *Astreinte* in French *Conseil d'État*," *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 12, no. 2 (n.d.): 107–26.

<sup>26</sup>Sauveplanne, JG., *Rechtsstelsels in Vogelvlucht – Een Inleiding tot de Privaatrechtsvergeleijkin g*, tweede druk, Kluwer – Deventer, 1981, p. 45

etc.<sup>27</sup> The TUN judicial system in France, which is completely separate from the organizational structure of the general judiciary, is referred to as a *duality of jurisdiction system*, namely that there is a general judiciary on the one hand, and on the other hand there is a TUN judiciary. If a jurisdictional dispute occurs between judicial institutions in one system, each will be resolved by the top judiciary of each system, namely for state administration disputes it will be resolved by the *Conseil d'etat* and for disputes within the general judiciary it will be resolved by *the Cour de Cassation*.

If a jurisdictional dispute occurs between the general judiciary and the State Administrative Court, the matter will be examined and decided by a collegial judicial institution called *the Tribunal des Conflicts*. *The Tribunal des Conflicts* consists of 3 (three) supreme judges from *the Cour de Cassation* and 3 (three) members of *the Conseil d'etat*, plus 2 (two) substitute members each drawn from *the Cour de Cassation* and *the Conseil d'etat*.

With regard to the authority to adjudicate compensation claims relating to the state's responsibility to pay compensation, this is largely the result of developments from the jurisprudence of *the Conseil d'etat*, and a small part is developed through law. In order to assess the state's responsibility to pay compensation, French jurisprudence has developed a theory of "fault" which in principle distinguishes between official errors (*faute de service*) and personal errors of officials (*faute personnelle*). In addition, another classification was carried out for serious errors (*faute lourde*) and minor errors (*faute legere*). The government's responsibility to pay compensation has also been expanded through the decision of *the Conseil d'etat*, which is called the theory of "*responsibilite sans faute*" (responsibility without fault). Based on this theory, even if there is no element of error/negligence on the part of the government/state, the government can also be burdened with the obligation to pay compensation to the people/citizens who are victims of the implementation of administrative duties.

However, the inclusion of criminal sanctions in the application of administrative law seems less democratic. In the Law on "*Contempt of court*", provisions should be formulated that give the authority to judges to make decisions that require paying a certain amount of money (forced money), carrying out certain obligations and some of them (*civil contempt of court*) for parties. parties who do not want to implement the court decision. Clear court decisions must be respected, implemented and must not be interpreted further for the sake of the supremacy of the law.<sup>28</sup>

If we look closely at the two State Administrative Court systems in France and Indonesia, it can be seen that with the active-passive nature of the State Administrative Court system in France, through the advisory and testing authority of the KTUN from the *Conseil d'etat*, supervision of the government in France has a preventive and repressive character. The advisory function carried out by *the Conseil d'etat* can prevent government administrative legal actions in France from violating statutory regulations and general principles of good governance.<sup>29</sup>

The implementation of this advisory function as long as it is carried out optimally and complied with by government officials in France can essentially also minimize the occurrence of state administration disputes in the future as long as the government in issuing State Administrative Decrees (administrative deeds) uses references and considerations as has been suggested by *the Conseil d'etat*. A similar pattern could actually be considered for the State Administrative Court in Indonesia by looking at the comparison of the *dwangsom* model in France and the Netherlands. This idea could be part of the dynamics of implementing the

<sup>27</sup> Hans Verheul, "The EEC Convention on Jurisdiction and Judgments of 27 September in Dutch Legal Practice," *Netherlands International Law Review* 28, no. 1 (1981): 68–86.

<sup>28</sup> Marcel Storme, "Een Revolutionaire Hervorming: De Dwangsom," *TIJDSCHRIFT VOOR PRIVAATRECHT*, 1980, 222–40.

<sup>29</sup> Stefaan Van Der Jeught, "Penalty Payment and Lump Sum for Member States Failing to Comply with a Judgment of the EC-Court (Dwangsom En Boete Voor EU-Lidstaten in Geval van Niet-Nakoming Na Eerdere Veroordeling Door Hof van Justitie)," *Rechtskundig Weekblad*, no. 70/12 (2006): 501–9.

function of the State Administrative Court in Indonesia.<sup>30</sup>

### **C. Conclusion**

Based on the discussion above, the conclusion that the author can draw is that we look at it from the perspective of forced money (*dwangsom*), namely an amount of money determined by the judge in the decision handed down to the convict and implemented if the losing party does not carry out the sentence determined by the judge. . The position of forced money is as a means of execution, so that the execution of the decision is maintained, as well as as a tool of psychological coercion, so that the party being punished is willing to carry out the decision. As a coercive tool, *dwangsom* is more effective when imposed on the personal finances of officials who are punished to comply with decisions. This amount is a certain amount that can psychologically force the convict to comply with the decision, but the certain amount is such that it is possible to take or execute it from the convict's finances/property, if he has not/done so. did not immediately comply with the decision. However, in reality, up to now there are still obstacles in implementing the crime of paying forced money because there is a legal vacuum related to several aspects, one of which the author highlights is the amount of forced money and which party is burdened.

If we look closely at the two State Administrative Court systems in France and Indonesia, it can be seen that with the active-passive nature of the State Administrative Court system in France, through the advisory and testing authority of the *KTUN* from the *Conseil d'*. However, supervision of the government in France is preventive in nature. and repressive. We can see the French system in *dwangsom* from the use of criminal law in the realm of contempt of court. Then, if compared with the Netherlands, the *dwangsom* implementation system is how it is imposed on the community personally, the longer the content of the decision is not implemented, the greater the fine given, this of course applies *mutatis mutandis*.

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<sup>30</sup> Preadvies van Prof Mr Jan Ronse, "De *Dwangsom* in Het Belgische Recht," *VERENIGING VOOR DE VERGELIJKENDE STUDIE VAN HET RECHT VAN BELGIË EN NEDERLAND (Ed.)*, *Jaarboek*, 1961, 107–17.

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